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WHEN: Tuesday, October 23, 2012
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Notice of October 17, 2012

The President**Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia**

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
Washington, October 17, 2012.

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF THE TREASURY

31 CFR Part 29

RIN 1505-AC02

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Treasury.
ACTION: Final rule.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing final regulations to implement the provisions of Title XI of the Balanced Budget Act of 1997, as amended (the Act) related to the split between Federal and District obligations. Pursuant to the Act, with certain exceptions, Treasury has responsibility for payment of benefits based on service accrued as of June 30, 1997, under the retirement plans for District of Columbia teachers, police officers, and firefighters. Benefits for service after that date, and certain other benefits, are funded by the District of Columbia. These regulations amend earlier regulations which implement the provisions of the Act, establishing the methodology for determining the split between the Federal and District obligations. The effective date was delayed pending completion of Treasury's new automated retirement system, "System to Administer Retirement" (STAR), which replaced the District's legacy automated retirement system. While the new system has been completed, the amended regulations establish additional rules and provide additional examples of benefit calculation scenarios, a need identified during systems development. The amendments have minimal financial impact and were introduced to simplify calculations and maintain consistency with the general principles established in the original regulations.

DATES: This final rule is effective November 19, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Cicchetti, (202) 622-1859, Department of the Treasury, Office of D.C. Pensions, Metropolitan Square Building, Room 6G503, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2000, the Department of the Treasury (the Department or Treasury) published (at 65 FR 77500) regulations to implement Title XI of the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251, 712-731, 756-759, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, 112 Stat. 2681, 2681-530 through 538, 2681-552, and the District of Columbia Retirement Protection Improvement Act of 2004, Public Law 108-489 (the Act). The Act transferred certain unfunded pension liabilities from the District of Columbia (the District) government to the Federal Government. Pursuant to the Act, with certain exceptions, Treasury is responsible for payment of benefits based on service accrued as of June 30, 1997, the date defined in the Act as the "freeze date". Under the Act, the Department calculates its obligations based on the terms of the retirement plans for District of Columbia teachers, police officers, and firefighters in effect as of June 29, 1997, referred to as the "District Retirement Program." Benefits for service after June 30, 1997, and other benefits, e.g., certain disability benefits, remain a District responsibility. These regulations addressed the Department's responsibility for retirement benefits in those situations where the benefit responsibility is shared between Treasury and the District. All benefit payments that are the responsibility of the Department under the Act are referred to as Federal Benefit Payments. Any remaining benefit payments to which an individual is entitled under the District's retirement plans are the responsibility of the District and are referred to as "District benefit payments." Annuities which consist of Federal Benefit Payments and District benefit payments are referred to as "split benefits."

The Act also established the District of Columbia Judicial Retirement and

Survivors Annuity Fund, administered by Treasury's Office of D.C. Pensions (ODCP). Because the D.C. judges' benefits are now entirely a federal responsibility, the proposed split benefit regulations, discussed below, do not apply to the judges' benefit calculations.

Subpart C of the regulations (originally published at 65 FR 77500, 77503), contains the methodology for determining Federal Benefit Payments in situations where a teacher, police officer, or firefighter has service with the District of Columbia both before and after June 30, 1997, i.e., split benefits. On March 29, 2001, 66 FR 17222, the Department announced that it was "postponing indefinitely" the effective date of subpart C of the regulations because "Treasury decided to acquire an upgraded version of the replacement system software. This decision, coupled with the need to accommodate integration of the replacement system with systems implementation schedules of the government of the District of Columbia, protracted the implementation schedule for Treasury's replacement system." 66 FR 17222.

Treasury's ODCP, the District's Office of Payroll Services (OPRS), and the District of Columbia Retirement Board (DCRB) collaborated on the development of the replacement system, known as "System to Administer Retirement" (STAR). STAR is an automated pension/payroll system which supports the end-to-end business processes for retirement. STAR, which replaced the District's legacy system, calculates retirement and survivor benefits for the District's teachers, police officers and firefighters, regardless of whether their service accrued before or after the "freeze date" for Federal Benefit Payments.

From the earliest stages of this effort, Treasury worked with the District to arrive at key decisions for STAR development. Pursuant to Section 11041 of the Act, the District continues as the benefits administrator during the interim administration period, which is ongoing. Originally, OPRS performed the benefits administration function. DCRB assumed responsibility for benefits administration for both District benefit payments and Federal Benefit Payments on September 26, 2005. As benefits administrator, OPRS, and now DCRB, participated with Treasury to: Develop a proposed system that met the

programs' needs; develop the approach for addressing and resolving issues; make decisions about development; test the system being developed; review the status of projects; evaluate readiness and approve plans for implementation.

As Treasury explained in the preamble to the original proposed regulations in 1999, 64 FR at 69435, unless an exception applies under the Act, the general rule for the calculation of Federal Benefit Payments states that in all cases "in which some service becomes creditable on or before June 30, 1997 and some service becomes creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though: (1) The employee was eligible to retire as of June 30, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the retirement age, including any applicable age reduction, based on the age at actual retirement; (2) the service that became creditable after June 30, 1997 did not exist; and (3) the average salary is the average salary at separation." The original proposed regulations were largely derived from this general rule.

In the course of developing the STAR system, the development team and the subject matter experts from ODCP and the DCRB determined that additional rules for benefit calculation scenarios were needed to simplify development and to address situations that had not been considered when the original regulations were published in 2000. STAR was programmed with these additional rules.

On November 22, 2010, the Department of the Treasury published (75 FR 71047) proposed regulations that would amend subpart C of the rules promulgated in 2000. The amendments to subpart C were proposed to establish additional rules and provide additional examples of benefit calculation scenarios. These amendments have no significant financial impact and are introduced to simplify calculations and maintain consistency with the general principles established in the original regulations. For the convenience of readers, Treasury is restating subpart C in its entirety. For discussion of subpart C as originally proposed, see 64 FR 69432, 69434–36, December 13, 1999 and the preamble addressing the comments to the final regulations at 65 FR 77500–77501, December 12, 2000. For a discussion of the November 22, 2010, proposed rule, see 75 FR 71047.

This Final Rule; Public Comments and Explanation of Provisions

The initial comment period closed on January 21, 2011. In response to a request to extend the comment period, on February 3, 2011, the Department published in the **Federal Register** a notice of extension of the comment period until April 21, 2011 (see 76 FR 6112). The Department received comments from the District of Columbia Retirement Board and the D.C. Fire Fighters Association on the proposed regulations. In response, the Department has adopted the proposed rule with some modifications as suggested by the commenters.

Proposed § 29.332 provides the rule for determining when unused sick leave is creditable for the computation of Federal Benefit Payments. Comments objected to § 29.332(b), which provides that for employees separated for retirement after June 30, 1997, no unused sick leave is creditable towards Federal Benefit Payments. One comment argued that the Department's rule regarding unused sick leave ignores its chosen accrual methodology based on the freeze date and the District is forced to bear a financial burden accrued prior to the freeze date, since the allocation of unused sick leave fails to account for accrued service ratios. The suggestion was that allocating unused sick leave based on each annuitant's service ratio was necessary to comply with the intent of the Act. Another comment suggested that an actuarial assumption be used to determine the amount of sick leave accrued prior to June 30, 1997, with the implication being this amount would be creditable towards a Federal Benefit Payment.

The Department's response is that the suggested changes are inconsistent with the general principle in the Act and in 31 CFR 29.331. Section 29.331 provides that all requirements must be satisfied as of June 30, 1997, for service to be creditable towards a Federal Benefit Payment. In turn, the general principle is consistent with section 11012(b) of the Act which states that "(s)ervice after the freeze date shall not be credited for purposes of determining the amount of any Federal benefit payment." Unused sick leave becomes creditable for retirement only when the employee separates for retirement. Sick leave accrued before retirement is not a retirement benefit, but a benefit to the plan member as an employee. Therefore, for employees who separate after June 30, 1997, unused sick leave becomes creditable after the freeze date and is not

creditable towards a Federal Benefit Payment.

Proposed §§ 29.334 and 29.335 provide the rules for determining when purchased service is creditable for the computation of Federal Benefit Payments. One comment objected to the rules that purchases of service must be completed by June 30, 1997, to be creditable towards Federal Benefit Payments. The comment argued that by focusing on the date of the purchase of service transaction, the rules allocate 100% of the benefit cost to the District government regardless of sound accrual or equitable concepts, and ignore the Department's accrual methodology based on the freeze date. Another comment argued that regardless of when payment is made to purchase service, after being hired, employees have an expectation that the prior service will be credited. The suggested change is, in the case where a purchase of service is completed after June 30, 1997, to allocate a portion of the benefit cost of this service to the Department of the Treasury, based on each annuitant's service ratio.

As above, the Department's response is that the suggested change is inconsistent with the general principle in 31 CFR 29.331 and with section 11012(b) of the Act. The Department's interpretation of section 11012(b) of the Act is that service credited after the freeze date shall not be credited for purposes of determining a Federal benefit payment.

The comment also noted that Treasury is liable for refunds of service deposits made on or before the freeze date, regardless of when the underlying purchase was completed, implying an inconsistency with the proposed regulations. In response to the comment and to make the regulations more clear, the Department has modified the rules in §§ 29.334(c) and 29.335(c) to require a transfer to the District of all installment purchase of service payments received by the Department where the purchase was not completed by the freeze date.

Proposed § 29.343 provides the rule for determining the Federal Benefit Payment when an individual retires on disability. One comment argued that given that the disability plan provisions were legislated by Congress, it is unfair to pass on the liability of all post-freeze date disability retirements to the District.

The Department's response is that this section follows directly from section 11012(c) of the Act, which states that "(t)o the extent that any portion of a benefit payment to which an individual is entitled under a District Retirement

Program is based on a determination of disability made by the District Government or the Trustee after the freeze date, the Federal benefit payment determined with respect to the individual shall be an amount equal to the deferred retirement benefit or normal retirement benefit the individual would receive if the individual left service on the day before the commencement of disability retirement benefits.”

Example 3 in Appendix A refers to a maximum annuity of “80 percent of basic salary.” One comment noted that the reference should be to “80 percent of average salary.” The Department agrees and the correction has been made to examples 3A and 3B.

In addition to the suggestions, the Department received one general comment that Treasury’s discretion to interpret the Act presents an inherent conflict of interest when Treasury has a financial stake in the determination of Federal Benefit Payments and another general comment that the proposed regulations must equitably allocate costs between the Federal and District governments and be consistent with the intent and terms of the Act.

The Department responds that, as required, the General Principles and associated regulations established in the proposed rule are consistent with the intent and terms of the Act, specifically, section 11002(b), that it is the policy of the Act “for the Federal government to assume the legal responsibility for paying certain pension benefits (including certain unfunded pension liabilities which existed as of the day prior to introduction of this legislation) for the retirement plans of teachers, police, and firefighters.”

Executive Order 12866, Regulatory Planning and Review

Because this rule is not a significant regulatory action for purposes of Executive Order 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia and will not have an effect on small entities. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pension, Retirement, Teachers.

Accordingly, the Department of the Treasury amends subtitle A of 31 CFR part 29 as follows:

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

- 1. The authority citation for 31 CFR part 29 is revised to read as follows:

Authority: Subtitle A and Chapter 3 of Subtitle H, of Pub. L. 105–33, 111 Stat. 712–731 and 786–787; as amended.

- 2. Subpart C is revised to read as follows:

Subpart C—Split Benefits

Sec.

- 29.301 Purpose and scope.
- 29.302 Definitions.

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

- 29.311 Credit only for service performed on or before June 30, 1997.
- 29.312 All requirements for credit must be satisfied by June 30, 1997.
- 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

- 29.321 General principle.
- 29.322 Disability benefits.

All Requirements for Credit Must Be Satisfied by June 30, 1997

- 29.331 General principle.
- 29.332 Unused sick leave.
- 29.333 Military service.
- 29.334 Deposit service.
- 29.335 Refunded service.

Calculation of the Amount of Federal Benefit Payments

- 29.341 General principle.
- 29.342 Computed annuity exceeds the statutory maximum.
- 29.343 Disability benefits.
- 29.344 Survivor benefits.
- 29.345 Cost-of-living adjustments.
- 29.346 Reduction for survivor benefits.

Calculation of the Split of Refunds of Employee Contributions and Deposits

- 29.351 General principle.
 - 29.352 Refunded contributions.
 - 29.353 Refunded deposits.
- Appendix A to Subpart C of Part 29—
Examples

Subpart C—Split Benefits

§ 29.301 Purpose and scope.

(a) The purpose of this subpart is to address the legal and policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, and 786–787 enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government are both responsible for paying a portion of an employee’s total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs on or before June 30, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

(c) This subpart does not apply to benefit calculations under the Judges Plan.

§ 29.302 Definitions.

In this subpart (including appendix A of this subpart)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or *departmental service* means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. Department service or departmental service may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the D.C. Code (1997)

(under the Police and Firefighters Plan) or section 31–1225 of the D.C. Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or *excess LWOP* means a period of time in a non-pay status that in any year is greater than the amount creditable as service under § 29.105(d).

Hire date means the date the employee entered on duty.

Military service means—

(1) For the Police and Firefighters Plan, military service as defined in section 4–607 of the D.C. Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the D.C. Code (1997); and

(2) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the D.C. Code (1997).

Optional retirement means regular longevity retirement under section 4–618 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the D.C. Code (1997) (under the Teachers Plan).

Other service means any period of creditable service other than departmental service or unused sick leave. Other service includes service that becomes creditable upon payment of a deposit, such as service in another school system (under section 31–1208 of the D.C. Code (1997)) (under the Teachers Plan) or prior governmental service (under the Teachers Plan and the Police and Firefighters Plan); and service that is creditable without payment of a deposit, such as military service occurring prior to employment (under the Teachers Plan and the Police and Firefighters Plan).

Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.

Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 1, 1996.

Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 29.105(c).

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

§ 29.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 29.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

§ 29.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 29.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—

(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately, that is, the Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997 (See examples 7A and 7B of appendix A of this subpart); or

(b) Does not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (See § 29.343.)

All Requirements for Credit Must Be Satisfied by June 30, 1997

§ 29.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 29.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.

(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 29.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.

(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.

(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 29.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.

(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service was not paid in full as of June 30, 1997.

(3) If the deposit for the service was paid in installments, but was not paid in full as of June 30, 1997, Treasury shall transfer to the District an amount equal to the portion of the deposit completed prior to June 30, 1997.

(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (See definition of “governmental service” at D.C. Code section 4–607(15) (1997).)

§ 29.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the

redeposit for the service was paid in full to the District government as of June 30, 1997.

(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

(c) If the redeposit for the service was paid in installments, but was not paid in full as of June 30, 1997, Treasury shall transfer to the District an amount equal to the portion of the redeposit completed prior to June 30, 1997.

Calculation of the Amount of Federal Benefit Payments

§ 29.341 General principle.

(a) Where service is creditable both before and after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—

(1) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the retirement age, including any applicable age reduction, based on the age at actual retirement);

(2) The service that became creditable after June 30, 1997, did not exist; and

(3) The average salary is the average salary at separation.

(b) Exceptions to the general principle apply where:

(1) Congress amends the terms of the District Retirement Program in effect on June 29, 1997. For example, see section 11012(e) & (f) of the Balanced Budget Act of 1997, as amended by Public Laws 106–554, 107–290, and 108–133 (codified at D.C. Code section 1–803.02(e) and (f));

(2) The retirement is based on disability after June 30, 1997 (see 29.343); or

(3) The benefit is based on the death of an employee after June 30, 1997 and the survivor benefit is not based on years of service (see 29.344).

Note to § 29.341: See examples 7B, 9, and 13 of appendix A of this subpart.

§ 29.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the total computed annuity exceeds the statutory maximum:

(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.

(2) If the employee had sufficient service as of June 30, 1997, to qualify for

the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (See example 3, of appendix A of this subpart.)

(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The District benefit payment is the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 29.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.

(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997, and average salary (computed under the rules for the applicable plan) as of the date of separation. (See examples 6 and 7 of appendix A of this subpart.)

(c) In no case will the amount of the Federal Benefit Payment exceed the amount of the total disability annuity.

§ 29.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, applies to death benefits that are determined by length of service. In these cases, the survivor's Federal Benefit Payment is calculated by multiplying the survivor's total benefit by the ratio of the deceased retiree or employee's Federal Benefit Payment to the deceased retiree or employee's total annuity. (See examples 13A and B of appendix A of this subpart.)

(b) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30,

1997, does not apply to death benefits that are not determined by length of service. In these cases, the survivor's Federal Benefit Payment is calculated by multiplying the survivor's total benefit by the deceased retiree or employee's number of full months of service through June 30, 1997, and then dividing by the retiree or employee's number of months of total service at retirement. (See examples 13C–F of appendix A of this subpart.)

(c) In cases involving a disability or early voluntary retiree who dies before reaching the age at which a Federal Benefit Payment is payable, the survivor's Federal Benefit Payment is calculated as though the employee had not retired from service, but had separated from service with eligibility to receive a deferred annuity. (See examples 13G and 13H of appendix A of this subpart.)

§ 29.345 Annuity adjustments.

(a) In cases in which the total annuity and the Federal Benefit Payment are equally impacted by a cost-of-living adjustment, the new Federal Benefit Payment is determined by applying the federal percentage of the total annuity to the new total annuity. (See examples 14A–G of appendix A of this subpart.)

(b) In cases in which the total annuity and the Federal Benefit Payment are not equally impacted by a change, such as a new plan provision or service-based adjustment, the Federal Benefit Payment is recalculated where applicable, and the federal percentage of the total annuity used to determine subsequent Federal Benefit Payments is recalculated. (See example 14H of appendix A of this subpart.)

§ 29.346 Reduction for survivor benefits.

If a retiree elects a reduction for a survivor annuity, the ratio of the unreduced Federal Benefit Payment to the unreduced total annuity is multiplied by the reduced total annuity to determine the reduced Federal Benefit Payment. (See example 10 of appendix A of this subpart.)

Calculation of the Split of Refunds of Employee Contributions and Deposits

§ 29.351 General principle.

Treasury will fund refunds of employee contributions and purchase of service deposits paid by or on behalf of a covered employee to the District of Columbia Police Officers' and Firefighters' Retirement Fund or District of Columbia Teachers' Retirement Fund on or before June 30, 1997.

§ 29.352 Refunded contributions.

For any given pay period, employee contributions are considered to have been made before the freeze date if the pay date was on or before June 30, 1997. As a result, for calendar year 1997, Treasury will fund refunds of employee contributions made by teachers through pay period 12 and fund refunds of employee contributions made by police officers and firefighters through pay period 13. If pay period records are unavailable for calendar year 1997, and the participant separated on or before June 30, 1997, Treasury will fund 100 percent of the refund of retirement contributions. If pay period records are unavailable for calendar year 1997, and the participant was hired before January 1, 1997, and separated after December 31, 1997, Treasury will fund 50 percent of the refund of retirement contributions made to teachers in calendar year 1997, and 48 percent of the retirement contributions made to police officers or firefighters in calendar year 1997. Otherwise, if the participant separated after June 30, 1997, the percent of contributions made in calendar year 1997 funded by Treasury is assumed to be the ratio where the numerator is the number of days before July 1 the participant was employed in calendar year 1997 and the denominator is the number of days the participant was employed in calendar year 1997.

§ 29.353 Refunded deposits.

Treasury will fund refunds of purchase of service deposits made by employees by lump sum payment or by installment payments on or before June 30, 1997.

Appendix A to Subpart C of Part 29—Examples

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

Optional Retirement Examples**Example 1: No Unused Sick Leave**

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23 years and 4 months of service, all at the 2.5 percent accrual rate.

EXAMPLE 1A—POLICE OPTIONAL
[Pre-80 hire]**Total Annuity Computation**

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: \$45,680.80
Total: \$26,647.12
Total/month: \$2,221.00

Federal Benefit Payment Computation

Birth date: 9/10/46
Hire date: 10/09/77
Freeze date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: \$45,680.80
Total: \$26,361.61
Total/month: \$2,197.00
Total federal/month ÷ total/month: 0.989194

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11 months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

EXAMPLE 1B—POLICE OPTIONAL
[Pre-80 hire]**Total Annuity Computation**

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.916667
Average salary: \$45,680.80

EXAMPLE 1B—POLICE OPTIONAL—
Continued
[Pre-80 hire]

Total: \$29,368.96
Total/month \$2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/13/75
Freeze date: 06/30/97
Department service: 21/08/18
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.666667
Average salary: \$45,680.80
Total: \$29,026.36
Total/month: \$2,419.00
Total federal/month ÷ total/month: 0.988557

Example 2: Unused Sick Leave Credit

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 2,069 hours (341 days divided by 360 days per year times 2,184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

EXAMPLE 2—POLICE OPTIONAL
[Pre-80 hire]**Total Annuity Computation**

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 03/13/98
Department service: 24/08/06
Other service: 00/06/04
Sick leave: 00/11/11
.025 service: 20.5
.03 service: 5.583333
Average salary: \$61,264.24
Total: \$41,659.68
Total/month: \$3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
Hire date: 07/08/73
Freeze date: 06/30/97

EXAMPLE 2—POLICE OPTIONAL—
Continued
 [Pre-80 hire]

Department service: 23/11/23
 Other service: 00/06/04
 Sick leave:
 .025 service: 20.5
 .03 service: 3.916667
 Average salary: \$61,264.24
 Total: \$38,596.47
 Total/month: \$3,216.00
 Total federal/month ÷ total/month: 0.926267

Example 3: Calculated Benefit Exceeds Statutory Maximum

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the average salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

EXAMPLE 3A—POLICE OPTIONAL
 [Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Separation date: 03/30/98
 Department service: 32/00/17
 Other service:
 Sick leave:
 .025 service: 20
 .03 service: 12
 Average salary: \$75,328.30
 Total: \$64,782.34
 Total/month: \$5,399.00
 Maximum: \$60,262.64
 Maximum/month: \$5,022.00

Federal Benefit Payment Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Freeze date: 03/30/97
 Department service: 31/03/17
 Other service:
 Sick leave:
 .025 service: 20
 .03 service: 11.25
 Average salary: \$75,328.30
 Total: \$63,087.45
 Total/month: \$5,257.00
 Maximum: \$60,262.64
 Maximum/month: \$5,022.00
 Total federal/month ÷ total/month: 1.0

B. In this example, the individual in example 3A also has 6 months of unused sick

leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1092 hours (180 days divided by 360 days per year times 2184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by \$94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

EXAMPLE 3B—POLICE OPTIONAL
 [Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Separation date: 03/30/98
 Department service: 32/00/17
 Other service:
 Sick leave: 00/06/00
 .025 service: 20
 .03 service: 12
 Average salary: \$75,328.30
 Total wo/sl credit: \$64,782.34
 Total/month: \$5,399.00
 Max wo/sl credit: \$60,262.64
 Max w/sl credit: \$61,392.57
 Monthly benefit: \$5,116.00

Federal Benefit Payment Computation

Birth date: 06/12/42
 Hire date: 03/14/66
 Freeze date: 06/30/97
 Department service: 31/03/17
 Other service:
 Sick leave: none
 .025 service: 20
 .03 service: 11.25
 Average salary: \$75,328.30
 Total: \$63,087.45
 Total/month: \$5,257.00
 Maximum: \$60,262.64
 Monthly benefit: \$5,022.00
 Total federal/month ÷ total/month: 0.981626

Example 4: Excess Leave Without Pay

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is based on the 32 years and 8 months of

service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

Note: For the Teachers Plan, section 1230(a) of title 31 of the D.C. Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the D.C. Code (1997) allows for 6 months leave without pay in any calendar year.

EXAMPLE 4—TEACHERS OPTIONAL
 [Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
 Hire date: 03/01/71
 Separation date: 02/28/98
 Department service: 27/00/00
 Other service: 06/07/28
 Excess LWOP: 00/03/18
 .015 service: 5
 .0175 service: 5
 .02 service: 23.333333
 Average salary: \$53,121.00
 Total: \$33,421.98
 Total/month: \$2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
 Hire date: 03/01/71
 Freeze date: 06/30/97
 Department service: 26/04/00
 Other service: 06/07/28
 Excess LWOP: 00/03/18
 .015 service: 5
 .0175 service: 5
 .02 service: 22.666667
 Average salary: \$53,121.00
 Total: \$32,713.66
 Total/month: \$2,726.00
 Total federal/month ÷ total/month: 0.978815

Example 5: Service Credit Deposits

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual

rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5A—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department Service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$45,680.80
Total: \$28,740.85
Total/month: \$2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick Leave:
.015 service: 5
.0175 service: 5
.02 service: 23.08333; 13 days
dropped
Average salary: \$45,680.80
Total: \$28,512.45
Total/month: \$2,376.00
Total federal/month ÷ total/month: 0.992067

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997. Thus, none of the other service is used in the computation of the Federal Benefit Payment. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5B—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
\$0.00
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$45,680.80
Total: \$28,740.85
Total/month: \$2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: \$45,680.80
Total: \$25,390.90
Total/month: \$2,116.00
Total federal/month ÷ total/month: 0.883507

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

EXAMPLE 5C—TEACHERS OPTIONAL
[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$45,680.80
Total: \$28,740.85
Total/month: \$2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22

EXAMPLE 5C—TEACHERS OPTIONAL—
Continued
[Pre-96 hire]

Other service: none
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: \$45,680.80
Total: \$25,390.90
Total/month: \$2,116.00
Total federal/month ÷ total/month: 0.883507

Disability Retirement Examples

Example 6: Disability Occurs Before Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement. When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

EXAMPLE 6A—POLICE DISABILITY IN
LINE OF DUTY, AGE 45

[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service:
Sick leave:
.025 service: 18.416667
.03 service:
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$22,002.70
Total/month: \$1,834.00
2/3 of average pay: \$31,859.11
Monthly: \$2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Department service: 18/01/17
Other service:
Sick leave:
.025 service: 18.083333
.03 service:
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$21,604.43
Total/month: \$1,800.00; deferred

**EXAMPLE 6A—POLICE DISABILITY IN
LINE OF DUTY, AGE 45—Continued**
[Pre-80 hire]

Total federal/month ÷ total/month: 0.0 (at time of retirement)

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation. When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 and 6 months of service at the 2 percent accrual rate.

**EXAMPLE 6B—TEACHERS DISABILITY
AGE 49**
[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: \$53,121.00
Total: \$23,506.04
Total/month: \$1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: \$53,121.00
Total: \$22,974.83
Total/month: \$1,915.00; deferred
Total federal/month ÷ total/month: 0.0 (at time of retirement)

Example 7: Disability Occurs After Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in

the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 month, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3 percent accrual rate. The total annuity is based on the disability formula and is equal to two-thirds of average pay because that amount is higher than the 63.25 percent payable based on total service.

**EXAMPLE 7A—POLICE DISABILITY IN
LINE OF DUTY AGE 55**
[Pre-80 hire]

Total Annuity Computation

Birth date: 10/01/42
Hire date: 05/14/73
Separation date: 10/24/97
Department service: 24/05/11
Other service:
Sick leave:
.025 service: 20
.03 service: 4.416667
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$30,226.31
Total/month: \$2,519.00
2/3 of average pay: \$31,859.11
Monthly: \$2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service:
Sick leave:
.025 service: 20
.03 service: 4.083333
Average salary: \$47,788.64
Final salary: \$50,938.00
Total: \$29,748.43
Total/month: \$2,479.00
Total federal/month ÷ total/month: 0.984121

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual

rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

**EXAMPLE 7B—TEACHERS DISABILITY
AGE 60**
[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/37
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: \$53,121.00
Total: \$23,506.04
Total/month: \$1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: \$53,121.00
Total: \$22,974.83
Total/month: \$1,915.00
Total federal/month ÷ total/month: 0.977540

Deferred Retirement Examples

Example 8: All Service Before June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

EXAMPLE 8—POLICE DEFERRED
[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: \$30,427.14

**EXAMPLE 8—POLICE DEFERRED—
Continued**
[Pre-80 hire]

Final salary: \$45,415.00
Total: \$11,980.69; deferred
Total/month: \$998.00; deferred

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$11,980.69; deferred
Total/month: \$998.00; deferred
Total federal/month ÷ total/month: 1.0; de-
ferred

Example 9: Service Straddles June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

EXAMPLE 9—POLICE DEFERRED
[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service:
Sick leave:
.025 service: 18.5
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$14,072.55; deferred
Total/month: \$1,173.00; deferred

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
Other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: \$30,427.14
Final salary: \$45,415.00
Total: \$13,755.60; deferred
Total/month: \$1,146.00; deferred
Total federal/month ÷ total/month: 0.976982;
deferred

**Reduction To Provide a Survivor Annuity
Examples**

**Example 10: Survivor Reduction
Calculations**

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit:

A. In this example, the employee elects to provide full survivor benefits of 55% of the employee's unreduced annuity. The total annuity is reduced by 2½ percent of the first \$3600 and 10 percent of the balance. The reduced Federal Benefit Payment is determined by multiplying the reduced total annuity (rounded) by the ratio of the unreduced Federal Benefit Payment to the unreduced total annuity. Military service occurred prior to June 30, 1997 and purchase of other service was completed prior to June 30, 1997.

**EXAMPLE 10A—TEACHERS OPTIONAL
W/SURVIVOR REDUCTION**
[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: \$66,785.00
Total unreduced: \$42,464.13
Total unreduced/month: \$3,539.00
Reduction: \$3,976.41
Total: \$38,487.72
Total/month: \$3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: \$66,785.00
Total federal unreduced: \$41,796.28
Total federal unreduced/month: \$3,483.00
Total federal unreduced/month ÷ total unre-
duced/month: 0.984176
Total federal/month: \$3,156.00

B. In this example, the employee elects to provide a partial survivor annuity of 26% of the employee's unreduced annuity. The total annuity is reduced by 2½ percent of the first \$3,600 of \$20,073.95 and 10 percent of the balance. The reduced Federal Benefit Payment is determined by multiplying the reduced total annuity (rounded) by the ratio of the unreduced Federal Benefit Payment to the unreduced total annuity.

**EXAMPLE 10B—TEACHERS OPTIONAL
W/SURVIVOR REDUCTION**
[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: \$66,785.00
Total unreduced: \$42,464.13
Total unreduced/month: \$3,539.00
Reduction: \$1,737.40
Total reduced: \$40,726.73
Total reduced/month: \$3,394.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire Date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: \$66,785.00
Total federal unreduced: \$41,796.28
Total federal unreduced/month: \$3,483.00
Total federal unreduced/month ÷ total unre-
duced/month: 0.984176
Total federal reduced/month: \$3,340.00

**Early Optional or Involuntary Retirement
Examples**

**Example 11: Early Optional With Age
Reduction**

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62. When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate

(including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

EXAMPLE 11—TEACHERS EARLY OUT W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: \$69,281.14
Total unreduced: \$41,395.48
Age reduction factor: 0.990000
Total reduced: \$40,981.53
Total/month: \$3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: \$69,281.14
Total unreduced: \$40,240.80; deferred
Reduction factor: 1.000000 no reduction
Total reduced: \$40,240.80; deferred
Total/month: \$3,353.00 deferred
Total federal unreduced/month ÷ Total unreduced/month: 0.0 (at time of retirement)

Example 12: Involuntary With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

EXAMPLE 12—TEACHERS INVOLUNTARY W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: \$69,281.14
Total unreduced: \$41,395.48
Age reduction factor: 0.990000
Total reduced: \$40,981.53
Total/month: \$3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: \$69,281.14
Total unreduced: \$40,240.80
Age reduction factor: 0.990000
Total reduced: \$39,838.39
Total/month: \$3,320.00
Total federal/month ÷ total/month: 0.972182

Death Benefits Example

Example 13: Death Benefits Calculation

Examples A and B involve service-based death benefits calculations. Examples C–F involve non-service-based death benefits calculations. Examples G and H involve disability death benefit calculations.

A. In this example, an individual covered by the Teachers Plan retires in December 1997 and elects to provide a full survivor annuity. He dies in June 1998. The survivor's Federal Benefit Payment is 98.4 percent (\$3,483 ÷ \$3,539) of the total survivor benefit.

EXAMPLE 13A—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Death date: 06/24/98
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
Average salary: \$66,785.00
Total unreduced/month (retiree): \$3,539.00
Total/month (survivor): \$1,946.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68

EXAMPLE 13A—TEACHERS DEATH BENEFITS—Continued

[Pre-96 hire]

Freeze date: 06/30/97
Death date: 06/24/98
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
Average salary: \$66,785.00
Total federal unreduced/month (retiree): \$3,483.00
Total federal unreduced/month (retiree) ÷ total unreduced/month (retiree): 0.984176
Total federal/month (survivor): \$1,915.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is 96.5 percent (\$1,818 ÷ \$1,883) of the total survivor benefit.

EXAMPLE 13B—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Average salary: \$38,787.88
Total (retiree): \$22,593.94
Total/month (retiree): \$1,883.00
Total/month (survivor): \$1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Average salary: \$38,787.88
Total federal (retiree): \$21,818.18
Total federal/month (retiree): \$1,818.00
Total federal/month (retiree) ÷ total/month (retiree): 0.965481
Total federal/month (survivor): \$1,000.00

C. In this example, as in Example A, an individual covered by the Teachers Plan retires in December 1997 but elects to provide a survivor annuity of \$12,000. He dies in June 1998. Because the amount of the survivor annuity is not service-based, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 398 months of service as of the freeze date and 404 months of service, at retirement, the Federal Benefit Payment equals 398/404ths of the total benefit.

EXAMPLE 13C—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68

EXAMPLE 13C—TEACHERS DEATH BENEFITS—Continued

[Pre-96 hire]

Separation date: 12/31/97
 Death date: 06/24/98
 Department service: 29/02/00
 Other service: 03/09/18
 Military: 00/09/11
 Months of service: 404
 Total: \$12,000.00
 Total/month: \$1,000.00

Federal Benefit Payment Computation

Birth date: 11/01/42
 Hire date: 11/01/68
 Freeze date: 06/30/97
 Death date: 06/24/98
 Department service: 28/08/00
 Other service: 03/09/18
 Military: 00/09/11
 Months of service: 398
 Federal service ÷ total service: 0.985149
 Total: \$11,820.00
 Total/month: \$985.00

D. In this example, a teacher dies in service on April 1, 1998 after 14 years and 6 months of departmental service. Because the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 165 months of service as of the freeze date and 180 months of service, including unused sick leave, at death, the Federal Benefit Payment equals 165/180ths of the total benefit.

EXAMPLE 13D—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
 Hire date: 10/01/83
 Separation date: 04/01/98
 Death date: 04/01/98
 Department service: 14/06/01
 Unused Sick Leave: 00/06/00
 Average salary: \$36,000.00
 Months of service: 180
 Total: \$7,920.00
 Total/month: \$660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
 Hire date: 04/01/83
 Freeze date: 06/30/97
 Death date: 04/01/98
 Department Service: 13/09/00
 Average salary: \$36,000.00
 Months of service: 165
 Federal service ÷ total service: 0.916667
 Total: \$7,260.00
 Total/month: \$605.00

E. In this example, as in the prior example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. However, in this example, the teacher was age 40 on the hire date. The amount of

service used in the survivor annuity calculation equals the amount of service that the teacher would have had if the teacher continued covered employment until age 60. Because the survivor annuity is based on projected service, a form of the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13E—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/43
 Hire date: 04/01/83
 Separation date: 04/01/98
 Death date: 04/01/98
 Department service: 15/00/01
 Departmental Service projected to age 60: 20/00/01
 .015 service: 5
 .0175 service: 5
 .02 service: 10
 Average salary: \$36,000.00
 Months of service: 180
 Total: \$7,177.50
 Total/month: \$598.00

Federal Benefit Payment Computation

Birth date: 04/01/43
 Hire date: 04/01/83
 Freeze date: 06/30/97
 Death date: 04/01/98
 Department service: 14/03/00
 Average salary: \$36,000.00
 Months of service: 171
 Federal service ÷ total service: 0.950000
 Total: \$6,818.63
 Total/month: \$568.00

F. In this example, a police officer dies in the line of duty on July 31, 2001 after 18 years of departmental service. The survivor annuity is equal to 100 percent of the officer's pay at the time of death, as provided by District legislation effective October 1, 2000. However, the Federal Benefit Payment is calculated based on plan provisions in effect on June 29, 1997, which provided for a survivor annuity equal to 40 percent of the officer's pay at the time of death. Because the Federal Benefit Payment is not service-based and the officer had 167 months of service as of the freeze date and 216 months of service, including unused sick leave, at death, the Federal Benefit Payment equals 167/216ths of the total benefit calculated according to plan provisions in effect on July 1, 1997. The difference between the total benefit paid and the Federal Benefit Payment calculated according to plan provisions in effect on June 29, 1997 is the responsibility of the District government.

EXAMPLE 13F—POLICE DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/13/62
 Hire date: 08/01/83
 Death date: 07/31/2001
 Department service: 18/00/00
 Average salary: \$54,000.00
 Final salary: \$56,000.00
 Months of service: 216
 Total: \$56,004.00
 Total/month: \$4,667.00
 Total based on July 1, 1997 provisions: \$21,600.00
 Total/month based on July 1, 1997 provisions: \$1,800.00

Federal Benefit Payment Computation

Birth date: 07/13/62
 Hire date: 08/01/83
 Freeze date: 06/30/97
 Death date: 07/31/2001
 Department service: 13/11/00
 Months of service: 167
 Federal service ÷ total service: 0.773148
 Total: \$16,704.00
 Total/month: \$1,392.00

G. In this example, a firefighter dies on July 1, 1999 at age 47 after retiring based on a disability in the line of duty in November 1997. At separation, the firefighter was not eligible for optional retirement but was eligible to receive a deferred retirement annuity at age 55. Therefore, the survivor's Federal Benefit Payment is calculated based on the plan rules for deferred retirees. Under the Police and Firefighters Plan, if a separated police officer or firefighter eligible for deferred retirement dies before reaching age 55, the survivor is eligible to receive an annuity. The survivor annuity is based on the firefighter's adjusted average pay. Therefore, the survivor's Federal Benefit Payment is a prorated portion of the survivor annuity. Since the firefighter had 217 months of service as of the freeze date and 222 months of service at retirement, the survivor's Federal Benefit Payment equals 217/222nds of the total survivor benefit.

EXAMPLE 13G—FIREFIGHTERS DISABILITY/EARLY VOLUNTARY DEATH BENEFITS**Total Annuity Computation**

Birth date: 08/20/52
 Hire date: 05/14/79
 Separation date: 11/28/97
 Death date: 07/01/99
 Department service: 18/06/15
 Adjusted average salary: \$45,987.00
 Months of service: 222
 Total: \$18,396.00
 Total/month: \$1,533.00

Federal Benefit Payment Computation

Birth date: 08/20/52
 Hire date: 05/14/79

EXAMPLE 13G—FIREFIGHTERS DISABILITY/EARLY VOLUNTARY DEATH BENEFITS—Continued

Freeze date: 06/30/97
 Death date: 07/01/99
 Department service: 18/01/17
 Adjusted average salary: \$45,987.00
 Months of service: 217
 Federal service ÷ total service: .977477
 Total: \$17,976.00
 Total/month: \$1,498.00

H. In this example, a teacher dies on August 3, 1999 at age 58 after retiring based on a disability in April 1998. At separation, the teacher was not eligible for optional retirement but was eligible to receive a deferred retirement annuity at age 62. Therefore, the survivor's Federal Benefit Payment is calculated based on the plan rules for deferred retirees. Under the Teachers Plan, if a separated teacher eligible for deferred retirement dies before reaching age 62, the survivor is not eligible to receive an annuity. Therefore, the survivor's Federal Benefit Payment is zero and the survivor annuity is the full responsibility of the District.

EXAMPLE 13H—TEACHERS DISABILITY/EARLY VOLUNTARY DEATH BENEFITS**Total Annuity Computation**

Birth date: 08/01/41
 Hire date: 07/01/76
 Separation date: 04/30/98
 Death date: 08/03/99
 Total: \$21,888.00
 Total/month: \$1,824.00

Federal Benefit Payment Computation

Birth date: 08/01/41
 Hire date: 07/01/76
 Separation date: 04/30/98
 Death date: 08/03/99
 Total: \$0.00
 Total/month: \$0.00
 Total federal/month ÷ total/month: 0.0

Cost of Living Adjustment (COLA) Examples**Example 14: Application of Cost of Living Adjustments**

In cases in which the District plan applies the same cost of living adjustment that is provided for the Federal Benefit Payment, the federal percentage is applied to the new total benefit after the adjustment to determine the new Federal Benefit Payment after the adjustment.

A. In this example, a teacher retiree receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. The federal percentage for the retiree is applied to the new total benefit after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14A—TEACHERS COLA—RETIREE W/SURVIVOR REDUCTION
[Pre-96 hire]**Benefit Computation (at retirement)**

Total unreduced: \$42,464.13
 Total unreduced/month: \$3,539.00
 Total/month: \$3,207.00
 Federal unreduced: \$41,796.28
 Federal unreduced/month: \$3,483.00
 Federal percentage = federal unreduced/month ÷ total unreduced/month: 0.984176

COLA Computation

District and Federal COLA rate 5%:
 Total COLA: \$160.00
 New total/month: \$3,367.00
 New federal benefit/month = new total benefit/month × federal percentage = \$3,314.00

B. In this example, a survivor of a deceased teacher retiree receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor benefit is service related, the federal percentage for the retiree is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14B—TEACHERS COLA—SURVIVOR OF RETIREE

[Pre-96 hire]

Benefit Computation (at death of retiree whose annuity was based on service—percentage survivor election)

Total/month: \$2,043.00
 Federal percentage (retiree): 0.984176
 Federal/month: \$2,011.00

COLA Computation

District and Federal COLA rate 4.5%:
 Total COLA: \$92.00
 New total/month: \$2,135.00
 New federal benefit/month = new total benefit/month × federal percentage = \$2,101.00

C. In this example, a survivor of a deceased teacher retiree receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14C—TEACHERS COLA—SURVIVOR OF RETIREE
[Pre-96 hire]**Benefit Computation (at death of retiree—flat amount survivor election)**

Total months of service: 404
 Federal months of service: 398
 Total/month: \$1,000.00
 Federal percentage = federal service ÷ total service: 0.985149
 Federal/month: \$985.00

COLA Computation

District and Federal COLA rate 4.5%:
 Total COLA: \$45.00
 New total/month: \$1,045.00
 New federal benefit/month = new total benefit/month × federal percentage = \$1,029.00

Note: This method also applies to a percentage survivor election by a retiree whose annuity was based on a guaranteed minimum.

D. In this example, a survivor of a deceased teacher receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is service related, the federal percentage based on the deceased teacher's service is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14D—TEACHERS COLA—SURVIVOR OF EMPLOYEE

[Pre-96 hire]

Benefit Computation (at death—based on service)

Total/month: \$1,036.00
 Federal/month: \$1,000.00
 Federal percentage = federal/month ÷ total/month: 0.965251

COLA Computation

District and Federal COLA rate: 5%
 Total COLA: \$52.00
 New total benefit/month: \$1,088.00
 New federal benefit/month = new total benefit/month × federal percentage = \$1,050.00

E. In this example, a survivor of a deceased teacher receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

**EXAMPLE 14E—TEACHERS COLA—
SURVIVOR OF EMPLOYEE**
[Pre-96 hire]

**Benefit Computation (at death—guaranteed
minimum)**

Total months of service: 180
Federal months of service: 171
Total/month: \$598.00
Federal percentage = federal service ÷ total
service: 0.950000
Federal/month: \$568.00

COLA Computation

District and Federal COLA rate 5%:
Total COLA: \$30.00
New total/month: \$628.00
New federal benefit/month = new total ben-
efit/month × federal percentage = \$597.00

F. In this example, a survivor of a deceased retired police officer receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

**EXAMPLE 14F—POLICE COLA—
SURVIVOR OF RETIREE**

Benefit Computation (at death of retiree)

Total months of service: 240
Federal months of service: 236
Total/month: \$1,614.00
Federal percentage = federal service ÷ total
service: 0.983333
Federal/month: \$1,587.00

COLA Computation

District and Federal COLA rate 5%:
Total COLA: \$81.00
New total/month: \$1,695.00
New federal benefit/month = new total ben-
efit/month × federal percentage =
\$1,667.00

G. In this example, a survivor of a deceased firefighter receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

**EXAMPLE 14G—FIREFIGHTER COLA—
SURVIVOR OF EMPLOYEE**

**Benefit Computation (at death of employee
in the line of duty)**

Total/month: \$4,667.00
Federal/month: \$1,867.00
Federal percentage = federal/month

**EXAMPLE 14G—FIREFIGHTER COLA—
SURVIVOR OF EMPLOYEE—Continued**

÷ Total/month: 0.400043

COLA Computation

District and Federal COLA rate 4.5%:
Total COLA: \$210.00
New total benefit/month: \$4,877.00
New federal benefit/month = New total ben-
efit/month × federal percentage =
\$1,951.00

H. In this example, a new District plan provision applies a different cost of living adjustment than is provided for the Federal Benefit Payment. In Variation 1, the federal cost of living adjustment is applied to the Federal Benefit Payment and the District cost of living adjustment is applied to the total benefit. In Variation 2, the federal cost of living adjustment is applied to the District Benefit Payment and the District cost of living adjustment is applied to the total benefit. A new federal percentage equal to the ratio of the Federal Benefit Payment to the total benefit is established after the adjustments.

EXAMPLE 14H—TEACHERS COLA
[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: \$53,121.00
Total: \$33,421.96
Total/month: \$2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: \$53,121.00
Total: \$16,777.38
Total/month: \$1,398.00
Federal percentage: 0.501975

COLA Computation Variations Variation 1

District COLA rate 5% applied to total ben-
efit:
Total COLA: \$139.00
New total benefit/month: \$2,924.00
Federal COLA rate 4%
Federal COLA: \$56.00

**EXAMPLE 14H—TEACHERS COLA—
Continued**
[Pre-96 hire]

New federal benefit/month: \$1,454.00
New federal percentage: 0.497264

Variation 2

District COLA rate 5% applied to District ben-
efit:
Old District benefit/month: \$1,387.00
District COLA: \$69.00
New District benefit/month: \$1,456.00
Federal COLA rate 4%:
Federal COLA: \$56.00
New federal benefit/month: \$1,454.00
New total benefit/month: \$2,910.00
New federal percentage: 0.499656

**Retroactive Payment of Accrued Annuity
Example**

**Example 15: Accrual of Federal Benefit
Payment**

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been a Federal Benefit Payment (if it were made in the regular payment cycle) is still a Federal Benefit Payment. In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is \$3000 per month and her total benefit payment is \$3120 per month. Her initial check is \$5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is \$5000 of the initial check (\$3000 for the October cycle and \$2000 for the September cycle).

**EXAMPLE 15—TEACHERS ACCRUED
BENEFIT**

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 09/01/66
Separation date: 09/10/98
Department service: 32/00/10
.015 service: 5
.0175 service: 5
.02 service: 22
Average salary: \$62,150.00
Total: \$37,445.38
Total/month: \$3,120.00
Sept 11–30: \$2,080.00
Oct 1–31: \$3,120.00
Nov 1–30: \$3,120.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 09/01/66
Freeze date: 06/30/97
Department service: 30/10/00
.15 service: 5

EXAMPLE 15—TEACHERS ACCRUED BENEFIT—Continued

[Pre-96 hire]

.0175 service: 5
 .02 service: 20.833333
 Average salary: \$62,150.00
 Total: \$35,995.21
 Total/month: \$3,000.00
 Sept 11–30: \$2,000.00
 Oct 1–31: \$3,000.00
 Nov 1–30: \$3,000.00

Dated: October 10, 2012.

Nancy Ostrowski,*Director, Office of D.C. Pensions.*

[FR Doc. 2012–25562 Filed 10–18–12; 8:45 am]

BILLING CODE P**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[FRL–9743–4]

Notice of Approval of Clean Air Act Prevention of Significant Deterioration Permit Issued to the City of Palmdale for the Palmdale Hybrid Power Project**AGENCY:** Environmental Protection Agency.**ACTION:** Final action.

SUMMARY: This document announces that Environmental Protection Agency (EPA) Region 9 has issued a final permit decision issuing a Clean Air Act Prevention of Significant Deterioration (PSD) permit for the City of Palmdale (City) for the construction of the Palmdale Hybrid Power Project (PHPP).

DATES: EPA Region 9 issued a final PSD permit decision for the PHPP on September 25, 2012. The permit also became effective on that date. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final 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 within 60 days of October 19, 2012.

ADDRESSES: Documents relevant to the above-referenced permit 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 94105–3901. To arrange for viewing of these documents, call Lisa Beckham at (415) 972–3811.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, Permits Office (Air-3), U.S. Environmental Protection Agency, Region 9, (415) 972–3811,

beckham.lisa@epa.gov. Anyone who wishes to review the EPA Environmental Appeals Board (EAB) decision described below or documents in the EAB's electronic docket for its decision can obtain them at <http://www.epa.gov/eab/>. A copy of the PSD permit is also available at <http://www.epa.gov/region9/air/permit/r9-permits-issued.html>.

SUPPLEMENTARY INFORMATION: EPA Region 9 issued a final permit to the City authorizing the construction and operation of the PHPP, PSD Permit No. SE 09–01. The City's permit was initially issued by EPA Region 9 on October 18, 2011.

The EPA's EAB received one petition for review of the PHPP permit from Mr. Rob Simpson. On September 17, 2012, the EAB denied review of Mr. Simpson's petition. *See In re City of Palmdale*, PSD Appeal No. 11–07 (EAB, Sept. 17, 2012) (Order Denying Review). Following the EAB's action, pursuant to 40 CFR 124.19(f)(1), EPA Region 9 issued a final permit decision on September 25, 2012. All conditions of the PHPP PSD permit, as initially issued by EPA Region 9 on October 18, 2011, are final and effective as of September 25, 2012.

Dated: September 27, 2012.

Elizabeth Adams,*Acting Director, Air Division, Region IX.*

[FR Doc. 2012–25796 Filed 10–18–12; 8:45 am]

BILLING CODE 6560–50–P**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 120416008–2525–02]

RIN 0648–BB72**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 34**

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Amendment 34 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule removes the income

qualification requirements for renewal of Gulf of Mexico (Gulf) commercial reef fish permits and increases the maximum crew size to four for dual-permitted vessels (i.e. vessels that possess both a charter vessel/headboat permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish) that are fishing commercially. The intent of this rule is to remove permit requirements that NMFS views as no longer applicable to current commercial fishing practices and to improve safety-at-sea in the Gulf reef fish fishery.

DATES: This rule is effective November 19, 2012.

ADDRESSES: Electronic copies of Amendment 34, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and to OMB, by email at OIRA.Submission@omb.eop.gov, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727–824–5305; email: Cynthia.Meyer@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On July 10, 2012, NMFS published a notice of availability for Amendment 34 and requested public comment (77 FR 40561). NMFS published a proposed rule for Amendment 34 on July 18, 2012, and requested public comment (77 FR 42251). The purpose and rationale for the actions contained in this final rule can be found in the proposed rule and are not repeated here.

Management measures implemented through this final rule eliminate the income qualification requirements for renewal of commercial Gulf reef fish permits and increase the maximum crew size from three to four for dual-permitted vessels.

Comments and Responses

The following is a summary of the comments NMFS received on the

proposed rule and NMFS' respective responses. During the comment period, NMFS received 11 comment letters, including nine from private citizens and two from fishing organizations. Of these comment letters, 10 were in support of the proposed rule and one opposed the proposed rule. Three of the comment letters were an identical form.

Comment 1: The comments supporting the proposed rule insisted that the income requirement was no longer needed due to other existing regulations for the reef fish fishery. The comment letter opposing the proposed rule suggested that by removing the income requirement, there would be no incentive to report catch.

Response: NMFS agrees that the income requirement is no longer needed in the reef fish fishery. Currently, to obtain or renew a commercial vessel permit for reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing or from charter fishing during either of the 2 calendar years preceding the application. Due to recent regulatory changes in the commercial sector including establishment of individual fishing quotas (IFQs) for the most commercially sought after species, NMFS views existing income qualification requirements as no longer necessary. The regulations for the reef fish fishery require dealer reporting and the IFQ programs require trip declarations, 3-hour notifications, and detailed reporting. These requirements and the potential enforcement measures are considered adequate incentives for fishermen to accurately report their catches in the absence of the income requirement.

Further, the relative ease of fulfilling or circumventing income requirement provisions has rendered them largely meaningless. Currently, NMFS requires only that applicants submit affidavits attesting that they meet the minimum income requirements. These affidavits are not routinely validated by NMFS, because doing so is difficult and costly. In addition, business entities such as corporations and partnerships are the most common form of permitted entity, and their operations are easily structured so as to satisfy the income requirement. Removing these requirements will streamline the permit renewal process and eliminate ineffective regulations.

Comment 2: Regarding the increase in crew size for dual-permitted vessels, the comments supporting this change were based on improving safety-at-sea and allowing compliance with current Occupational Safety and Health

Administration (OSHA) regulations for commercial diving operations. The comment opposing the change suggests that increasing the crew size would result in overfishing by spear fishermen.

Response: The rule increases the maximum crew size regulations from three to four people for dual-permitted vessels without a certificate of inspection when fishing commercially. Historically, limiting the crew size on a dual-permitted vessel when fishing commercially was intended to prevent a vessel from taking out a number of passengers under the pretense of making a charter trip, but subsequently selling the catch. In addition to the implementation of the IFQ programs for most of the commercially harvested species, all commercial reef fish vessels are required to be equipped with vessel monitoring systems. Vessel monitoring systems (VMSs) track the location of individual vessels in the fleet. Having a VMS on board makes it clear when a vessel is operating as a commercial vessel. Dual-permitted commercial spear fishermen requested an increase in crew size to allow two divers in the water, diving as a buddy pair, while two crew members remain aboard the vessel. This conforms to safe operating procedures for commercial diving (according to OSHA regulations) and directly promotes the safety of human life at sea. The change in crew size could slightly increase the vessel's efficiency in overall fishing effort by allowing the crew to rest in between shifts. Spearfishing is a minor component of the Gulf reef fish fishery and any increase in efficiency would be a small percentage of overall harvest. If the dual-permitted vessels do increase the overall fishing effort, then the regulations for the commercial reef fish fishery requiring detailed monitoring and reporting including VMS, trip declaration, and landing notifications would provide the catch information. Additionally, other management measures such as quotas and associated closures are tailored to prevent overfishing of species in the reef fish fishery and there is no evidence that an increase in crew size would lead to overfishing.

Classification

NMFS determined that this final rule and Amendment 34 are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of management and Budget (OMB) under control number 0648-0205. NMFS has determined the removal of the income qualification requirements for commercial Gulf reef fish permit holders will result in a net decrease in the time to complete the Federal Permit Application (for all applicants), however, the current burden estimate (20 minutes per applicant) to complete the application form would not decrease because the time to complete the Income Qualification Affidavit is minimal compared to the time to complete the entire application. These estimates of the public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 15, 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.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition for “charter vessel” is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish. A charter vessel that has a charter vessel permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than four persons aboard, including operator and crew. A charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for

vessels that are underway for more than 12 hours.

* * * * *

■ 3. In § 622.4, the introductory text for paragraph (a)(2)(v) is revised; paragraphs (m)(3), (m)(4), and (m)(5) are removed; paragraph (m)(6) is redesignated as paragraph (m)(3); and paragraph (m)(2) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) *Gulf reef fish*. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2)(xiv) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish.

* * * * *

(m) * * *

(2) A permit holder may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity. A permit holder may also transfer the commercial vessel permit for Gulf reef fish to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.

* * * * *

[FR Doc. 2012-25821 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786-1781-01]

RIN 0648-XC294

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the State of New York

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2012 summer flounder commercial quota allocated to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 2012, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in New York.

DATES: Effective at 0001 hr local time, October 20, 2012, through 2400 hr local time December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281-9224, or Carly.Bari@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2012 fishing year is 13,136,001 lb (5,958,490 kg) (76 FR 82189, December 30, 2011). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, resulting in a commercial quota of 1,004,509 lb (455,645 kg). The 2012 allocation was reduced to 922,705 lb (418,539 kg) after deduction of research set-aside and

adjustment for quota overages carried forward from 2011.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial quotas and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined based upon dealer reports and other available information that New York has harvested its quota for 2012.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, October 20, 2012, landings of summer flounder in New York by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2012 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours October 20, 2012, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

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

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

Dated: October 16, 2012.

Emily H. Menashes,

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

[FR Doc. 2012-25790 Filed 10-16-12; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737-2141-02]

RIN 0648-XC295

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2012 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 30,270 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2012 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 28,284 mt. This amount incorporates a 1,886 mt deduction to account for the A season allowance of

the pollock TAC that was unharvested and unavailable to carry forward to subsequent seasons (per § 679.20(a)(5)(iv)(B)), and a set aside of 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 12, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 15, 2012.

James P. Burgess,

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

[FR Doc. 2012-25677 Filed 10-15-12; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 77, No. 203

Friday, October 19, 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.

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1070

[Docket No. CFPB–2012–0038]

Privacy Act of 1974; Implementation of Exemptions

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) is proposing to amend its regulations to exempt portions of its system of records entitled “CFPB.005—Consumer Response System” from certain provisions of the Privacy Act of 1974, as amended (the “Privacy Act”).

DATES: Comments must be received on or before November 19, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0038, by any of the following methods:

- *Electronic:* www.regulations.gov.

Follow the instructions for submitting comments.

- *Email:* privacy@cfpb.gov.

- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION:

Background

The CFPB is re-publishing its System of Records Notice entitled “CFPB.005—Consumer Response System.” The CFPB uses the Consumer Response System (“CRS”) to collect, process, respond to, and refer consumer complaints or inquiries regarding consumer financial products and services.

The CFPB also uses information in CRS to investigate whether allegations set forth in consumer complaints describe potential violations of law and if so, to determine whether and to whom to refer such allegations for possible law enforcement actions. Sensitive information about the CFPB’s investigative processes, techniques, and conclusions are recorded in CRS.

Pursuant to subsection (k) of the Privacy Act, 5 U.S.C. 552a(k), the CFPB proposes to amend its Rule on the Disclosure of Documents and Information, 12 CFR part 1070, to exempt this investigative information from public access and certain other provisions of the Privacy Act as well as corresponding provisions of Subpart E of the Rule. The CFPB deems this exemption to be necessary to prevent interference with law enforcement investigations as well as compromise of its investigative processes that could ensue if the CFPB divulged to the public information about particular consumer complaint investigations or investigative techniques and methods.

Where the CFPB does not have reason to expect that its provision of public access to investigatory information in CRS would interfere with pending law enforcement investigations or compromise the CFPB’s law enforcement process, then the CFPB may, in its discretion, waive the applicable exemption.

Procedural Requirements

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (the “RFA”), requires each agency to consider the potential impact of its regulations on small entities, including small

businesses, small governmental units, and small not-for-profit organizations, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned so certifies. The proposed rule would not impose any obligations or standards of conduct for purposes of analysis under the RFA, and it therefore would not give rise to a regulatory compliance burden for small entities.

Finally, the Bureau has determined that this proposed rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Part 1070

Confidential business information, Consumer protection, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth in the Preamble, the Bureau proposes to amend 12 CFR part 1070 as follows:

PART 1070—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 1070 continues to read as follows:

Authority: 12 U.S.C. 3401; 12 U.S.C. 5481 *et seq.*; 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 30; 5 U.S.C. 301.

2. In § 1070.60, add paragraph (a)(4) to read as follows:

§ 1070.60 Exempt Records.

(a) Exempt systems of records: * * *

(4) CFPB.005 Consumer Response System

* * * * *

Dated: October 2, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–24952 Filed 10–18–12; 8:45 am]

BILLING CODE 4810-AM-P

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

[Docket No. FAA-2012-1103; Directorate Identifier 2012-NM-131-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing 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 The Boeing Company Model 757-200, -200PF, -200CB, and -300 series airplanes. This proposed AD was prompted by reports of cracking of the forward bulkhead web, web stiffeners, attachment angles, and thermal anti-ice (TAI) spray ring assemblies of the engine air intake cowl. This proposed AD would require replacing the forward bulkhead assembly, TAI spray ring assembly, and attachment fittings of the air intake cowl. We are proposing this AD to prevent the failure of air intake cowl components due to cracking, which could result in the air intake cowl separating from the engine and striking critical airplane control surfaces that could result in a loss of airplane control; severe engine damage and loss of thrust; or large parts striking a person or property on the ground.

DATES: We must receive comments on this proposed AD by December 3, 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.

For Rolls-Royce service information identified in this proposed AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 011 44 1332 242424; fax 011 44 1332 249936; email http://www.rolls-royce.com/contact/civil_team.jsp; Internet <https://www.aeromanager.com>. For Bombardier service information

identified in this proposed AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland; telephone +44(0)2890-462469; fax +44(0)2890-468444; Internet <http://www.bombardier.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 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: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6501; fax: (425) 917-6590; email: kevin.nguyen@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-2012-1103; Directorate Identifier 2012-NM-131-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 have received reports of extensive cracking of the forward bulkhead web, web stiffeners, attachment angles, and TAI spray ring assemblies of the air

intake cowl. We received another report of extensive cracking in the forward bulkhead inner and outer cap angles, stiffeners, and the bulkhead web. In addition, the TAI piccolo tube and supports were found cracked after the intake cowl was disassembled. Further investigation determined that the issue was related to metal fatigue during the service lifetime of the components; therefore, there is a need to remove and replace the affected components within a prescribed timescale. Cracked air intake cowl parts and assemblies, if not corrected, could result in the air intake cowl separating from the engine and striking critical airplane control surfaces that could result in a loss of airplane control; severe engine damage, and loss of thrust; or large parts striking a person or property on the ground.

Relevant Service Information

We reviewed Rolls-Royce Service Bulletin RB.211-71-AG698, including Appendices 1, 2, 3, and 4, dated October 14, 2011 (for engines having Dyna-Rohr or Bombardier standard air intake cowls); and Bombardier Alert Service Bulletin RB211-E4-A1003, Revision 1, dated August 15, 2012 (for engines with air intake cowls modified by Bombardier Aerospace Supplemental Type Certificate (STC) ST02102NY, [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/\\$FILE/ST02102NY.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/$FILE/ST02102NY.pdf), commonly known as a 535EX cowls). The service information describes procedures for removing and replacing, with new parts, the forward bulkhead assembly, TAI spray ring assembly, and attachment fittings of the air intake cowl.

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 accomplishing the actions specified in the service information described previously.

Interim Action

We consider this proposed AD interim action due to on-going investigation into the nature, cause, and extent of the cracking. If final action is later identified, based on the results of the investigation, we might consider further rulemaking then.

Costs of Compliance

We estimate that this proposed AD affects 332 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
Replace left-side air intake cowl components.	Up to 252 work-hours × \$85 per hour = \$21,420 per replacement.	Up to \$158,760	Up to \$180,180 per replacement.	Up to \$59,819,760.
Replace right-side air intake cowl components.	Up to 252 work-hours × \$85 per hour = \$21,420 per replacement.	Up to \$158,760	Up to \$180,180 per replacement.	Up to \$59,819,760.

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):

The Boeing Company: Docket No. FAA–2012–1103; Directorate Identifier 2012–NM–131–AD.

(a) Comments Due Date

We must receive comments by December 3, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, equipped with Rolls-Royce RB211–535E4, –535E4–B, –535E4–C, and –535E4X engines; or with Rolls-Royce RB211–535E4, –535E4–B, and –535E4–C engines that have air intake cowls that were modified by Bombardier Aerospace Supplemental Type Certificate (STC) ST02102NY, [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/\\$FILE/ST02102NY.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/$FILE/ST02102NY.pdf), commonly known as 535E4X cowls.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by reports of cracking of the forward bulkhead web, web

stiffeners, attachment angles, and thermal anti-ice (TAI) spray ring assemblies of the engine air intake cowl. We are issuing this AD to prevent the failure of air intake cowl components due to cracking, which could result in the air intake cowl separating from the engine and striking critical airplane control surfaces that could result in a loss of airplane control; severe engine damage, and loss of thrust; or large parts striking a person or property on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement of Air Intake Cowl Complete Forward Bulkhead Assemblies Previously Disassembled

For airplanes on which the air intake cowls were replaced before the effective date of this AD using a kit or parts identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Within 144 months since replacement of the air intake cowl, or within 12 months after the effective date of this AD, whichever is later, replace the forward bulkhead assembly, TAI spray ring assembly, and associated attachment fittings of the air intake cowl with new parts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin RB211–E4–A1003, Revision 1, dated August 15, 2012 (for engines with air intake cowls modified by Bombardier Aerospace STC ST02102NY, [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/\\$FILE/ST02102NY.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/$FILE/ST02102NY.pdf), commonly known as a 535EX cowls); or Rolls-Royce Service Bulletin RB.211–71–AG698, dated October 14, 2011 (for engines having Dyna-Rohr or Bombardier standard air intake cowls). Repeat the replacement thereafter at intervals not to exceed 144 months.

(1) RB211–E4A1003 KIT, or all the parts listed in Appendix 3 of Bombardier Alert Service Bulletin RB211–E4–A1003, Revision 1, dated August 15, 2012 (for engines with air intake cowls modified by STC ST02102NY, commonly known as a 535EX cowls).

(2) RB–211–71–AG698–E4KIT, or all the parts listed in Appendix 3 of Rolls-Royce Service Bulletin RB.211–71–AG698, dated October 14, 2011 (for engines with Dyna-Rohr standard air intake cowls).

(3) RB–211–71–AG698–E4BKIT, or all the parts listed in Appendix 4 of Rolls-Royce

Service Bulletin RB.211-71-AG698, dated October 14, 2011 (for engines with Bombardier standard air intake cowls).

(h) Replacement of In-Service Air Intake Cowl Complete Forward Bulkhead Assemblies

For airplanes other than those identified in paragraph (g) of this AD: At the applicable time specified in paragraphs (h)(1) through (h)(12) of this AD, replace the forward bulkhead assembly, TAI spray ring assembly, and associated attachment fittings of the air intake cowl with new parts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin RB211-E4-A1003, Revision 1, dated August 15, 2012 (for engines with air intake cowls modified by Bombardier Aerospace STC ST02102NY [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/\\$FILE/ST02102NY.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/$FILE/ST02102NY.pdf), commonly known as a 535EX cowls); or Rolls-Royce Service Bulletin RB.211-71-AG698, dated October 14, 2011 (for engines with Dyna-Rohr or Bombardier standard air intake cowls.) Repeat the replacement thereafter at intervals not to exceed 144 months.

(1) For airplanes with air intake cowls having serial numbers 4001 through 4121 inclusive: Replace within 12 months after the effective date of this AD.

(2) For airplanes with air intake cowls having serial numbers 4122 through 4241 inclusive: Replace within 24 months after the effective date of this AD.

(3) For airplanes with air intake cowls having serial numbers 4242 through 4361 inclusive: Replace within 36 months after the effective date of this AD.

(4) For airplanes with air intake cowls having serial numbers 4362 through 4481 inclusive: Replace within 48 months after the effective date of this AD.

(5) For airplanes with air intake cowls having serial numbers 4482 through 4484 inclusive: Replace within 60 months after the effective date of this AD.

(6) For airplanes with air intake cowls having serial numbers 9001 through 9117 inclusive: Replace within 60 months after the effective date of this AD.

(7) For airplanes with air intake cowls having serial numbers 9118 through 9237 inclusive: Replace within 72 months after the effective date of this AD.

(8) For airplanes with air intake cowls having serial numbers 9238 through 9357 inclusive: Replace within 84 months after the effective date of this AD.

(9) For airplanes with air intake cowls having serial numbers 9358 through 9477 inclusive: Replace within 96 months after the effective date of this AD.

(10) For airplanes with air intake cowls having serial numbers 9478 through 9597 inclusive: Replace within 108 months after the effective date of this AD.

(11) For airplanes with air intake cowls having serial numbers 9598 through 9717 inclusive: Replace within 120 months after the effective date of this AD.

(12) For airplanes with air intake cowls having serial numbers 9718 through 9780 inclusive: Replace within 132 months after the effective date of this AD.

(i) Credit for Previous Actions

For engines with air intake cowls modified by Bombardier Aerospace STC ST02102NY [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/\\$FILE/ST02102NY.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/256325188c3b1f2f8625705f004dd977/$FILE/ST02102NY.pdf), commonly known as a 535EX cowls): This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Alert Service Bulletin RB211-E4-A1003, dated June 27, 2012 (which is not incorporated by reference in this AD).

(j) No Reporting Requirement

Although Bombardier Alert Service Bulletin RB211-E4-A1003, Revision 1, dated August 15, 2012; and Rolls-Royce Service Bulletin RB.211-71-AG698, excluding Appendix 1 and including Appendices 2, 3, and 4, dated October 14, 2011; specify to submit certain reporting information to the manufacturer, this AD does not include that requirement.

(k) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6501; fax: (425) 917-6590; email: kevin.nguyen@faa.gov.

(2) For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 011 44 1332 242424; fax 011 44 1332 249936; email http://www.rolls-royce.com/contact/civil_team.jsp; Internet <https://www.aeromanager.com>. For Bombardier Service information identified in this AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road,

Belfast, BT3 9DZ Northern Ireland; telephone +44(0)2890-462469; fax +44(0)2890-468444; Internet <http://www.bombardier.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.

Issued in Renton, Washington, on October 12, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012-25780 Filed 10-18-12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA-HQ-OAR-2012-0486, FRL-9741-6]

RIN 2060-AR59

Revision to Ambient Nitrogen Dioxide Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the deadlines established in the national ambient air quality standard (NAAQS) for nitrogen dioxide (NO₂) for the near-road component of the NO₂ monitoring network and to implement a phased deployment approach. This approach would create a series of deadlines that would make the near-road NO₂ network operational between January 1, 2014, and January 1, 2017. The EPA is also proposing to revise the approval authority for annual monitoring network plans for NO₂ monitoring.

DATES: Comments must be received on or before November 19, 2012.

Public Hearing. If anyone contacts the EPA by October 29, 2012 requesting to speak at a public hearing, a hearing will be held on November 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0486 by one of the following methods:

- www.regulations.gov: Follow the online instructions for submitting comments.

- **Email:** a-and-r-Docket@epa.gov.

- **Fax:** (202) 566-9744.

- **Mail:** Docket No. EPA-HQ-OAR-2012-0486, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* Docket No. EPA–HQ–OAR–2012–0486, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0486. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The www.regulations.gov Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/

DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Neelson Watkins, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C304–06, Research Triangle Park, NC 27711; telephone: (919) 541–5522; fax: (919) 541–1903; email: watkins.neelson@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This action applies to state, territorial, and local air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. Categories and entities potentially regulated by this action include:

Category	NAICS ^a code
State/territorial/local/tribal government	924110

^aNorth American Industry Classification System.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through <http://www.regulations.gov> or email. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the 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:

- 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.

- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed rule will be posted on the TTN’s policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control. A redline/strikeout document comparing the proposed revisions to the appropriate sections of the current rules is located in the docket.

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Minority Populations and Low-Income Populations

I. Background

On February 9, 2010, the EPA promulgated minimum monitoring requirements for the NO₂ monitoring network in support of the revised NO₂ NAAQS (75 FR 6474). The NO₂ NAAQS was revised to include a 1-hour standard with a 98th percentile form averaged over three years and a level of 100 parts per billion (ppb), reflecting the maximum allowable NO₂ concentration anywhere in an area, while retaining the annual standard of 53 ppb.

As part of the NAAQS rulemaking, the EPA promulgated revisions to requirements for minimum numbers of ambient NO₂ monitors that included new monitoring near major roads in larger urban areas. In addition, these monitoring requirements included requirements to characterize NO₂ concentrations representative of wider spatial scales in larger urban areas (area-wide monitors), and monitors intended to characterize NO₂ exposures of susceptible and vulnerable populations. Specifically, the requirements for these minimum monitoring requirements are as follows:

The first tier of the ambient NO₂ monitoring network requires near-road monitoring.¹ There must be one microscale near-road NO₂ monitoring station in each Core Based Statistical Area (CBSA) with a population of 500,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road. An additional near-road NO₂ monitoring station is required at a second location of expected maximum hourly concentrations for any CBSA with a population of 2,500,000 or more persons, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater Annual Average Daily Traffic (AADT). Based upon 2010 census data and data maintained by the U.S. Department of Transportation Federal Highway Administration on the most heavily trafficked roads in the U.S. (<http://www.fhwa.dot.gov/policyinformation/tables/02.cfm>), approximately 126 near-road NO₂ sites are required within 103 CBSAs nationwide.

The second tier of the NO₂ minimum monitoring requirements is for area-wide NO₂ monitoring.² There must be one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of

expected highest NO₂ concentrations representing the neighborhood or larger spatial scales. These NO₂ monitors are referred to as area-wide monitors. Based on 2010 census data, approximately 52 area-wide NO₂ sites are required within 52 CBSAs.

The third tier of the NO₂ minimum monitoring requirements is for the characterization of NO₂ exposure for susceptible and vulnerable populations.³ The EPA Regional Administrators, in collaboration with states, must require a minimum of 40 additional NO₂ monitoring stations nationwide in any area, inside or outside of CBSAs, above the minimum monitoring requirements for near-road and area-wide monitors, with a primary focus on siting these monitors in locations to protect susceptible and vulnerable populations.

All three tiers of the NO₂ minimum monitoring requirements are to be submitted to the EPA for approval. Currently, 40 CFR 58.10 and 58.13 require states to submit a plan for establishing all required NO₂ monitoring sites to the EPA Administrator by July 1, 2012. Further, these plans shall provide for all required monitoring stations to be operational by January 1, 2013.

II. Proposed Changes to the Ambient NO₂ Monitoring Requirements

A. Network Implementation Dates

We are proposing a phased implementation approach to allow more time for states to establish the required near-road NO₂ monitors on a schedule consistent with available resources. No changes are proposed for the implementation timing requirements for area-wide monitoring and for monitoring to characterize NO₂ exposures for susceptible and vulnerable populations.

Language in 40 CFR part 58, sections 58.10 and 58.13, requires states to submit their NO₂ monitoring network plan by July 1, 2012, and to have all required NO₂ monitors physically established and operational by January 1, 2013. The EPA believes that most states have monitoring stations currently in operation that either already house an NO₂ monitor, or could easily accommodate an NO₂ monitor, which would allow the state to satisfy the requirements for area-wide monitoring and for characterizing NO₂ exposures for susceptible and vulnerable populations without the need for additional funds or network alterations. Near-roadway monitors,

however, generally do not exist and represent a significant, new monitoring activity needing substantial resources to implement. The EPA is aware that a very large majority of state and local air agencies required to install one or more near-road NO₂ stations currently do not have the financial resources to install and operate these new monitoring sites.

During the 2010 NO₂ NAAQS review process, the EPA received comments from state and local agencies, along with representative Regional Planning Organizations (RPOs) and national associations, indicating that full funding from the EPA was essential to ensure that the near-road NO₂ network was implemented as required. For example, in their public comments on the proposed primary NAAQS for NO₂ (74 FR 34404, July 15, 2012), the National Association of Clean Air Agencies stated: "Particularly in light of the recent and anticipated demands of funding other new and expanded monitoring networks, including the source and population lead network, the air toxics in schools monitors, and the proposed rural ozone network, it is imperative that the near-road [NO₂] network be federally funded with new appropriations at requisite levels. State and local air agency budgets have been generally flat for a number of years, with some agencies struggling to match funds to support core programs. Without additional funding for near-road monitoring, provided under section 103 of the Clean Air Act (CAA) so that matching funds are not required, many agencies will be unable to fulfill this new responsibility." In response to these and other state comments, the EPA pursued an approach to fund all required near-road NO₂ monitors through CAA section 103, and thus removed the state burden of providing matching funds. As of federal fiscal year 2012, insufficient federal funds have been identified to fund all of the required near-road NO₂ monitors across the country by the original deadline promulgated in the primary NAAQS for NO₂ (75 FR 6474). However, the EPA has been able to identify limited available funding to support a phased deployment approach.

Where neither states nor the EPA can identify sufficient funding to implement all required near-road NO₂ sites, the EPA is proposing changes to the dates by which required near-road NO₂ monitors are to be identified in annual monitoring network plans and physically established. The EPA is proposing a phased implementation approach, where subsets of the required near-road NO₂ monitors will be funded over the course of multiple years,

¹ See 40 CFR part 58, appendix D, section 4.3.2.

² See 40 CFR part 58, appendix D, section 4.3.3.

³ See 40 CFR part 58, appendix D, section 4.3.4.

beginning in federal fiscal year 2012 and anticipated to extend through federal fiscal year 2015. The EPA believes that it will be able to identify sufficient grant funding to support this approach and, therefore, allow states to complete the near-road network.

The EPA is proposing the following adjustments to the dates by which near-road NO₂ monitors are to be included in Annual Monitoring Network Plans and physically established. Specifically, we are proposing that:

(1) Those near-road NO₂ monitors which are either a single required monitor or the first of two required monitors in CBSAs having 1 million or more persons shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2013, and that the monitors shall be operational by January 1, 2014.

(2) Those near-road NO₂ monitors which are the second near-road NO₂ monitor in any CBSA with a population of 2,500,000 persons or more, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts, shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2014, and the monitors shall be operational by January 1, 2015.

(3) Those remaining near-road NO₂ monitors required in CBSAs having 500,000 or more persons shall be reflected in the state Annual Monitoring Plan submitted July 1, 2016, and the monitors shall be operational by January 1, 2017.

Under these proposed changes, the EPA estimates that 52 near-road NO₂ monitors would be operational by January 1, 2014, in CBSAs having 1 million or more persons; an estimated 23 additional near-road NO₂ monitors would be operational by January 1, 2015, in any CBSA having 2.5 million persons or more, or those CBSAs with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts; and an estimated 51 additional near-road NO₂ sites would be operational by January 1, 2017, in those CBSAs having a population between 500,000 and 1 million persons. The EPA believes this proposed phased approach appropriately focuses the limited resources currently available. Further, the proposed approach plans to initially install by January 1, 2014, 52 monitors in 52 different CBSAs across the country in order to provide a level of national representation that includes variations in climate, population densities, and pollutant mixtures along with the near-road monitoring site variables including

traffic count, fleet mix, roadway design, congestion patterns, and local meteorology. The EPA is proposing that the second phase of the proposed network implementation approach establish any second near-road NO₂ monitor in a CBSA because these are the largest CBSAs or are CBSAs containing the most heavily trafficked roads where the additional characterization is desired due to the generally greater number of major roads across a potentially larger geographic area, or exceptionally high traffic volumes, which correspond to increased potential for exposure. The EPA is proposing the third and final phase of the network implementation to be all additional required near-road NO₂ monitors in CBSAs having a population between 500,000 and 1 million persons. The EPA solicits comments on the phased implementation of the required near-road NO₂ network as proposed, specifically with regard to the dates by which each proposed phase is to be included in annual monitoring network plans and operational.

The EPA is not proposing any changes to the implementation dates for area-wide NO₂ monitors or those NO₂ monitors to be operated to characterize susceptible and vulnerable populations. As noted above, the EPA believes that most states have monitoring stations currently in operation that either house an NO₂ monitor or could easily accommodate a relocated NO₂ monitor, which would allow the state to satisfy these two tiers of the required NO₂ monitoring network without need for additional funds or network alterations. The EPA is currently working with states to review their NO₂ networks and evaluate which of the currently operated monitors would be most appropriate to continue operating in support of required area-wide and susceptible and vulnerable population monitoring or to identify locations where an NO₂ monitor could be relocated to support these requirements.

B. Change in Annual Monitoring Network Plan Approval Authority

The EPA is also proposing to amend the regulatory text to have state and local air monitoring agencies submit their NO₂ monitoring network plans to their respective EPA Regional Administrator instead of the EPA Administrator for approval as it is currently stated in 40 CFR 58.10(a)(5). This change would make the NO₂ monitoring network plan submittals consistent with the requirements for submittal of Annual Monitoring Network Plans for ozone, carbon monoxide, sulfur dioxide, particulate

matter, and lead to EPA Regional Administrators. The EPA believes it most appropriate for states to submit such information regarding NO₂ monitoring to EPA Regional Administrators for approval as required for all other monitoring plans. The EPA requests comment on the proposed change in the approval authority for NO₂ monitoring plans.

III. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The proposed amendments to revise ambient NO₂ monitoring requirements do not add any information collection requirements beyond those imposed by the existing NO₂ monitoring requirements.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of this rule on small entities, I

certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will neither impose emission measurement requirements beyond those specified in the current regulations, nor will it change any emission standard. As such, it will not present a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action proposes to increase the time by which state and local air monitoring agencies must install and operate a subset of required NO₂ monitors and does not add any new requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes to increase the time by which state and local air monitoring agencies must install and operate a subset of required NO₂ monitors and does not add any new requirements. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule imposes no requirements on tribal governments. This action proposes to increase the time by which state and local air monitoring agencies must install and

operate a subset of required NO₂ monitors and does not add any new requirements. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive order 13175, the EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, but merely proposes to increase the time by which state and local air monitoring agencies must install and operate a subset of required NO₂ monitors.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes to increase the time by which state and local air monitoring agencies must install and operate a subset of required NO₂ monitors and does not add any new requirements.

I. National Technology Transfer and Advancement Act

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

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

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

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

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule proposes to increase the time by which state and local air monitoring agencies must install and operate a subset of required NO₂ monitors and does not add any new requirements.

List of Subjects

40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: October 5, 2012.

Lisa P. Jackson,
Administrator.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7405, 7410, 7414, 7601, 7611, 7614, and 7619.

Subpart B—[AMENDED]

2. Section 58.10, is amended by revising paragraph (a)(5) and paragraph (b)(12) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

* * * * *

(a) * * *

(5)(i) A plan for establishing a single near-road NO₂ site in CBSAs having 1 million or more persons, in accordance with the requirements of appendix D section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2013. The plan shall provide for these

required monitoring stations to be operational by January 1, 2014.

(ii) A plan for establishing a second near-road NO₂ site in any CBSA with a population of 2,500,000 persons or more, or a site in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts, in accordance with the requirements of appendix D section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2014. The plan shall provide for these required monitoring stations to be operational by January 1, 2015.

(iii) A plan for establishing a single near-road NO₂ site in all other CBSAs having 500,000 or more persons, but less than 1 million persons, in accordance with the requirements of appendix D section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2016. The plan shall provide for these monitoring stations to be operational by January 1, 2017.

(iv) A plan for establishing or identifying area-wide NO₂ monitoring sites, in accordance with the requirements of appendix D section 4.3.3 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2012. The plan shall provide for these required monitoring stations to be operational by January 1, 2013.

(v) A plan for establishing or identifying any NO₂ monitor intended to characterize vulnerable and susceptible populations, as required in appendix D section 4.3.4 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2012. The plan shall provide for these monitors to be operational by January 1, 2013.

* * * * *

(b) * * *

(12) The identification of required NO₂ monitors as near-road, area-wide, or vulnerable and susceptible population sites in accordance with Appendix D, Section 4.3 of this part.

* * * * *

3. Section 58.13 is amended by revising paragraph (c) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(c)(1) Near-road NO₂ monitors required in Appendix D, section 4.3.2 which are the single required site or the first of two required sites in any CBSA having 1 million or more persons must

be physically established and operating under the requirements of this part, including the requirements of appendices A, C, D, and E to this part, by January 1, 2014.

(2) Near-road NO₂ monitors required in Appendix D, section 4.3.2 as a second near-road NO₂ site in any CBSA with a population of 2,500,000 persons or more, or a site in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts, must be physically established and operating under the requirements of this part, including the requirements of appendices A, C, D, and E to this part, by January 1, 2015.

(3) Near-road NO₂ monitors required in Appendix D, section 4.3.2 in all other CBSAs having 500,000 or more persons, but less than 1 million, must be physically established and operating under the requirements of this part, including the requirements of appendices A, C, D, and E to this part, by January 1, 2017.

(4) Area-wide NO₂ monitors required in Appendix D, section 4.3.3 must be physically established and operating under the requirements of this part, including the requirements of appendices A, C, D, and E to this part, by January 1, 2013.

(5) NO₂ monitors intended to characterize vulnerable and susceptible populations that are required in Appendix D, section 4.3.4 must be physically established and operating under the requirements of this part, including the requirements of appendices A, C, D, and E to this part, by January 1, 2013.

* * * * *

[FR Doc. 2012-25423 Filed 10-18-12; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA-2011-0058, Notice No. 1]

RIN 2130-AC28

Track Safety Standards; Improving Rail Integrity

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend the Federal Track Safety Standards to promote the safety of railroad operations

by enhancing rail flaw detection processes. In particular, FRA is proposing minimum qualification requirements for rail flaw detection equipment operators, as well as revisions to requirements for effective rail inspection frequencies, rail flaw remedial actions, and rail inspection records. In addition, FRA is proposing to remove regulatory requirements concerning joint bar fracture reporting. This rulemaking is intended to implement section 403 of the Rail Safety Improvement Act of 2008 (RSIA).

DATES: (1) Written comments must be received by December 18, 2012. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However if FRA receives a specific request for a public, oral hearing prior to November 19, 2012, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to this Docket No. FRA-2011-0058, Notice No. 1 may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to www.Regulations.gov. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Please note that all comments received will be posted without change to www.Regulations.gov, including any personal information provided. Please see the discussion under the Privacy Act heading in the Supplementary Information section of this document.

Docket: For access to the docket to read background documents or comments received, go to www.Regulations.gov at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room

W12-140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Carlo Patrick, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202-493-6399); or Elisabeth Galotto, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: 202-493-0270).

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I. Executive Summary

The Track Safety Standards Working Group (Working Group) of FRA's Railroad Safety Advisory Committee (RSAC) was formed on February 22, 2006. On October 27, 2007, the Working Group formed two subcommittees: the Rail Integrity Task Force (RITF) and the Concrete Crosstie Task Force. The RITF was tasked to review the reuse of plug rail and the requirements for internal rail flaw inspections. The RITF met 11 times between November 2007 and April 2010. On September 23, 2010 and December 14, 2010, and the RSAC voted to approve the Working Group's recommended text and adopt it as their recommendation to FRA. The RSAC recommendation formed the basis of this NPRM.

This NPRM proposes requirements related to the following subject areas: defective rails, the inspection of rail,

qualified operators, and inspection records. The NPRM also addresses the mandate of section 403 of the Rail Safety Improvement Act of 2008, and removes the joint bar fracture report requirement. The following is a brief overview of the proposal organized by the subject area:

• *Defective Rails*

FRA is proposing to provide railroads with a four-hour period in which to verify that a suspected defect exists in the rail section. The primary purpose of the four-hour deferred-verification option is to assist the railroads in improving detector car utilization and production, increase the opportunity to detect larger defects, and ensure that all of the rail the detector car travels over while in service is inspected.

Additionally, FRA proposes revisions to the remedial action table in areas such as transverse defects, longitudinal weld defects, and crushed head defects.

• *Inspection of Rail*

Currently, Class 4 and 5 track, as well as Class 3 track over which passenger trains operate, are required to be tested for internal rail defects at least once every accumulation of 40 million gross tons (mgt) or once a year (whichever time is shorter). Class 3 track over which passenger trains do not operate are required to be tested at least once every accumulation of 30 mgt or once per year (whichever time is longer). When this standard was drafted, railroads were already initiating and implementing the development of a performance-based risk management concept for determination of rail inspection frequency that is often referred to as the "self-adaptive scheduling method." Under this method, inspection frequency is established based annually on several factors, including the total detected defect rate per test, the rate of service failures between tests, and the accumulated tonnage between tests. The railroads then utilize this information to generate and maintain a service failure performance target.

The proposed changes in this NPRM seek to codify standard industry good practices. The NPRM proposes to require railroads to maintain service failure rates of no more than 0.1 service failure per year per mile of track for all Class 4 and 5 track; no more than 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous material route; and no more than 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled

passenger trains and is a hazardous material route.

The NPRM also proposes that internal rail inspections on Class 4 and 5 track, or Class 3 track with regularly-scheduled passenger trains or that is a hazardous materials route, not exceed a time interval of 370 days between inspections or a tonnage interval of 30 million gross tons (mgt) between inspections, whichever is shorter. Internal rail inspections on Class 3 track without regularly-scheduled passenger trains and that is not a hazardous materials route must be inspected at least once each calendar year, with no more than 18 months between inspections, or at least once every 30 mgt, whichever interval is longer, with the additional provision that inspections cannot be more than 5 years apart.

• *Qualified Operators*

FRA proposes to add a new provision requiring that each provider of rail flaw detection have a documented training program to ensure that a flaw detection equipment operator is qualified to operate each of the various types of equipment currently utilized in the industry for which he or she is assigned to operate.

• *Removing the Requirement of a Joint Bar Fracture Report*

This NPRM proposes removing the requirement that railroads generate a Joint Bar Fracture Report (Fracture Report) for every cracked or broken continuous welded rail (CWR) joint bar that the track owner discovers during the course of an inspection. The RSAC Working Group ultimately determined that the reports were providing little useful research data to prevent future failures of CWR joint bars. Instead, the Group recommended that a new study be conducted to determine what conditions lead to CWR joint bar failures and include a description of the overall condition of the track in the vicinity of the failed joint(s); photographic evidence of the failed joint, track geometry (gage, alignment, profile, cross-level) at the joint location; and the maintenance history at the joint location.

• *Inspection Records*

FRA proposes to require that the railroad's rail inspection records include the date of inspection, track identification and milepost for each location tested, type of defect found and size if not removed prior to traffic, and initial remedial action as required by § 213.113. FRA also proposes that all tracks that do not receive a valid

inspection are documented in the railroad rail inspection records.

• *Section 403 of the RSIA*

On October 16, 2008, the RSIA (Pub. L. 110-432, Division A) was enacted. Section 403(a) of the RSIA required the Secretary to conduct a study of track issues, known as the Track Inspection Time Study (Study). The Study was to determine whether track inspection intervals needed to be amended; whether track remedial action requirements needed to be amended; whether different track inspection and repair priorities and methods were required; and whether the speed of track inspection vehicles should be regulated. As part of the study, section 403(b) instructed the Secretary to consider “the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies,” as well as new inspection technologies, and National Transportation Safety Board (NTSB) and FRA accident information. The study was completed and presented to Congress on May 2, 2011. Section 403(c) of the RSIA further provides that FRA prescribe regulations based on the results of the Study two years after its completion.

On August 16, 2011, RSAC accepted RSAC task 11-02, which was generated in response to the RSIA and to address the recommendations of the Study. After several meetings, the Association of American Railroads (AAR) together with the Brotherhood of Maintenance of Way Employees Division (BMWED) stated that FRA had met its obligations under section 403(c) of the RSIA through its rulemakings on vehicle/track interaction (VTI), concrete crossties, and the proposals contained in this NPRM related to rail integrity. They also stated that additional action on RSAC task 11-02 was unnecessary and recommended that the task should be closed. FRA took the proposal under advisement after the February meeting and conducted its own analysis as to the fulfillment of the mandates under section 403. FRA concluded that these statutory obligations were being fulfilled and on April 13, 2012, the Working Group approved a proposal to conclude RSAC task 11-02. On April 26, 2012, the RSAC concluded that FRA’s recent and ongoing rulemakings were sufficiently addressing the statutorily-mandated topics and that no additional work by the RSAC was necessary. Thus, the full RSAC approved the proposal and closed RSAC task 11-02.

• *Economic Impact*

The bulk of the proposed regulation revises FRA’s Track Safety Standards by codifying current industry good practices. In analyzing the economic impacts of the proposed rule, FRA does not believe that any existing operation will be adversely affected by these changes, nor does FRA believe that the changes will induce any costs.

Through its regulatory evaluation, FRA has explained what the likely benefits for this proposed rule would be, and has provided a cost-benefit analysis. FRA anticipates that this rulemaking would enhance the current Track Safety Standards by allocating more time to rail inspections, increasing the opportunity to detect larger defects sooner, providing assurance that qualified operators are inspecting the rail, and causing inspection records to be updated with more useful information. The main benefit associated with this proposed rule is derived from granting the railroads a four-hour window to verify some defects found in a rail inspection. Without the additional time to verify a defect, railroads currently must stop their inspection anytime a suspect defect is identified, and then resume their inspection after the defect is verified. The defects subject to the proposed deferred verification allowance are usually considered less likely to cause immediate rail failure, and require less restrictive remedial action. The additional time permits railroads to avoid the cost of paying their internal inspection crews or renting a rail car flaw detector an additional half day, saving the industry \$8,400 per day. FRA believes the value of the anticipated benefits would easily justify the cost of implementing the rule as proposed.

TABLE E1—TOTAL DISCOUNTED NET BENEFITS FOR 20-YEAR PERIOD

	Discount factor	
	7 percent	3 percent
Four Hour Inspection Window	\$34,754,935	\$46,982,768
Net Benefit	34,754,935	46,982,768

The rule’s total net benefits are estimated to be about \$61.3 million over a 20-year period. The benefits are approximately \$47.0 million discounted at a 3 percent rate, or about \$34.8 million, discounted at a 7 percent rate. FRA believes that such improvements would more than likely result from the

adoption of the proposed rule by the railroad industry.

II. Rail Integrity Overview

A. Derailment in 2001 Near Nodaway, Iowa

On March 17, 2001, the *California Zephyr*, a National Railroad Passenger Corporation (Amtrak) passenger train carrying 257 passengers and crew members, derailed near Nodaway, Iowa. According to the NTSB, sixteen cars decoupled from the two locomotives and eleven cars went off the rails. Seventy-eight people were injured and one person died from the accident. See NTSB/RAB-02-01.

The NTSB discovered a broken rail at the point of derailment. The broken pieces of rail were reassembled at the scene, and it was determined that they came from a 15½-foot section of rail that had been installed as replacement rail, or “plug rail,” at this location in February, 2001. The replacement had been made because, during a routine scan of the existing rail on February 13, 2001, the Burlington Northern and Santa Fe Railway (now BNSF Railway Company or BNSF) discovered internal defects that could possibly hinder the rail’s effectiveness. A short section of the continuous welded rail that contained the defects was removed, and a piece of replacement rail was inserted. However, the plug rail did not receive an ultrasonic inspection before or after installation.

During the course of the accident investigation, the NTSB could not reliably determine the source of the plug rail. While differing accounts were given concerning the origin of the rail prior to its installation in the track, the replacement rail would most likely have been rail which was removed from another track location for reuse. Analysis of the rail found that the rail failed due to fatigue initiating from cracks associated with the precipitation of internal hydrogen. If the rail had been ultrasonically inspected prior to its reuse, it is likely that the defects could have been identified and that section of rail might not have been used as plug rail.

As a result of its investigation of the Nodaway, Iowa, railroad accident, the NTSB recommended that FRA require railroads to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects. See NTSB Recommendation—02-5.

B. Derailment in 2006 Near New Brighton, Pennsylvania

On October 20, 2006, Norfolk Southern Railway Company (NS) train 68QB119 derailed while crossing the Beaver River railroad bridge in New Brighton, Pennsylvania. The train was pulling eighty-three tank cars loaded with denatured ethanol, a flammable liquid. Twenty-three of the tank cars derailed near the east end of the bridge, causing several of the cars to fall into the Beaver River. Twenty of the derailed cars released their loads of ethanol, which subsequently ignited and burned for forty-eight hours. Some of the unburned ethanol liquid was released into the river and the surrounding soil. Homes and businesses within a seven-block area of New Brighton and in an area adjacent to the accident had to be evacuated for days. While no injuries or fatalities resulted from the accident, NS estimated economic and environmental damages to be \$5.8 million. See NTSB/RAB-08-9 through 12.

The NTSB determined that the probable cause of the derailment was an undetected internal rail defect identified to be a detail fracture. The NTSB also noted that insufficient regulation regarding internal rail inspection may have contributed to the accident.

This accident demonstrates the potential for rail failure with subsequent derailment if a railroad's internal rail defect detection process fails to detect an internal rail flaw. This accident also indicates a need for adequate requirements that will ensure rail inspection and maintenance programs identify and remove rail with internal defects before they reach critical size and result in catastrophic rail failures.

C. Office of Inspector General Report: Enhancing the Federal Railroad Administration's Oversight of Track Safety Inspections

On February 24, 2009, the Office of Inspector General (OIG) for the Department of Transportation (DOT) issued a report presenting the results of its audit of FRA's oversight of track-related safety issues. The report made two findings. First, the OIG found that FRA's safety regulations for internal rail flaw testing did not require the railroads to report the specific track locations, such as milepost numbers or track miles that were tested during these types of inspections. Second, the OIG found that FRA's inspection data systems did not provide adequate information for determining the extent to which FRA's track inspectors have reviewed the railroads' records for internal rail flaw testing and visual track inspections to

assess compliance with safety regulations. The OIG recommended that FRA revise its track safety regulations for internal rail flaw testing to require railroads to report track locations covered during internal rail flaw testing, and that FRA develop specific inspection activity codes for FRA inspectors to use to report on whether the record reviews FRA inspectors conduct were for internal rail flaw testing or visual track inspections. *Enhancing the Federal Railroad Administration's Oversight of Track Safety Inspections*, Department of Transportation, Office of Inspector General, CR-2009-038, February 24, 2009.

D. General Factual Background on Rail Integrity¹

The single most important asset to the railroad industry is its rail infrastructure, and historically the primary concern of the railroad companies is the probability of rail flaw development, broken rails, and subsequent derailments. This has resulted in railroads improving their rail maintenance practices, purchasing more wear-resistant rail, improving flaw-detection technologies, and increasing rail inspection frequencies in an effort to prevent rail defect development. The direct cost of an undetected rail failure is the difference between the cost of replacing the rail failure on an emergency basis, and the cost of the organized replacement of detected defects. However, a rail defect that goes undetected and results in a train derailment can cause considerable additional costs such as excessive service interruption, extensive traffic rerouting, environmental damage, and potential injury and loss of life.

To maximize the life of rail, railroads must accept a certain rate of defect development. This results in the railroad relying on regular rail inspection cycles, and strategically renewing rail that is obviously showing evidence of fatigue. The development of internal rail defects is an inevitable consequence of the accumulation and effects of fatigue under repeated loading. The challenge for the railroad industry is to avoid the occurrence of rail service failure due to the presence of an undetected defect. Rail service

failures are expensive to repair and can lead to costly service disruptions and possibly derailments.

The effectiveness of a rail inspection program depends on the test equipment being properly designed and capable of reliably detecting rail defects of a certain size and orientation, while also ensuring that the test frequencies correspond to the growth rate of critical defects. The objective of a rail inspection program is to reduce the annual costs resulting from broken rails, which involve several variables.

The predominant factor that determines the risk of rail failure is the rate of development of internal flaws. Internal rail flaws have a period of origin and a period often referred to as slow crack growth life. The risk is introduced when internal flaws remain undetected during their growth to a critical size. This occurs when the period between when the crack develops to a detectable size is significantly shorter than the required test interval.

In practice, the growth rate of rail defects is considered highly inconsistent and unpredictable. Rail flaw detection in conjunction with railroad operations often presents some specific problems. This is a result of high traffic volumes that load the rail and accelerate defect growth, while at the same time decreasing the time available for rail inspection. Excessive wheel loading can result in stresses to the rail that can increase defect growth rates. Consequently, heavy axle loading can lead to rail surface fatigue that may prevent detection of an underlying rail flaw by the test equipment. Most railroads attempt to control risk by monitoring test reliability through an evaluation process of fatigue service failures that occur soon after testing, and by comparing the ratio of service failures or broken rails to detected rail defects.

The tonnage required to influence defect development is also considered difficult to predict; however, once initiated, transverse defect development is influenced by tonnage. Rapid growth rates can also be associated with rail where high-tensile residual stresses are present in the railhead and in CWR in lower temperature ranges where the rail is in high longitudinal tension.

It is common for railroads to control risk by monitoring the occurrence of both detected and service defects. For U.S. railroads, risk is typically evaluated to warrant adjustment of test frequencies. The railroads attempt to control the potential of service failure by testing more frequently.

¹This section is primarily based on information from two sources: *Progress in Rail Integrity Research*, DOT/FRA/Ord-01/18, D. Jeong 2001; and *I. H. H. A. Guidelines to Best Practices for Heavy Haul Railway Operations; Infrastructure Construction and Maintenance Issues, Section 4.3.1 Rail Defect Detection and Technologies*, Carlo M. Patrick, R. Mark Havira, Gregory A. Garcia, Library of Congress Control No. 2009926418, 2009.

In general, the approach in conducting rail integrity research is focused to confirm whether rail defects can be detected by periodic inspection before they grow large enough to cause a rail failure. In the context of rails, damage tolerance is the capability of the rail to resist failure and continue to operate safely with damage (i.e., rail defects). This implies that a rail containing a crack or defect is weaker than a normal rail, and that the rail's strength decreases as the defect grows. As growth continues, the applied stresses will eventually exceed the rail's strength and cause a failure. Such information can be used to establish guidelines for determining the appropriate frequency of rail inspections to mitigate the risk of rail failure from undetected defects.

Current detection methods that are performed in the railroad industry utilize various types of processes with human involvement in the interpretation of the test data. These include the:

- Portable test process, which consists of an operator pushing a test device over the rail at a walking pace while visually interpreting the test data;
- Start/stop process, where a vehicle-based flaw detection system tests at a slow speed (normally not exceeding 20 mph) gathering data that is presented to the operator on a test monitor for interpretation;
- Chase car process, which consists of a lead test vehicle performing the flaw detection process in advance of a verification chase car; and
- Continuous test process, which consists of operating a high-speed, vehicle-based test system non-stop along a designated route, analyzing the test data at a centralized location, and subsequently verifying suspect defect locations.

The main technologies utilized for non-destructive testing on U.S. railroads are the ultrasonic and induction methods. Ultrasonic technology is the primary technology used, and induction technology is currently used as a complimentary system. As with any non-destructive test method, these technologies are susceptible to physical limitations that allow poor rail head surface conditions to negatively influence the detection of rail flaws. The predominant types of these poor rail head surface conditions are shells, engine driver burns, spalling, flaking, corrugation, and head checking. Other conditions that are encountered include heavy lubrication or debris on the rail head.

Induction testing requires the introduction of a high-level, direct

current into the top of the rail and establishing a magnetic field around the rail head. An induction sensor unit is then passed through the magnetic field. The presence of a rail flaw will result in a distortion of the current flow, and it is this distortion of the magnetic field that is detected by the search unit.

Ultrasonics can be briefly described as sound waves, or vibrations, that propagate at a frequency that is above the range of human hearing, normally above a range of 20,000 Hz, or cycles per second. The range normally utilized during current flaw detection operations is 2.25 MHz (million cycles per second) to 5.0 MHz. Ultrasonic waves are generated into the rail by piezo-electric transducers that can be placed at various angles with respect to the rail surface. The ultrasonic waves produced by these transducers normally scan the entire rail head and web, as well as the portion of the base directly beneath the web. Internal rail defects represent a discontinuity in the steel material that constitutes the rail. This discontinuity acts as a reflector to the ultrasonic waves, resulting in a portion of the wave being reflected back to the respective transducer. These conditions include rail head surface conditions, internal or visible rail flaws, weld upset/finish, or known reflectors within the rail geometry such as drillings or rail ends. The information is then processed by the test system and recorded in the permanent test data record. Interpretation of the reflected signal is the responsibility of the test system operator.

Railroads have always inspected track visually to detect rail failures, and have been using crack-detection devices in rail-test vehicles since the 1930s. Meanwhile, trends in the railroad industry have been to increase traffic density and average axle loads. Current rail integrity research recognizes and addresses the need to review and update rail inspection strategies and subsequent preventive measures. This would include the frequency interval of rail inspection, remedial action for identified rail defects, and improvements to the performance of the detection process.

FRA has sponsored research related to railroad safety for several decades. One part of this research program is focused on rail integrity. The general objectives of FRA rail integrity research have been to improve railroad safety by reducing rail failures and the associated risks of train derailment, and to do so more efficiently through new maintenance practices that increase rail service life. Brief descriptions of the studies conducted by FRA focus on four

different areas: Analysis of rail defects; residual stresses in rail; strategies for rail testing; and other areas related to rail integrity, which include advances in nondestructive inspection techniques and feasibility of advanced materials for rail, rail lubrication, rail grinding, and wear. Moreover, rail integrity research is an ongoing effort, and will continue as annual tonnages and average axle loads increase on the nation's railroads.

Due to the limitations of current technology to detect internal flaws beneath surface conditions and in the base flange area, FRA's research has been focusing on other rail flaw detection technologies. One laser-based ultrasonic rail defect detection prototype, which is being developed by the University of California-San Diego under an FRA Office of Research and Development grant, has produced encouraging results in ongoing field testing. The project goal is to develop a rail defect detection system that provides better defect detection reliability and a higher inspection speed than is currently achievable. The primary target is the detection of transverse defects in the rail head. The method is based on ultrasonic guided waves, which can travel below surface discontinuities, hence minimizing the masking effect of transverse cracks by surface shelling. The inspection speed can be improved greatly also because guided waves run long distances before attenuating.

Non-destructive test systems perform optimally on perfect test specimens. However, rail in track is affected by repeated wheel loading that results in the plastic deformation of the rail running surface that can create undesirable surface conditions as described previously. These conditions can influence the development of rail flaws. These conditions can also affect the technologies currently utilized for flaw detection by limiting their detection capabilities. Therefore, it is important that emerging technology development continue, in an effort to alleviate the impact of adverse rail surface conditions.

E. Statutory Mandate To Conduct This Rulemaking

The first Federal Track Safety Standards (Standards) were published on October 20, 1971, following the enactment of the Federal Railroad Safety Act of 1970, Public Law 91-458, 84 Stat. 971 (October 16, 1970), in which Congress granted to FRA comprehensive authority over "all areas of railroad safety." See 36 FR 20336. FRA envisioned the new Standards to be an evolving set of safety requirements

subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (Nov. 2, 1994). The amended statute is codified at 49 U.S.C. 20142 and required the Secretary of Transportation (Secretary) to review and then revise the Standards, which are contained in 49 CFR part 213. The Secretary has delegated such statutory responsibilities to the Administrator of FRA. See 49 CFR 1.49. FRA carried out this review on behalf of the Secretary, which resulted in FRA issuing a final rule amending the Standards in 1998. See 63 FR 34029, June 22, 1998; 63 FR 54078, Oct. 8, 1998.

Pursuant to 49 U.S.C. 20103, the Secretary may prescribe regulations as necessary in any area of railroad safety. As described in the next section, FRA began its examination of rail integrity issues through RSAC on October 27, 2007. Then, on October 16, 2008, the RSIA was enacted. As previously noted, section 403(a) of the RSIA required the Secretary to conduct a study of track issues known as the Track Inspection Time Study (Study). In doing so, section 403(b) required the Secretary to consider “the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies” as part of the Study. The Study was completed and submitted to Congress on May 2, 2011. Section 403(c) also required the Secretary to promulgate regulations based on the results of the study. As delegated by the Secretary, see 49 CFR 1.49, FRA utilized its advisory committee, RSAC and its Rail Integrity Task Force, to help develop the information necessary to fulfill the RSIA’s mandates in this area.

FRA notes that section 403 of the RSIA contains one additional mandate, which FRA has already fulfilled, promulgating regulations for concrete crossties. On April 1, 2011, FRA published a final rule on concrete crosstie regulations per this mandate in section 403(d). That final rule specifies requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete crossties. See 76 FR 18073. FRA received two petitions for reconsideration in response to that final rule, and responded to them

by final rule published on September 9, 2011. See 76 FR 55819.

III. Overview of FRA’s Railroad Safety Advisory Committee (RSAC)

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. RSAC includes representation from all of the agency’s major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members follows:

AAR;
 American Association of Private Railroad Car Owners;
 American Association of State Highway and Transportation Officials (AASHTO);
 American Chemistry Council;
 American Petrochemical Institute;
 American Public Transportation Association (APTA);
 American Short Line and Regional Railroad Association (ASLRRA);
 American Train Dispatchers Association;
 Amtrak;
 Association of Railway Museums;
 Association of State Rail Safety Managers (ASRSM);
 BMWED;
 Brotherhood of Locomotive Engineers and Trainmen (BLET);
 Brotherhood of Railroad Signalmen (BRS);
 Chlorine Institute;
 Federal Transit Administration;*
 Fertilizer Institute;
 High Speed Ground Transportation Association;
 Institute of Makers of Explosives;
 International Association of Machinists and Aerospace Workers;
 International Brotherhood of Electrical Workers;
 Labor Council for Latin American Advancement;*
 League of Railway Industry Women;*
 National Association of Railroad Passengers;
 National Association of Railway Business Women;*
 National Conference of Firemen & Oilers;
 National Railroad Construction and Maintenance Association;
 NTSB;*
 Railway Supply Institute;
 Safe Travel America;
 Secretaria de Comunicaciones y Transporte;*
 Sheet Metal Workers International Association;
 Tourist Railway Association Inc.;

Transport Canada;*
 Transport Workers Union of America;
 Transportation Communications International Union/BRC;
 Transportation Security Administration;
 and
 United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether a recommended rule achieves the agency’s regulatory goals, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

IV. RSAC Track Safety Standards Working Group

The Track Safety Standards Working Group (Working Group) was formed on February 22, 2006. On October 27, 2007, the Working Group formed two

subcommittees: the Rail Integrity Task Force (RITF) and the Concrete Crosstie Task Force. Principally in response to NTSB recommendation R-02-05,² the task statement description for the RITF was to review the controls applied to the reuse of plug rail and ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections.

However, after the New Brighton accident, and in response to NTSB recommendations R-08-9, R-8-10, and R-08-11,³ the RITF was given a second task on September 10, 2008, which directed the group to do the following: (1) Evaluate factors that can and should be included in determining the frequency of internal rail flaw testing and develop a methodology for taking those factors into consideration with respect to mandatory testing intervals; (2) determine whether the quality and consistency of internal rail flaw testing can be improved and how; (3) determine whether adjustments to current remedial action criteria are warranted; and (4) evaluate the effect of rail head wear, surface conditions and other relevant factors on the acquisition and interpretation of internal rail flaw test results.

The RITF met on November 28-29, 2007; February 13-14, 2008; April 15-16, 2008; July 8-9, 2008; September 16-17, 2008; February 3-4, 2009; June 16-17, 2009; October 29-30, 2009; January 20-21, 2010; March 9-11, 2010; and April 20, 2010. The RITF's findings were reported to the Working Group for approval on July 28-30, 2010. The Working Group reached a consensus on

² After the accident in Nodaway, the NTSB recommended that FRA "[r]equire railroads to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects." NTSB Safety Recommendation R-02-5, dated March 5, 2002.

³ After the New Brighton accident, the NTSB issued three additional safety recommendations dated May 22, 2008: (1) FRA should "[r]eview all railroads' internal rail defect detection and require changes to those procedures as necessary to eliminate exception to the requirement for an uninterrupted, continuous search for rail defects." R-08-9; (2) FRA should "[r]equire railroads to develop rail inspection and maintenance programs based on damage-tolerance principles, and approve those programs. Include in the requirement that railroads demonstrate how their programs will identify and remove internal defects before they reach critical size and result in catastrophic rail failures. Each program should take into account, at a minimum, accumulated tonnage, track geometry, rail surface conditions, rail head wear, rail steel specifications, track support, residual stresses in the rail, rail defect growth rates, and temperature differentials." R-08-10; and (3) FRA should "[r]equire that railroads use methods that accurately measure rail head wear to ensure that deformation of the head does not affect the accuracy of the measurements." R-08-11.

the majority of the RITF's work and forwarded proposals to the full RSAC on September 23, 2010 and December 14, 2010. The RSAC voted to approve the Working Group's recommended text, which provided the basis for this NPRM.

In addition to FRA staff, the members of the Working Group include the following:

- AAR, including the Transportation Technology Center, Inc., and members from BNSF, Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc., The Kansas City Southern Railway Company (KCS), NS, and Union Pacific Railroad Company (UP);

- Amtrak;
- APTA, including members from Northeast Illinois Regional Commuter Railroad Corporation (Metra), Long Island Rail Road (LIRR), and Southeastern Pennsylvania Transportation Authority (SEPTA);

- ASLRR (representing short line and regional railroads);

- BLET;
- BMWED;
- BRS;
- John A. Volpe National Transportation Systems Center (Volpe Center)

- NTSB; and
- UTU.

FRA worked closely with RSAC in developing its recommendations and believes that RSAC has effectively addressed rail inspection safety issues regarding the frequency of inspection, rail defects, remedial action, and operator qualification. FRA has greatly benefited from the open, informed exchange of information during the meetings. There is a general consensus among railroads, rail labor organizations, State safety managers, and FRA concerning the primary principles set forth in this NPRM. FRA believes that the expertise possessed by RSAC representatives enhances the value of the recommendations, and FRA has made every effort to incorporate them in this proposed rule.

Nevertheless, the Working Group was unable to reach consensus on one item that FRA has elected to include in this NPRM. The Working Group could not reach consensus on the definition of "segment" length, which FRA proposes to be utilized in a new performance-based test frequency determination in § 213.237, "Inspection of Rail," as discussed below.

V. Track Inspection Time Study

As noted previously, section 403(a) of the RSIA required the Secretary to conduct a study of track issues. The

Study was to determine whether track inspection intervals needed to be amended; whether track remedial action requirements needed to be amended; whether different track inspection and repair priorities and methods were required; and whether the speed of track inspection vehicles should be more specifically regulated. In conducting the Study, section 403(b) instructed the Secretary to consider "the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies," as well as new inspection technologies, and NTSB and FRA accident information. The Study was completed and presented to Congress on May 2, 2011. Section 403(c) further provided that FRA prescribe regulations based on the results of the Study two years after its completion.

On August 16, 2011, RSAC accepted task 11-02, which was generated in response to the RSIA and to address the recommendations of the Study.

Specifically, the purpose of the task was "[t]o consider specific improvements to the Track Safety Standards or other responsive actions to the Track Inspection Time Study required by § 403 (a) through (c) of the RSIA and other relevant studies and resources."

The first meeting of the Working Group assigned to the task occurred on October 20, 2011, and a second meeting was held on December 20, 2011. At the third meeting on February 7-8, 2012, the AAR together with the BMWED stated that FRA had met its obligations under section 403(c) of the RSIA through its rulemakings on vehicle/track interaction (VTI), concrete crossties, and the proposals contained in this NPRM on rail integrity. They also stated that additional action on RSAC task 11-02 was unnecessary and recommended that the task should be closed. FRA took the proposal under advisement after the February meeting and conducted its own analysis as to the fulfillment of the mandates under section 403. FRA concluded that these statutory obligations were being fulfilled and on April 13, 2012, the Working Group approved a proposal to conclude RSAC task 11-02. On April 26, 2012, the full RSAC approved the proposal and closed RSAC task 11-02. The recommendation approved by the full RSAC is described below.

In determining whether regulations were necessary based on the results of the Study, RSAC examined the Study's four issues for improving the track inspection process:

- Expanding the use of automated inspections;
- Developing additional training requirements for track inspectors;

- Considering a maximum inspection speed for track inspection vehicles; and
- Influencing safety culture through a safety reporting system.

The Study's first recommendation was that FRA consider expanding the use of automated inspections to improve inspection effectiveness. Specifically, the Study cited two specific track defects that are more difficult to detect through visual track inspection and could benefit from the use of automated inspection: rail seat abrasion (RSA) and torch cut bolt holes. Through discussion among the affected parties, it was determined that these areas of concern already had been covered under previous rulemaking and regulations. The Concrete Crossties final rule published on April 1, 2011, new § 213.234, "Automated inspection of track constructed with concrete crossties," specifically employs the use of automated inspection "to measure for rail seat deterioration." In addition, torch cut bolt holes have been prohibited on track classes 2 and above since 1999, which was codified in §§ 213.121(g) and 213.351(f), and they are easily identifiable through the rail flaw detection technology currently in use. Thus, the RSAC concluded that additional regulations to find such defects would be unnecessary.

Outside of these two specific defects, the RSAC concluded that the instant NPRM would also be revising automated inspection standards in other areas, such as ultrasonic testing. For example, this NPRM proposes changing the ultrasonic testing of rail from a standard based on time and tonnage to one based on self-adaptive performance goals. Thus, the full RSAC concluded that the use of automated inspection has been sufficiently expanded in the areas that are most ideally suited for development at this point. While FRA and RSAC noted that they may wish to make changes to the automated inspection standards in the future, FRA and RSAC nevertheless maintained that the changes stated above sufficiently satisfy the RSIA's mandate.

However, RSAC concurred with FRA, BMWED and AAR that it was important to ensure that any type of report generated from the automated inspection of track, regardless of whether it is mandated by regulation or voluntarily utilized by a railroad, be made available to track inspectors. Therefore, in this NPRM, FRA is issuing policy guidance to encourage track owners and railroads to provide the information from their automated track inspections in a usable format to those persons designated as fully qualified under the Track Safety Standards and

assigned to inspect or repair the track over which an automated inspection is made. This guidance is as follows:

When automated track inspection methods are used by the track owner, FRA recommends that the information from that inspection be provided or made readily available to those persons designated as fully qualified under CFR 213.7 and assigned to inspect or repair the track over which the automated inspection was made.

The second recommendation the Study addressed was whether FRA should develop additional training requirements for track inspectors. RSAC found that it was unnecessary to generate additional training standards under RSAC task 11-02 for two reasons. First, the instant NPRM proposes to create a new § 213.238 to address an area of training that requires new standards. Proposed § 213.238 defines a qualified operator of rail flaw detection equipment and requires that each provider of rail flaw detection service have a documented training program to ensure that a rail flaw detection equipment operator is qualified to operate each of the various types of equipment currently utilized in the industry for which he or she is assigned, and that proper training is provided in the use of newly-developed technologies. Second, the recently published NPRM on Training, Qualification, and Oversight for Safety-Related Railroad Employees, 77 FR 6412 (proposed Feb. 7, 2012) (to be codified at 49 CFR parts 214, 232, and 243), proposes to require that employers develop and submit for FRA review a program detailing how they will train their track inspectors. As proposed in the NPRM, employees charged with the inspection of track or railroad equipment are considered safety-related railroad employees that each employer must train and qualify. The proposed formal training for employees responsible for inspecting track and railroad equipment is expected to cover all aspects of their duties related to complying with the Federal standards. FRA would expect that the training programs and courses for such employees would include techniques for identifying defective conditions and would address what sort of immediate remedial actions need to be initiated to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. *Id.*, at 6415. The RSAC found that new requirements for the training of track inspectors were being adequately addressed by this proposed NPRM on employee training standards, and thus did not believe additional action was currently necessary in this area.

The third recommendation of the Study addressed whether track hi-rail inspection speed should be specified. The Study concluded that specifying limits to hi-rail inspection speeds could be "counterproductive." With the currently-available data in this area, the RSAC concurred with the Study's recommendation, and determined that no further action needed to be taken in this area at this time. The RSAC found that the existing reliance on the "inspector's discretion" as noted in § 213.233, should generally govern track inspection speed. FRA notes that this point will be emphasized in the next publication of FRA's Track Safety Standards Compliance Manual. FRA also makes clear that, in accordance with § 213.233, if a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 m.p.h. when passing over track crossings and turnouts.

Finally, the last recommendation of the Study addressed ways to enhance the track safety culture of railroads through programs such as a safety reporting system, like the Confidential Close Call Reporting System currently piloted by FRA. The RSAC was aware that the Risk Reduction Working Group was in the process of developing recommendations for railroads to develop risk reduction programs, which should incorporate many safety concerns in this area. Therefore, the RSAC concluded that additional, overlapping discussion was unnecessary given the specific concurrent focus of the Risk Reduction Working Group.

FRA notes that, in addition to addressing the Study's recommendations, RSAC task 11-02 also incorporated other goals Congress had for the Study, which are described in section 403(a), such as reviewing track inspection intervals and remedial action requirements, as well as track inspection and repair priorities. The RSAC concluded that FRA's recent and ongoing rulemakings are sufficiently addressing these areas and that no additional work is currently necessary. Specifically, the instant rulemaking is intended to amend inspection intervals to reflect a new performance-based inspection program, revise the remedial action table for rail, and alter inspection and repair priorities involving internal rail testing and defects such as a crushed head and defective weld. The Concrete Crossties final rule also established new inspection methods and intervals requiring automated inspection, as well as new remedial actions for exceptions that can be field-verified within 48 hours. Finally, in addition to other requirements, the

Vehicle/Track Interaction Safety Standards (VTI) rulemaking, Vehicle/Track Interaction Safety Standards; High-Speed and High Cant Deficiency Operations, 75 FR 25928 (proposed May 10, 2010) (to be codified at 49 CFR parts 213 and 238), is addressing track geometry, inspection, and VTI safety requirements for high speed operations and operations at high cant deficiency over any track class.

Therefore, the RSAC recommended and FRA subsequently concluded that additional work on any of these areas would be unnecessary at this time, given the recent and ongoing work of the RSAC and FRA. FRA believes that its recent and ongoing rulemakings sufficiently address the statutorily-mandated topics in section 403 and that no additional work by the RSAC was currently necessary.

VI. Section-by-Section Analysis

Section 213.3 Application

FRA proposes to modify paragraph (b) to clarify the exclusion of track located inside a plant railroad's property from the application of this part. In this paragraph, "plant railroad" means a type of operation that has traditionally been excluded from the application of FRA regulations because it is not part of the general railroad system of transportation. In the past, FRA has not defined the term "plant railroad" in other regulations that it has issued because FRA assumed that its *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, The Extent and Exercise of FRA's Safety Jurisdiction*, 49 CFR part 209, Appendix A (FRA's Policy Statement or the Policy Statement) provided sufficient clarification as to the definition of that term. However, it has come to FRA's attention that certain rail operations believed that they met the characteristics of a plant railroad, as set forth in the Policy Statement, when, in fact, their rail operations were part of the general railroad system of transportation (general system) and therefore did not meet the definition of a plant railroad. FRA would like to avoid any confusion as to what types of rail operations qualify as plant railroads. FRA would also like to save interested persons the time and effort needed to cross-reference and review FRA's Policy Statement to determine whether a certain operation qualifies as a plant railroad. Consequently, FRA has decided to define the term "plant railroad" in this part 213.

The proposed definition would clarify that when an entity operates a locomotive to move rail cars in service

for other entities, rather than solely for its own purposes or industrial processes, the services become public in nature. Such public services represent the interchange of goods, which characterizes operation on the general system. As a result, even if a plant railroad moves rail cars for entities other than itself solely on its property, the rail operations will likely be subject to FRA's safety jurisdiction because those rail operations bring plant track into the general system.

The proposed definition of the term "plant railroad" is consistent with FRA's longstanding policy that it will exercise its safety jurisdiction over a rail operation that moves rail cars for entities other than itself because those movements bring the track over which the entity is operating into the general system. See 49 CFR part 209, Appendix A. Indeed, FRA's Policy Statement provides that "operations by the plant railroad indicating it [i]s moving cars on * * * trackage for other than its own purposes (e.g., moving cars to neighboring industries for hire)" brings plant track into the general system and thereby subjects it to FRA's safety jurisdiction. 49 CFR part 209, Appendix A. Additionally, this interpretation of the term "plant railroad" has been upheld in litigation before the U.S. Court of Appeals for the Fifth Circuit. See *Port of Shreveport-Bossier v. Federal Railroad Administration*, No. 10-60324 (5th Cir. 2011) (unpublished per curiam opinion).

FRA also makes clear that FRA's Policy Statement addresses circumstances where railroads that are part of the general system may have occasion to enter a plant railroad's property (e.g., a major railroad goes into a chemical or auto plant to pick up or set out cars) and operate over its track. As explained in the Policy Statement, the plant railroad itself does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. Accordingly, the rule would make clear that the track over which a general system railroad operates would not be excluded from the application of this part, even if the track is located within the confines of a plant railroad.

Section 213.113 Defective Rails

Paragraph (a). In this paragraph, FRA is proposing to clarify that only a person qualified under § 213.7 is qualified to determine that a track may continue to be utilized once a known defective condition is identified. FRA accepts the

RSAC recommendation to add "or repaired" to paragraph (a)(1) to allow railroads to use recently-developed processes that remove the defective portion of the rail section and replace that portion utilizing recently-developed weld technologies commonly referred to as "slot weld" or "wide gap weld." These processes allow the remaining portion of non-defective rail to remain in the track.

Paragraph (b). FRA is proposing to redesignate existing paragraph (b) as paragraph (d) and add a new paragraph (b) providing that railroads have a four-hour period in which to verify that a suspected defect exists in the rail section. This would apply only to suspected defects that may require remedial action notes "C" through "I," found in the remedial action table. This would *not* apply to suspected defects that may require remedial action notes "A," "A2," or "B." The four-hour timeframe would provide the railroads flexibility to allow the rail flaw detector car to continue testing in a non-stop mode, without requiring verification of suspected defects that may require remedial action under notes "C" through "I," when the track has to be cleared for train traffic movement. However, any suspected defect encountered that may require remedial action notes "A," "A2," or "B" would require immediate verification. This brief, deferred-verification period would also avoid the need to operate the detector car in a non-test, "run light" mode over a possibly severe defective rail condition that could cause a derailment while clearing the track.

The primary purpose of the four-hour deferred-verification option is to assist the railroads in improving detector car utilization and production, increase the opportunity to detect larger defects, and ensure that all the rail the detector car travels over while in service is inspected. FRA is in agreement with the railroad industry that most tracks are accessible by road or hi-rail, and will support a deferred-verification process where the operator can verify the suspect defect location with a portable type of test unit. FRA also agrees that if the detector car travels over the rail while in service it is more beneficial to complete the inspection over that location instead of leaving a possible serious internal defect undetected in the track.

Paragraph (c). Currently, the remedial action table and its notes are included under paragraph (a). FRA is proposing to add a new paragraph (c) to contain both the table and its notes, as revised. Specifically, FRA proposes revisions to the remedial action table regarding

transverse defects. FRA would place the “transverse fissure” defect in the same category as detail fracture, engine burn fracture, and defective weld because they all normally fail in a transverse plane. The RITF discussed the possible addition of compound fissure to this category as well, to combine all transverse-oriented defects under the same remedial action. However, FRA ultimately determined that “compound fissure” should not be included in this category because a compound fissure may result in rail failure along an oblique or angular plane in relation to the cross section of the rail and should be considered a more severe defect requiring more restrictive remedial action. In addition, FRA proposes that the header of the remedial action table for all transverse-type defects (i.e. compound fissures, transverse fissures, detail fractures, engine burn fractures, and defective welds) be revised to refer to the “percentage of existing rail head cross-sectional area weakened by defect,” to indicate that all transverse defect sizes are related to the actual rail head cross-sectional area, thus taking rail head wear into consideration. This is proposed to preclude the possibility that the flaw detector operator may size transverse defects without accounting for the amount of rail head loss on the specimen.

FRA’s proposed revisions to the remedial action table would also reduce the current limit of eighty percent of the rail head cross-sectional area requiring remedial action notes “A2” or “E and H” to sixty percent of the rail head cross-sectional area. FRA reviewed the conclusions of the most recent study performed by the Transportation Technology Center, Inc., concerning the development of transverse-oriented detail fracture defects: “Improved Rail Defect Detection Technologies: Flaw Growth Monitoring and Service Failure Characterization,” AAR Report No. R-959, Davis, David D., Garcia, Gregory A., Snell, Michael E., September 2002. (A copy of this study has been placed in the public docket for this rulemaking.) The study concluded that detail fracture transverse development is considered to be inconsistent and unpredictable. Further, the average growth development of the detail fracture defects in the study exceeded five percent of the cross-sectional area of the rail head per every one mgt of train traffic. *Id.*, at Table 1. Recognizing the impact of these findings, FRA believes that detail fracture defects reported as greater than sixty percent of the cross-sectional area of the rail head necessitate the remedial actions

required under this section, specifically that the railroad assign a person designated under § 213.7 to supervise each operation over the defect or apply and bolt joint bars to the defect in accordance with § 213.121(d) and (e), and limit operating speed over the defect to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

FRA also proposes adding required remedial action for a longitudinal defect that is associated with a defective weld. This proposal is based on current industry detection and classification experience for this type of defect, and would assign remedial action for the railroads to utilize. FRA proposes adding this defect to the remedial action table and including all longitudinal defects within one group subject to identical remedial actions based on their reported sizes. These types of longitudinal defects all share similar growth rates and the same remedial actions are considered appropriate for each type.

FRA also proposes the addition of “Crushed Head” to the remedial action table. This type of defect may affect the structural integrity of the rail section and impact vehicle dynamic response in the higher speed ranges. The RITF discussed the detection and classification of this type of defect, and its addition to the table would provide railroads with a remedial action to utilize. A crushed head defect would be identified in the table, and defined in paragraph (d) of this section, as being $\frac{3}{8}$ inch or more in depth and 8 inches or more in length.

FRA notes that the AAR expressed some concern regarding Footnote 1 of the remedial action table, which identifies conditions that could be considered a “break out in rail head.” The AAR pointed out that there had been previous incidents where an FRA inspector would consider a chipped rail end as a rail defect under this section, and at times the railroad was issued a defect or violation regarding this condition. FRA makes clear that a chipped rail end is not a designated rail defect under this section and is not, in itself, an FRA enforceable defective condition. Therefore, FRA intends to make clear in the Track Safety Standards Compliance Manual guidance for FRA inspectors that a chipped rail end is not to be considered as a “break out in rail head.”

FRA proposes the addition of a second footnote, Footnote 2, to the remedial action table. The footnote would provide that remedial action “D” applies to a moon-shaped breakout,

resulting from a derailment, with a length greater than 6 inches but not exceeding 12 inches and a width not exceeding one-third of the rail base width. FRA has proposed this change to allow relief because of the occurrence of multiple “broken base” defects that result from a dragging wheel derailment that may prevent traffic movement. FRA also recommends that track owners conduct a special visual inspection of the rail, pursuant to § 213.239, before the operation of any train over the affected track. A special visual inspection pursuant to § 213.239, which requires an inspection be made of the track involved in a derailment incident, should be done to assess the condition of the track associated with these broken base conditions before the operation of any train over the affected track.

Revisions to the “Notes” to the Remedial Action Table

Notes A, A2, and B. Notes A, A2, and B would be published in their entirety without substantive change.

Note C. FRA proposes a revision to remedial action note C, which applies specifically to detail fractures, engine burn fractures, transverse fissures, and defective welds, and addresses defects that are discovered during an internal rail inspection required under § 213.237 and whose size is determined not to be in excess of twenty-five percent of the rail head cross-sectional area. For these specific defects, a track owner currently has to apply joint bars bolted only through the outermost holes at the defect location within 20 days after it is determined to continue the track in use. However, evaluation of recent studies on transverse defect development shows that slow crack growth life is inconsistent and unpredictable. Therefore, FRA believes waiting 20 days to repair this type of defect is too long. FRA proposes that for these specific defects a track owner must apply joint bars bolted only through the outermost holes to the defect within 10 days after it is determined to continue the track in use. FRA also proposes that when joint bars have not been applied within 10 days, the track speed must be limited to 10 m.p.h. until joint bars are applied. The RITF recommended this addition to allow the railroads alternative relief from remedial action for these types of defects in Class 1 and 2 track, and FRA agrees with the Task Force.

Note D. FRA proposes a revision to remedial action note D, which applies specifically to detail fractures, engine burn fractures, transverse fissures, and defective welds, and addresses defects that are discovered during an internal rail inspection required under § 213.237

and whose size is determined not to be in excess of 60 percent of the rail head cross-sectional area. Currently, for these specific defects, a track owner has to apply joint bars bolted only through the outermost holes at the defect location within 10 days after it is determined that the track should continue in use. However, evaluation of recent studies on transverse defect development shows that slow crack growth life is inconsistent and unpredictable. Therefore, FRA determined that allowing a 10-day period before repairing this type of defect is too long. Instead, FRA proposes that for these specific defects a track owner must apply joint bars bolted only through the outermost holes to the defect within 7 days after it is determined to continue the track in use. A timeframe of 7 days is sufficient to allow for replacement or repair of these defects, no matter when a defect is discovered. FRA also proposes that when joint bars have not been applied within 7 days, the speed must be limited to 10 m.p.h. until joint bars are applied. The RITF recommended this addition to allow the railroads alternative relief from remedial action for these types of defects in Class 1 and 2 track, and FRA agrees with the Task Force.

Note E. Note E would be published in its entirety without substantive change.

Note F. FRA proposes to revise note F so that if the rail remains in the track and is not replaced or repaired, the re-inspection cycle starts over with each successive re-inspection unless the re-inspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process would continue indefinitely until the rail is removed from the track or repaired. If not inspected within 90 days, the speed would be limited to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until inspected. This change would define the re-inspection cycle and require the railroad to continue the re-inspection or apply a reduction in speed.

Note G. Note G currently requires the railroad to inspect the defective rail within thirty days after it is determined that the track should continue to be used. FRA proposes to revise note G so that if the rail remains in the track and is not replaced or repaired, the re-inspection cycle would start over with each successive re-inspection unless the re-inspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process would continue indefinitely until the rail is

removed from the track or repaired. If not inspected within 30 days, the railroad would be required to limit the speed to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until inspected. This change would define the re-inspection cycle and require the railroad to continue the re-inspection or apply a reduction in speed.

Notes H and I. Notes H and I would be published in their entirety without substantive change.

Paragraph (d). FRA is proposing to redesignate paragraph (b) as paragraph (d) and to revise it to define terms used in this section and in § 213.237. Definitions currently provided in paragraph (b)(1), (b)(3) through (8), (b)(10) through (13), and (b)(15) would be published in their entirety without substantive change. However, four terms would be redefined, and all terms would be enumerated in alphabetical order.

(d)(3) Compound fissure. FRA proposes to revise this definition, including removing the last sentence of the current definition, which provides that “[c]ompound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.” Rail failure analysis where a pre-existing fatigue condition is present normally exhibits an identical identifiable defective condition on both rail fracture faces. Thus, analysis of one fracture face should be sufficient to determine the type of defect, the origin of the defect, and the size of the defect. Additionally, it is typical in the railroad industry that only one failure fracture face is retained during the subsequent repair phase of rail replacement. Therefore, FRA has determined that the examination of only one fracture face is necessary to identify the horizontal split head from which compound fissures originate, and is proposing to modify the definition accordingly.

(d)(4) Crushed head. As discussed earlier, FRA proposes the addition of “Crushed head” to the remedial action table. FRA recognizes that operators currently detect and classify this type of defect, and this addition would provide a remedial action for the railroad to use. Crushed head would be identified in the table and defined by the current industry standard as being a short length of rail, not at a joint, which has drooped or sagged across the width of the rail head to a depth of $\frac{3}{8}$ inch or more below the rest of the rail head and 8 inches or more in length. FRA proposes that measurements taken to classify the crushed head defect not

include the presence of localized chips or pitting in the rail head. FRA notes that it plans to include this language in a section on “Crushed head” in the Track Safety Standards Compliance Manual.

(d)(6) Defective weld. FRA is proposing to add required remedial action for a longitudinal defect that is associated with a defective weld. FRA has determined that the railroad industry currently detects and classifies this type of defect, and the addition would codify a specific remedial action for the railroads to utilize. FRA recognizes that these defects develop in an oblique or angular plane within the rail section and have growth rates comparable to other longitudinal-type defects. Therefore, FRA believes that the same remedial action is appropriate.

(d)(9) Flattened Rail. FRA proposes a change to the definition of flattened rail to be aligned with the current industry standard and § 213.113 Remedial Action Table requirements that the area is flattened out across the width of the rail head to a depth of $\frac{3}{8}$ inch or more below the rest of the rail and 8 inches or more in length.

Section 213.119 Continuous Welded Rail (CWR); Plan Contents

FRA proposes removing the requirement under paragraph (h)(7)(ii) of this section to generate a Joint Bar Fracture Report (Fracture Report) for every cracked or broken CWR joint bar that the track owner discovers during the course of an inspection. Currently under this section, any track owner, after February 1, 2010, could petition FRA to conduct a technical conference to review fracture report data submitted through December 2009 and assess the necessity for continuing to collect this data. One Class I railroad submitted a petition to FRA, and on October, 26, 2010, a meeting of the RSAC Track Standards Working Group served as a forum for a technical conference to evaluate whether there was a continued need for the collection of these reports. The Group ultimately determined that the reports were costly and burdensome to the railroads and their employees, while providing little useful research data to prevent future failures of CWR joint bars. The Group found that Fracture Reports were not successful in helping to determine the root cause of CWR joint bar failures because the reports gathered only a limited amount of information after the joint bar was already broken.

Instead, the Group recommended that a new study be conducted to determine what conditions lead to CWR joint bar failures and include a description of the

overall condition of the track in the vicinity of the failed joint(s); photographic evidence of the failed joint, track geometry (gage, alignment, profile, cross-level) at the joint location; and the maintenance history at the joint location. Two Class I railroads volunteered to participate in a new joint bar study, which is expected to provide better data to pinpoint why CWR joint bars fail. In the meantime, given that FRA does not find it beneficial to the retain the existing requirement for railroads to submit CWR Joint Bar Fracture Reports, FRA proposes to remove the requirement and reserve the paragraph.

Section 213.237 Inspection of Rail

Paragraph (a). Currently, under existing paragraph (a) of this section, Class 4 and 5 track, as well as Class 3 track over which passenger trains operate, is required to be tested for internal rail defects at least once every accumulation of 40 mgt or once a year (whichever time is shorter), and Class 3 track over which passenger trains do not operate is required to be tested at least once every accumulation of 30 mgt or once per year (whichever time is longer). When this provision was drafted, railroads were already initiating and implementing the development of a performance-based risk management concept for determining rail inspection frequency, which is often referred to as the "self-adaptive scheduling method." Under this method, inspection frequency is established based on several factors, including the total detected defect rate per test, the rate of service failures between tests, and the accumulated tonnage between tests. The railroads then utilize this information to generate and maintain a service failure performance target.

This NPRM proposes to revise paragraph (a) to require railroads to maintain service failure rates of no more than 0.1 service failure per year per mile of track for all Class 4 and 5 track; no more than 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous material route; and no more than 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous material route.

The proposed changes to this section seek to codify standard industry good practices. With the implementation of the self-adaptive method, railroads generally test more frequently than currently required, and the test intervals align more closely with generally-accepted maintenance practices. The

frequency of rail inspection cycles vary according to the total detected defect rate per test; the rate of service failures, as defined in paragraph (j) below, between tests; and the accumulated tonnage between tests—all of which are factors that the railroad industry's rail quality managers generally consider when determining test schedules.

In 1990, as a result of its ongoing rail integrity research, FRA released report DOT/FRA/ORD-90/05; *Control of Rail Integrity by Self-Adaptive Scheduling of Rail Tests*; Volpe Transportation Systems Center; Oscar Orringer. The research objective was to provide the basis for a specification to adequately control the scheduling of rail tests of U.S. railroads. The research provided quantitative guidelines for scheduling rail tests based on rail defect behavior. The purpose of this method for scheduling rail tests is to establish a performance goal that is most advantageous to the control of rail flaw development and subsequent rail failure in a designated track segment. If the performance goal is not met, a responsive adjustment is triggered to the rail test schedule to ensure that the goal is met.

The research determined that a minimum requirement for annual rail testing requires a baseline figure of 0.1 service failure per mile for freight railroads. This baseline value can then be adjusted depending on characteristics of the individual railroad's operation and internal risk control factors. For instance, a railroad that handles multiple passenger trains a day may require scheduling rail test frequencies adequate to maintain a performance goal of 0.03 service failure. The baseline value applied for determining rail test frequencies can also be adjusted based on specific conditions that may influence rail flaw development such as age of the rail, rail wear, climate, etc. As a result, the RITF reached consensus that 0.1 service failure per mile was established as an appropriate minimum performance requirement for use in the U.S. freight railroad system. The Task Force also reached consensus that the minimum performance requirement should be adjusted to no more than 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous material route, and no more than 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous material route.

Paragraph (b). Current paragraph (b) would be redesignated as paragraph (f)

without substantive change. Under new paragraph (b), each rail inspection segment would be designated by the track owner. While the RITF discussed at length how best to define the term "segment" as it relates to inspection of rail under this section, ultimately the Task Force could not come to a consensus on a definition. The BMWED, NTSB and AAR were split on how best to define this term, and so no recommendation was ever made to the full RSAC. The BMWED and NTSB were concerned that collecting service failure rates that were averaged over excessively large segments of track (such as segments longer than a subdivision length) would fail to identify discrete areas of weakness with chronically high concentrations of service failures. At the same time, the BMWED and NTSB also recognized that if a segment size was too small, one random failure could trigger a service failure rate in excess of the performance target under this section. The BMWED and NTSB recommended that FRA impose a specific, uniform segment rate to be used by all railroads that is calculated to achieve the optimal length to avoid these problems.

The AAR, on the other hand, maintained that each individual railroad is in the best position to determine its own segment lengths based on factors that are unique to the railroad's classification system. The AAR noted that each railroad has distinct segment configurations and challenges for which each railroad has developed specific approaches to identify and address them. The AAR believed that it was not possible to define a single methodology to appropriately address every railroad's specific configurations and factors, and that any approach established in a regulation would be extremely difficult and costly to implement. The AAR stated that the large amount of route miles, complex networks, and vast quantities of data being analyzed on Class I railroads requires an automated electronic approach that integrates satisfactorily with each railroad's data system, which currently Class I railroads utilize. Arbitrary segmentation limitations developed through regulation would not be compatible with some of those systems and would create an onerous and costly burden of redesigning systems, with little overall improvement to safety, according to the AAR. The AAR maintained that each individual service failure represents a certain risk which is not affected by whether it is close to other service failures. The AAR contended that the railroads want the service failure rate to

be as low as possible and look for any patterns in service failures that suggest ways to reduce the service failure rate. Noting that these patterns can be affected by a myriad of different factors, the AAR stated that trying to create artificial boundaries on the length of a segment could lead to a less than optimal use of internal rail inspection capabilities, as well as decreased safety.

While FRA acknowledges the BMWED's and NTSB's concerns regarding identifying localized areas of failure, FRA recognizes that railroads have designed their current segment lengths through a decade of researching their own internal system rail testing requirements. This research takes into consideration pertinent criteria such as rail age, accumulated tonnage, rail wear, track geometry, and other conditions specific to these individual railroad-defined segments. FRA believes that altering existing railroad segment lengths without extensive data and research could be financially burdensome to individual railroads and detrimental to established rail maintenance programs, without yielding significant safety benefits.

FRA believes that requiring a designated segment length that focuses on these localized areas could disrupt current engineering policies and result in problematic and costly adjustments to the railroads' current maintenance programs without providing significant safety benefits. In addition, recognizing the BMWED's and NTSB's concerns, FRA believes that railroads, as well as FRA, will be able to capture rail failure data, even in large segment areas, by simply looking at rail failure records and comparing milepost locations. Therefore, FRA is not recommending a uniform segment length to be applied by all railroads. Instead, FRA recommends that railroads utilize their own designated segment lengths, which they would be using at the time of the promulgation of the final rule arising from this NPRM. However, in order to maintain consistency and uniformity, FRA would require that if a railroad wishes to change or deviate from its segment lengths, the railroad must receive FRA approval to make that change. This would ensure that the railroad does not have the ability to freely alter the defined segment length in order to compensate for a sudden increase of detected defects and service failures that could require an adjustment to the test frequency as a result of accelerated defect development.

Paragraph (c). FRA is proposing to redesignate current paragraph (c) as paragraph (e) and revise it, as discussed

below. In new paragraph (c) FRA proposes that internal rail inspections on Class 4 and 5 track, or Class 3 track with regularly scheduled passenger trains or that is a hazardous materials route, not exceed a time interval of 370 days between inspections or a tonnage interval of 30 mgt between inspections, whichever is shorter. The addition of this 370-day interval or 30-mgt accumulation would provide a maximum timeframe between tests on lines that may not be required to undergo testing on a more frequent basis in order to achieve the performance target rate. If limits were not set, for example, a railroad line carrying only 2 mgt a year could possibly go 15 years without testing. This length of time without testing was unacceptable to the Task Force; therefore, these proposed limits were included.

Paragraph (c) would also provide that internal rail inspections on Class 3 track without regularly-scheduled passenger trains that is not a hazardous materials route must be inspected at least once each calendar year, with no more than 18 months between inspections, or at least once every 30 mgt, whichever interval is longer, with the additional provision that inspections cannot be more than 5 years apart. The additional requirement for a maximum inspection interval of 370 days or tonnage accumulation of 30 mgt between rail inspections would provide a maximum time and tonnage interval between rail tests for low-tonnage lines. The reason why testing for internal rail defects would be decreased from 40 mgt to 30 mgt is because studies have shown that, while the predominant factor that determines the risk of rail failure is the rate of development of internal flaws, the development of internal rail flaws is neither constant nor predictable.

Previous studies on the development of transverse-oriented rail defects showed the average development period to be 2% of the cross-sectional area of the rail head per mgt, which meant that rail testing would have to be completed within every 50 mgt. However, the RITF took into consideration the conclusions of a more recent study performed by the Transportation Technology Center, Inc., *Improved Rail Defect Detection Technologies: Flaw Growth Monitoring and Service Failure Characterization*, AAR Report NO. R-959, Gregory A. Garcia, Michael E. Snell, David D. Davis, September 2002, concerning the development of transverse-oriented detail fracture defects, which concluded that detail fracture transverse development averaged 5% of the cross-sectional area of the rail head per mgt.

This would mean that testing would have to be done every 20 mgt. However, the study also concluded that development of internal rail flaws was considered to be inconsistent and unpredictable. Thus, as a result, consensus was reached to lower the 40-mgt limit between tests to 30 mgt.

Selecting an appropriate frequency for rail testing is a complex task involving many different factors including rail head wear, accumulated tonnage, rail surface conditions, track geometry, track support, steel specifications, temperature differentials, and residual stresses. Taking into consideration the above factors, FRA's research suggests that all of these criteria influence defect development (and ultimately rail service failure rates) and are considered in the determination of rail inspection frequencies when utilizing the performance-based self-adaptive test method.

For railroads without access to a sophisticated self-scheduling algorithm to determine testing frequencies, FRA would post an algorithm program designed by the Volpe Center on the FRA Web site. The algorithm would require five inputs: (1) Service failures per mile in the previous year; (2) detected defects per mile in the previous year; (3) annual tonnage; (4) number of rail tests conducted in the previous year; and (5) the targeted number of service failures per mile. Once the input is complete, the algorithm would take the average of two numbers when it calculates the number of rail tests. The first number would be based on the service failure rate. The second would be based on the total defect rate, which is the service defect rate plus the detected defect rate. This rate of designated tests per year for the designated segment would be the number of required tests per year enforced by FRA for the segment.

The NPRM also proposes the addition of requirements for inspection of rail intended for reuse, or "plug rail." On March 8, 2006, FRA issued Notice of Safety Advisory 2006-02 (SA), which promulgated recommended industry guidelines for the reuse of plug rail. 71 FR 11700. The recommendations in the SA consisted of two options for assuring that reused rail was free from internal defects.

Specifically, FRA's SA recommended that the entire length of any rail that is removed from track and stored for reuse must be retested for internal flaws. FRA also recommended that, recognizing that some railroads do not have the equipment to test second-hand rail in accordance with the recommendation above, railroads were encouraged to

develop a classification program intended to decrease the likelihood that a railroad will install second-hand rail containing defects back into active track. In addition, FRA recommended that a highly visible permanent marking system be developed and used to mark defective rails that railroads remove from track after identifying internal defects in those rails.

During some of the first RITF discussions, the NTSB expressed concern over one aspect of FRA's SA: the guidance that provides that rail is suitable for reuse if it has not accumulated more than 15 mgt since its last valid rail test. The NTSB suggested that such rail could experience up to 55 mgt before its next inspection if it were put in track at a location that had just been inspected and whose inspection frequency is every 40 mgt. The NTSB believed that all plug rail should be immediately inspected prior to reuse.

Also during RITF discussions, railroads described their method for assuring that rail intended for reuse is free of internal defects. In general, it was found that most railroads perform an ultrasonic inspection on rail intended for reuse while in the track and allow accumulation of tonnage prior to removal, or they perform an inspection and certification process of the rail after it has been taken out of service and prior to re-installation. However, the railroads stressed that plug rail inspection requirements should not be overly burdensome and should meet the same standards as any other rail inspections per the regulations.

FRA shares the railroads' concerns about creating a standard for rail inspection that would allow 30-mgt accumulation on in-service rail, but would mandate immediate inspection of plug rail prior to reuse. Consequently, FRA's proposal allows for plug rail to be inspected at the same frequency as conventional rail. This proposal would, therefore, supersede FRA Safety Advisory 2006-02 and codify current industry practice by allowing the use of rail that has been previously tested to be placed in track and retested at the normal frequency for that track segment. Nonetheless, all else being equal, FRA does recommend that the rail be tested prior to installation in track for reuse, even though FRA believes that requiring that the railroad test the rail immediately prior to installation is too restrictive. Alternatively, FRA believes that the railroad should have knowledge of the date the rail was last tested and ensure that the maximum tonnage of 30 mgt is not exceeded prior to retesting the rail. Once the rail is installed in track, FRA expects the rail to be tested

in accordance with the test frequency of the designated segment. FRA would require the railroad to have the ability to verify when the rail was last tested and the accumulated tonnage prior to installation.

Paragraph (d). Current paragraph (d) would be redesignated as paragraph (g) and revised, as discussed below. In new paragraph (d), FRA proposes restrictions that would apply if the service failure target rate is not achieved on a segment of track for two consecutive twelve-month periods. FRA recognizes that the service failure target rate may be exceeded within one defined twelve-month period. Therefore, the railroad would be allowed an additional year to adjust its rail integrity management program to bring the service failure rate on the offending track segment into compliance with the requirements. If the service failure target rate is exceeded for two consecutive twelve-month periods, the railroad would be required to comply with the requirements in paragraph (d) for either a minimum rail test frequency or a speed restriction on the offending track segment.

Paragraph (e). As noted above, FRA is proposing to redesignate paragraph (c) as paragraph (e) with some revision. Specifically, in paragraph (e) FRA proposes to require that each defective rail be marked with a highly visible marking on both sides of the web and base except that, where a side or sides of the web and base are inaccessible because of permanent features, the highly visible marking would be placed on or next to the head of the rail. This option to mark the rail head in certain situations would provide an alternative to the railroad in areas where the web or base may not be accessible. Current paragraph (e) would be redesignated as paragraph (h) and revised, as discussed below.

Paragraph (f). As stated above, FRA proposes to redesignate current paragraph (b) as paragraph (f) without substantive change.

Paragraph (g). Paragraph (g) would address the case where a valid search for internal rail defects could not be made because of rail surface conditions. Several types of technologies are presently employed to continuously search for internal rail defects, some capable of displaying and monitoring search signal returns. A continuous search is intended to mean an uninterrupted search by whatever technology is being used, so that there are no segments of rail that are not tested. If the test is interrupted, e.g., as a result of rail surface conditions that inhibit the transmission or return of the signal, then the test over that segment of

rail may not be valid because it was not continuous. Therefore, as proposed in the NPRM, a valid search for internal rail defects would be defined in paragraph (j), below, as a "valid test" during which the equipment is performing as intended and equipment responses are interpreted by a qualified operator as defined in § 213.238. In conducting a valid search, the operator would need to determine that the test has not been compromised due to environmental contamination, rail conditions, or test equipment performance.

Paragraph (h). FRA proposes to redesignate current paragraph (e) as paragraph (h) and revise it. In paragraph (h), FRA proposes to specify the options available to a railroad following a non-test. These options must be exercised prior to the expiration of the time or tonnage limits specified in paragraphs (a) or (c) of this section.

Paragraph (i). FRA proposes a new paragraph (i) to require that the rail flaw detector car operator be qualified as defined in new § 213.238, "Qualified operator," which would prescribe minimum training requirements for railroad personnel performing in this occupation.

Paragraph (j). FRA proposes to add paragraph (j) to provide new definitions for terms that are used in this section and that are applicable only to this section.

Hazardous materials route. FRA proposes a definition for "hazardous material route" to be applied when determining the service failure target rate pursuant to paragraph (a) of this section.

Plug rail. FRA proposes a definition for "plug rail" to mean a length of rail that has been removed from one track location and stored for future use as a replacement rail at another location.

Service failure. FRA proposes that only the listed fatigue defects, i.e., compound fissure, transverse fissure, detail fracture, or vertical split head, are to be utilized for determining the fatigue service failure rate. Since other defect types are more likely to go undetected, and how well defects can be detected is influenced by conditions other than fatigue, they would not be included in the service failure rate calculation.

Valid search. FRA proposes a definition to ensure that a valid test under this section has been conducted. As proposed, the test equipment must perform as intended and equipment responses must be properly interpreted by a qualified operator as defined in § 213.238.

Section 213.238 Qualified Operator

FRA proposes to add this new section to require that any entity that conducts rail flaw detection have a documented training program to ensure that a flaw detection equipment operator is qualified to operate each of the various types of equipment currently utilized in the industry for which he or she is assigned, and that proper training is provided if new rail flaw detection technologies are utilized.

As proposed in paragraph (b), the operator must have documentation from his or her employer that designates his or her qualifications to perform various functions associated with the flaw detection process. Specifically, requirements are proposed to help ensure that the operator is able to determine that a valid search for internal rail flaws is conducted, the equipment is functioning properly at all times, and the operator can properly interpret the test results and understand test equipment environmental limitations.

In paragraph (c), FRA proposes that the operator must receive a minimum amount of documented, supervised training according to the rail flaw detection equipment or employer's training program. FRA understands that this training may not be entirely held within the classroom environment and is in agreement that the employer should have the flexibility to determine the training process that is appropriate for compliance. The operator would be required to demonstrate proficiency for each type of equipment the employer intends the operator to use, and documentation must be available to FRA to verify the qualification.

As proposed in paragraph (d), operator reevaluation and, as necessary, refresher training would be provided in accordance with the employer's training program. The employer would be provided the flexibility to determine the necessary process and the frequency.

In paragraph (e), FRA proposes that the employer maintain a written or electronic record of each operator's qualification. The record must include the operator's name, type of equipment qualification, date of initial qualification, and most recent reevaluation of his or her qualifications, if any. This proposal is intended to ensure consistent recordkeeping and that FRA can accurately verify compliance.

FRA proposes in paragraph (f) that existing rail flaw detection operators, prior to the date of promulgation of the final rule arising from this rulemaking, be considered qualified to operate the equipment as designated by the

employer. Any employee that is considered for the position of qualified operator subsequent to the date of promulgation of the final rule must be qualified in accordance with paragraph (c) of this section.

Finally, in paragraph (g) FRA proposes that the records specifically associated with the operator qualification process are maintained at a designated location and made available to FRA as requested. This is intended to assist FRA to accurately verify the railroad's compliance.

Section 213.241 Inspection Records

This section contains requirements for keeping, handling, and making available records of track inspections required in accordance with subpart F.

Paragraphs (a) and (b) would remain unchanged.

FRA proposes to revise paragraph (c) to require that the railroad's rail inspection records include the date of inspection, track identification and milepost for each location tested, type of defect found and size if not removed prior to traffic, and initial remedial action as required by § 213.113. FRA also proposes that all tracks that do not receive a valid test be documented in the railroad's rail inspection records. These changes would respond to a recommendation arising out of the report by DOT's OIG referenced above, "Enhancing the Federal Railroad Administration's Oversight of Track Safety Inspections," CR-2009-038, February 24, 2009, which is available on the OIG's public Web site at: http://www.oig.dot.gov/sites/dot/files/pdfdocs/Signed_Final_Track_Safety_Report_02-24-09.pdf. The OIG recommended that FRA "[r]evise its track safety regulations for internal rail flaw testing to require the railroads to report all track locations (milepost numbers or track miles) covered during internal rail flaw testing." See OIG report at p. 8. The last sentence of current paragraph (c) would be moved to paragraph (d), as discussed below.

FRA proposes to redesignate current paragraph (d) as paragraph (f). In its place, FRA proposes to move to paragraph (d) and slightly modify the last sentence in current paragraph (c). In paragraph (d), FRA proposes that the railroads be required to maintain the rail inspection records at least for two years after an inspection has occurred and for one year after the initial remedial action has been taken. This information is vital for FRA to determine compliance with the rail integrity and inspection requirements in § 213.113 and § 213.237.

FRA proposes to redesignate current paragraph (e) as paragraph (g) without substantive change. In new paragraph (e), FRA proposes that rail inspection records must be maintained to sufficiently demonstrate compliance with proposed § 213.237(a). This requirement is intended to provide sufficient information to determine that accurate data concerning detected defects is utilized by the railroads as input into the performance-based test frequency formula. During RITF discussions, the railroads asked that FRA requests for records of rail inspections demonstrating compliance with required test frequencies be made by a designated FRA Rail Integrity Specialist; each railroad would then designate a person within its organization whom the Rail Integrity Specialists would contact when requesting records of rail inspections. FRA agrees that this suggested approach would be an efficient way to obtain inspection records and FRA intends to adopt this approach through guidance in FRA's Track Safety Compliance Manual.

As discussed above, FRA proposes to redesignate current paragraph (d) as paragraph (f) without substantive change. The paragraph provides that track inspection records be made available for inspection and copying by the Federal Railroad Administration upon request.

As discussed above, FRA proposes to redesignate current paragraph (e) as paragraph (g) without substantive change. This paragraph contains requirements for maintaining and retrieving electronic records of track inspections.

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this proposed rule. As part of the regulatory evaluation, FRA has assessed any quantitative costs from the implementation of this rule as proposed, and believes that the rail industry is already in compliance with the proposed requirements and that there are no new costs associated with the rule. FRA has also estimated the benefits of the rule and that, for a 20-

year period, the industry would save \$61.3 million, with a present value (PV, 7) of \$34.8 million. This cost-benefit analysis of the rule shows that the potential benefits from the proposal would exceed any costs.

FRA considered potential industry costs associated with the proposed rule, including: minimum qualification requirements for rail flaw detection equipment operators, as well as revisions to requirements for effective rail inspection frequencies, rail flaw remedial actions, and requirements for rail inspection records. The bulk of this proposed regulation would codify the railroad industry's current good practices. FRA believes that the railroad industry is currently following these practices, but requests comments in our assumptions, specifically the extent to which all Class III railroads with Class 3, 4 or 5 track would already be in compliance with this rule as proposed. For more details, please see the Regulatory Evaluation found in the docket.

As part of the Regulatory Evaluation, FRA also explained what the likely benefits for this proposed rule would be, and provided a cost-benefit analysis. FRA anticipates that this rulemaking would enhance the current Track Safety Standards by allocating more time to rail inspections, increasing the opportunity to detect larger defects sooner, providing assurance that qualified operators are inspecting the rail, and causing inspection records to contain more useful information. The main benefit associated with this proposed rule is derived from granting the railroads a four-hour window to verify defects found in a rail inspection. Without the additional time to verify a defect, railroads currently must stop their inspection when a suspect defect is identified and then resume their inspection after the defect is verified. The defects subject to the proposed deferred verification allowance are usually considered less likely to cause immediate rail failure, and require less restrictive remedial action. The additional time permits railroads to avoid the cost of paying their internal inspection crews or renting a rail car flaw detector an additional half day, saving the industry \$8,400 per day. FRA believes the value of the anticipated benefits would easily justify any cost of implementing the rule as proposed.

20-YEAR BENEFITS FOR PROPOSED RULE

Four-Hour Inspection Window	\$34,754,935*
Total	\$34,754,935*

* Benefits are discounted to present value using a 7 percent discount rate.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposed requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of this NPRM. FRA will consider all comments received in the public comment process when making a final determination.

The proposed rule would apply to all railroads that own Class 3, 4 or 5 track. Based on information currently available, FRA estimates that all small entities are already in compliance the proposed rule. Therefore, FRA believes that no small business would be negatively impacted by the proposed rule, as there are no additional costs.

Based on FRA's railroad reporting data from 2010 there are 710 Class III railroads; however, of those 710, only 58 own Class 3, 4 or 5 track and could be considered small for the purposes of this analysis. FRA knows that 51 of those railroads are already in compliance with the rule, as proposed, and believes that the other 7 Class III railroads are also in compliance, but does not have that information to confirm this statement. FRA requests comments on this assumption believing that no extra investments or costs would need to be made to meet the proposed requirements. Even if those 7 entities were impacted, the economic impact on them would likely not be significant. This IRFA is not intended to be a stand-alone document. The discussion of total regulatory cost in the Regulatory Evaluation is the basis for the estimates

in this IRFA and it has been placed in the docket for public review as it provides extensive information about any costs of the proposed regulation for each specific requirement in this NPRM.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

- A description of the reasons why the action by the agency is being considered.
- A succinct statement of the objectives of, and legal basis for, the proposed rule.
- A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record.
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

The goal of the proposed rule is to amend the existing Federal Track Safety Standards to improve rail flaw detection processes and promote safety in railroad operations. Rail Integrity is a priority for FRA and the railroad industry. FRA is using this opportunity to modernize Federal track standards with the industry's current good practices. FRA would also grant the railroads a 4-hour window to verify a defect. This would save the industry millions of dollars, as it takes additional time and money to not only obtain or operate, or both, a rail flaw detector car, but also find free time on track segments to conduct additional inspections.

After reviewing the current track standards, FRA determined the best, most cost-efficient and beneficial way to modernize our standards was to propose this rule. FRA anticipates that the proposed requirements would be accepted by the industry as being as unobtrusive as possible.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The purpose of this rulemaking is to amend the Federal Track Safety Standards to improve rail flaw detection processes and promote the safety of railroad operations.

Pursuant to 49 U.S.C. 20103, the Secretary maintains general authority to prescribe regulations as necessary in

any area of railroad safety. The Track Safety Standards fall under this purview. Additionally, on October 16, 2008, the RSIA was enacted into law. Section 403(a) of the RSIA required the Secretary to conduct a study of track issues, known as the Track Inspection Time Study (Study). The study was completed and presented to Congress on May 2, 2011. Section 403(c) of the RSIA further provides that FRA prescribe regulations based on the results of the Study two years after its completion. As delegated by the Secretary, FRA initially looked at creating a new regulation focusing on the recommendations of the Study; however, it was determined that multiple proposed rules were already addressing these recommendations. Therefore, this regulation in conjunction with other recent proposed and final FRA rules will allow FRA to fulfill the RSIA mandate.

Overall, FRA is using this opportunity to improve the existing track safety standards in 49 CFR part 213.

3. A Description of, and Where Feasible, an Estimate of Small Entities To Which the Proposed Rule Would Apply

The “universe” of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this rulemaking. This proposed rule would affect all railroads that own Class 3, 4 or 5 track.

“Small entity” is defined in 5 U.S.C. 601. Section 601(3) defines a “small entity” as having the same meaning as “small business concern” under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is “for profit” may be and still be classified as a “small entity” is 1,500 employees for “Line Haul Operating Railroads” and 500 employees for “Switching and Terminal Establishments.” Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or

special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with the SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The \$20 million-limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

According to FRA, there are a total of 763 regulated railroads. There are 7 Class I railroads and 12 Class II railroads, all which are not considered to be small. There are a total of 29 commuter/passenger railroads, including Amtrak, affected by this rule. However, most of the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000.

The level of costs incurred by each railroad should generally vary in proportion to the number of miles of Class 3, 4 or 5 track. For instance, railroads with less mileage should have lower overall costs associated with implementing the standards, as proposed. There are 710 Class III railroads. Of those railroads, only 58 are affected by the rule. However, FRA has confirmation that 51 of these small railroads are already in compliance with this regulation. FRA also believes that the remaining 7 affected Class III railroads are also in compliance, and that no small entity would be negatively impacted by this regulation.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

For a thorough presentation of cost estimates, please refer to the Regulatory Evaluation, which has been placed in the docket for this rulemaking.

Rail and infrastructure integrity specialists in FRA’s Office of Railroad Safety anticipate that all railroads that would be required to comply with the regulation, as proposed, are already in compliance with the proposed requirements. Even if the 7 small railroads that FRA assumed are in compliance with the rule are not, the added costs would be minimal. FRA estimates that it would cost a Class III railroad \$2,000 per day to rent a rail flaw detector car. The average Class III railroad that owns Class 3, 4, or 5 track has approximately 70 miles of track. FRA estimates it would take 3 days to inspect their entire track. The total cost per railroad would be \$6,000 per year. Again, FRA is confident that these railroads are already inspecting their track at least once a year; however, if these entities were not in compliance, FRA believes a cost of \$6,000 per year would not be a significant economic impact on the railroads.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rules that may duplicate, overlap or conflict with the specific requirements proposed in this rule.

FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.4—Excepted track:				
—Designation of track as excepted	236 railroads	20 orders	15 minutes	5
—Notification to FRA about removal of excepted track.	236 railroads	15 notification	10 minutes	3
213.5—Responsibility of track owners	763 railroads	10 notification	8 hours	80
213.7—Designation of qualified persons to supervise certain renewals and inspect track:				
—Designation	763 railroads	1,500 names	10 minutes	250
—Employees trained in CWR procedures ..	37 railroads	8,000 trained employees.	90 minutes	12,000
—Written authorizations and recorded exams.	37 railroads	8,000 auth. + 8,000 exams.	10 minutes + 60 minutes.	9,333
—Designations (partially qualified) under paragraph (c) of this section.	37 railroads	250 names	10 minutes	42
213.17—Waivers	763 railroads	6 petitions	24 hours	144
213.57—Curves, elevation and speed limitations:				
—Request to FRA for approval	763 railroads	2 requests	40 hours	80
—Notification to FRA with written consent of other affected track owners.	763 railroads	2 notifications	45 minutes	2
—Test plans for higher curving speeds	1 railroad	2 test plans	16 hours	32
213.110—Gage restraint measurement systems (GRMS):				
—Implementing GRMS—notices & reports ..	763 railroads	5 notifications + 1 tech rpt.	45 minutes	8
—GRMS vehicle output reports	763 railroads	50 reports	4 hours 5 minutes	4
—GRMS vehicle exception reports	763 railroads	50 reports	5 minutes	4
—GRMS/PTLF—procedures for data integrity.	763 railroads	4 proc. docs.	2 hours	8
—GRMS training programs/sessions	763 railroads	2 programs + 5 sessions.	16 hours	112
—GRMS inspection records	763 railroads	50 records	2 hours	100
213.118—Continuous welded rail (CWR); plan review and approval:				
—Plans with written procedures for CWR ...	279 railroads	279 plans	4 hours	1,116
—Notification to FRA and RR employees of CWR plan effective date.	279 railroads	279 + 8,000 notifications.	15 minutes + 2 minutes	336
—Written submissions after plan disapproval.	279 railroads	20 submissions	2 hours	40
—Final FRA disapproval and plan amendment.	279 railroads	20 amended plans	1 hour	20
213.119—Continuous welded rail (CWR); plan contents:				
—Annual CWR training of employees	279 railroads	8,000 trained employees.	30 minutes	4,000
—Record keeping	279 railroads	2,000 records	10 minutes	333
—Record keeping for CWR rail joints	279 railroads	360,000 rcds.	2 minutes	12,000
—Periodic records for CWR rail joints	279 railroads	480,000 rcds.	1 minute	8,000
—Copy of track owner's CWR procedures ..	279 railroads	279 manuals	10 minutes	47
213.233—Track inspections—Notations	763 railroads	12,500 notations	1 minute	208
213.241—Inspection records	763 railroads	1,542,089 records	Varies	1,672,941
213.303—Responsibility for compliance	2 railroads	1 notification	8 hours	8
213.305—Designation of qualified individuals; general qualifications:				
—Designations (partially qualified)	2 railroads	20 designations	10 minutes	3
213.317—Waivers	2 railroads	1 petition	80 hours	80
213.329—Curves, elevation and speed limitations.	2 railroads	3 notifications	40 hours	120
—Written notification	2 railroads	3 notifications	45 minutes	2
213.333—Automated vehicle inspection systems	2 railroads + 1 possible future railroad.	18 reports	20 hours	360
—Track/vehicle performance measurement system.	2 railroads	13 printouts	20 hours	260
213.341—Initial inspection of new rail and welds:				
—Mill inspection	2 railroads	2 reports	16 hours	32
—Welding plant inspection	2 railroads	2 reports	16 hours	32
—Inspection of field welds	2 railroads	125 reports	20 minutes	42
213.343—Continuous welded rail (CWR)	2 railroads	150 records	10 minutes	25
213.345—Vehicle qualification testing	1 railroad	2 reports	560 hours	1,120
213.369—Inspection records	2 railroads	500 records	1 minute	8
—Inspection defects + remedial action	2 railroads	50 records	5 minutes	4

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning the following: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Office of Railroad Safety, Information Clearance Officer, at 202-493-6292, or Ms. Kimberly Toone, Office of Financial Management and Administration, Information Clearance Officer, at 202-493-6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: Robert.brogan@dot.gov; Kimberly.toone@dot.gov.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule and associated information collection submission will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the eventual final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this NPRM in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

E. Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. If adopted, this proposed rule would not have a substantial direct

effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FRA has also determined that this proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Moreover, FRA notes that RSAC, which endorsed and recommended the majority of this proposed rule, has as permanent members, two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendation made in this rulemaking. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representatives of State government.

However, if adopted, this proposed rule could have preemptive effect by operation of law under 49 U.S.C. 20106 (Sec. 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to section 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Sec. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

F. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent

that such regulations incorporate requirements specifically set forth in law.” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of 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) [currently \$143,100,000 in 2010 dollars] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This NPRM will not result in the expenditure, in the aggregate, of \$143,100,000 in 2010 dollars or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” See 66 FR 28355 (May 22, 2001). Under the Executive Order a “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a “significant energy action” within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments

received into any of DOT’s dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Please visit <http://www.regulations.gov/#!privacyNotice>. You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit <http://www.dot.gov/privacy.html>.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Pub. L. 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

2. Section 213.3 is amended by revising paragraph (b) to read as follows:

§ 213.3 Application.

* * * * *

(b) This part does not apply to track—

(1) Used exclusively for rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(2) Located inside an installation that is not part of the general railroad system of transportation (i.e., a plant railroad). As used in this part, *plant railroad* means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility’s own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that track by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from

the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation. Similarly, this exclusion does not apply to track over which a general system railroad operates, even if that track is located within a plant railroad.

Subpart D—Track Structure

3. Section 213.113 is revised to read as follows:

§ 213.113 Defective rails.

(a) When an owner of track learns that a rail in the track contains any of the defects listed in the table contained in paragraph (c) of this section, a person designated under § 213.7 shall determine whether the track may continue in use. If the designated person determines that the track may continue in use, operation over the defective rail is not permitted until—

- (1) The rail is replaced or repaired; or
- (2) The remedial action prescribed in the table contained in paragraph (c) of this section is initiated.

(b) When an owner of track learns that a rail in the track contains an indication of any of the defects listed in the table contained in paragraph (c) of this section, the track owner shall verify the indication. The track owner must verify the indication within four hours, unless the track owner has an indication of the existence of the defects that require remedial action A, A2, or B identified in the table contained in paragraph (c) of this section, in which case the track owner must immediately verify the indication. If the indication is verified, the track owner must—

- (1) Replace or repair the rail; or
- (2) Initiate the remedial action prescribed in the table contained in paragraph (c) of this section.

(c) *Remedial action table.* A track owner who learns that a rail contains one of the following defects shall prescribe the remedial action specified if the rail is not replaced or repaired:

REMEDIAL ACTION TABLE

Defect	Length of defect (inch(es))		Percentage of existing rail head cross-sectional area weakened by defect		If the defective rail is not replaced or repaired, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Compound Fissure .....	.....	.....	70	5	B.
			100	70	A2.
				100	A.
Transverse Fissure			25	5	C.
Detail Fracture			60	25	D.
Engine Burn Fracture			100	60	A2, or [E and H].
Defective Weld				100	A, or [E and H].
Horizontal Split Head					
Vertical Split Head					
Split Web	1	2			H and F.
Piped Rail	2	4			I and G.
Head Web Separation	4				B.
Defective Weld (Longitudinal)	(¹)	(¹)			A.
Bolt Hole Crack	³ / ₄	1			H and F.
	1	1½			H and G.
	1				B.
	1½				
	(¹)	(¹)			A.
Broken Base	1	6			D.
	6 ²				A, or [E and I].
Ordinary Break					A or E.
Damaged Rail					C.
Flattened Rail Crushed Head	Depth > ³ / ₈ and Length > 8.				H.

¹ Break out in rail head.

² Remedial action D applies to a moon-shaped breakout, resulting from a derailment, with length greater than 6 inches but not exceeding 12 inches and width not exceeding one-third of the rail base width.

Notes:

A. Assign a person designated under § 213.7 to visually supervise each operation over the defective rail.

A2. Assign a person designated under § 213.7 to make a visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over the defective rail to that as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The operating speed cannot be over 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to the defect within 10 days after it is determined to continue the track in use. In the case of Class 3 through 5 track, limit the operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit the speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the

class of track concerned, whichever is lower. When a search for internal rail defects is conducted under § 213.237, and defects are discovered in Class 3 through 5 track that require remedial action C, the operating speed shall be limited to 50 m.p.h., or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When joint bars have not been applied within 10 days, the speed must be limited to 10 m.p.h. until joint bars are applied.

D. Apply joint bars bolted only through the outermost holes to defect within 7 days after it is determined to continue the track in use. In the case of Class 3 through 5 track, limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until joint bars are applied; thereafter, limit

speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When joint bars have not been applied within 7 days, the speed must be limited to 10 m.p.h. until the joint bars are applied.

E. Apply joint bars to the defect and bolt in accordance with § 213.121(d) and (e).

F. Inspect the rail within 90 days after it is determined to continue the track in use. If the rail remains in track and is not replaced or repaired, the reinspection cycle starts over with each successive reinspection unless the reinspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process continues indefinitely until the rail is removed from the track or repaired. If not inspected within 90 days, limit speed to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until it is inspected.

G. Inspect rail within 30 days after it is determined to continue the track in use. If the rail remains in the track and is not replaced or repaired, the reinspection cycle starts over with each successive reinspection unless the

reinspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process continues indefinitely until the rail is removed from the track or repaired. If not inspected within 30 days, limit speed to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until it is inspected.

H. Limit operating speed over the defective rail to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over the defective rail to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

(d) As used in this section—

(1) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base.

Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint must be reported as separate defects.

(2) *Broken base* means any break in the base of the rail.

(3) *Compound fissure* means a progressive fracture originating from a horizontal split head that turns up or down, or in both directions, in the head of the rail. Transverse development normally progresses substantially at a right angle to the length of the rail.

(4) *Crushed head* means a short length of rail, not at a joint, which has drooped or sagged across the width of the rail head to a depth of $\frac{3}{8}$ inch or more below the rest of the rail head and 8 inches or more in length. Unlike flattened rail where the depression is visible on the rail head only, the sagging or drooping is also visible in the head/web fillet area.

(5) *Damaged rail* means any rail broken or otherwise damaged by a derailment, broken, flat, or unbalanced wheel, wheel slipping, or similar causes.

(6) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete

penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrapment of slag or sand, under-bead or shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends. If the weld defect progresses longitudinally through the weld section, the defect is considered a split web for purposes of remedial action required by this section.

(7) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins.

Detail fractures may arise from shelled spots, head checks, or flaking.

(8) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(9) *Flattened rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of $\frac{3}{8}$ inch or more below the rest of the rail and 8 inches or more in length. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(10) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

(11) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually $\frac{1}{4}$ inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(12) *Ordinary break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (d) is found.

(13) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(14) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(15) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(16) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

4. Section 213.119 is amended by removing and reserving paragraph (h)(7)(ii) to read as follows:

§ 213.119 Continuous welded rail (CWR); plan contents.

*	*	*	*	*
(h)	*	*	*	
(7)	*	*	*	
(ii)	[Reserved]			
*	*	*	*	*

Subpart F—Inspection

5. Section 213.237 is revised to read as follows:

§ 213.237 Inspection of rail.

(a) In addition to the inspections required by § 213.233, a track owner shall conduct internal rail inspections sufficient to maintain service failure rates per rail inspection segment in accordance with this paragraph (a) for a 12-month period as determined by the track owner and calculated within 45 days of the end of the period. These rates shall not include service failures that occur in rail that has been replaced through rail relay since the time of the service failure. Rail used to repair a service failure defect is not considered rail relay. The service failure rates shall not exceed—

(1) 0.1 service failure per year per mile of track for all Class 4 and 5 track;

(2) 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous material route; and

(3) 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous material route.

(b) Each rail inspection segment shall be designated by the track owner no later than [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]

for track that is Class 4 or 5 track, or Class 3 track that carries regularly-scheduled passenger trains or is a hazardous material route and is used to determine the milepost limits for the individual rail inspection frequency.

(1) To change the designation of a rail inspection segment or to establish a new segment pursuant to this section, a track owner may submit a detailed request to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator). Within 30 days of receipt of the submission, FRA will review the request. FRA will approve, disapprove or conditionally approve the submitted request, and will provide written notice of its determination.

(2) The track owner's existing designation shall remain in effect until the track owner's new designation is approved or conditionally approved by FRA.

(3) The track owner shall, upon receipt of FRA's approval or conditional approval, establish the designation's effective date. The track owner shall advise in writing FRA and all affected railroad employees of the effective date.

(c) Internal rail inspections on Class 4 and 5 track, or Class 3 track with regularly-scheduled passenger trains or that is a hazardous materials route, shall not exceed a time interval of 370 days between inspections or a tonnage interval of 30 million gross tons (mgt) between inspections, whichever is shorter. Internal rail inspections on Class 3 track that is without regularly-scheduled passenger trains and not a hazardous materials route must be inspected at least once each calendar year, with no more than 18 months between inspections, or at least once every 30 mgt, whichever interval is longer, with the additional provision that inspections cannot be more than 5 years apart.

(1) Any rail used as a replacement plug rail in track that is required to be tested in accordance with this section must have been tested for internal rail flaws.

(2) The track owner must be able to verify that the plug rail has not accumulated more than a total of 30 mgt in previous and new locations since its last internal rail flaw test, before the next test on the rail required by this section is performed.

(3) If plug rail not in compliance with paragraphs (c)(1) and (2) of this section is in use after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], trains over that rail must not exceed Class 2 speeds until the rail is tested in accordance with this section.

(d) If the service failure rate target identified in paragraph (a) of this section is not achieved, the track owner must inform FRA of this fact within 45 days of the end of the defined 12-month period in which the performance target is exceeded. In addition, the owner may provide to FRA an explanation as to why the performance target was not achieved and provide a remedial action plan.

(1) If the performance target rate is not met for two consecutive years, then for the area where the greatest number of service failures is occurring, either:

(i) The inspection tonnage interval between tests must be reduced to 10 mgt; or

(ii) The class of track must be reduced to Class 2 until the target service failure rate is achieved.

(2) In cases where a single service failure would cause the rate to exceed the applicable service failure rate as designated in paragraph (a) of this section, the service failure rate will be considered to comply with paragraph (a) of this section unless a second such failure occurs within a designated 12-month period.

(3) For the purposes of paragraph (d)(2) of this section, a period begins no earlier than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(e) Each defective rail shall be marked with a highly visible marking on both sides of the web and base except that, where a side or sides of the web and base are inaccessible because of permanent features, the highly visible marking shall be placed on or next to the head of the rail.

(f) Inspection equipment shall be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(g) If the qualified rail defect detection equipment operator determines that a valid search for internal defects could not be made over a particular length of track, that particular length of track may not be considered as internally inspected under paragraphs (a) and (c) of this section.

(h) If a valid search for internal defects cannot be conducted, the track owner shall, before expiration of the time or tonnage limits in paragraphs (a) or (c) of this section—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 m.p.h. until such time as a valid search can be made; or

(3) Replace the rail that had not been inspected.

(i) The person assigned to operate the rail defect detection equipment must be

a qualified operator as defined in § 213.238 and have demonstrated proficiency in the rail flaw detection process for each type of equipment the operator is assigned.

(j) As used in this section—

(1) *Hazardous materials route* means any track of any class over which a minimum of 10,000 car loads or intermodal portable tank car loads of hazardous material as defined in 49 CFR 171.8 travel over a period of one year; or Class 3, 4 or 5 track over which a minimum of 4,000 car loads or intermodal portable tank car loads of the hazardous material specified in 49 CFR 172.820 travel, in a period of one year.

(2) *Plug rail* means a length of rail that has been removed from one track location and stored for future use as a replacement rail at another location.

(3) *Service failure* means a broken rail occurrence, the cause of which is determined to be a compound fissure, transverse fissure, detail fracture, or vertical split head.

(4) *Valid search* means a continuous inspection for internal rail defects where the equipment is performing as intended and equipment responses are interpreted by a qualified operator as defined in § 213.238.

6. Section 213.238 is added to read as follows:

§ 213.238 Qualified operator.

(a) Each track owner or railroad conducting rail flaw detection shall have a documented training program in place and shall identify the types of rail flaw detection equipment for which each operator has received training and is qualified.

(b) A qualified operator shall be trained and shall have written authorization by the employing track owner or railroad (employer) to:

(1) Conduct a valid search for internal rail defects utilizing the specific type(s) of equipment for which he or she is authorized and qualified to operate;

(2) Determine that such equipment is performing as intended;

(3) Interpret equipment responses and institute appropriate action in accordance with the employer's procedures and instructions; and

(4) Determine that each valid search for an internal rail defect is continuous throughout the area inspected and has not been compromised due to environmental contamination, rail conditions, or equipment malfunction.

(c) The operator must have received training in accordance with the documented training program and a minimum of 160 hours of rail flaw detection experience under direct supervision of a qualified operator or

rail flaw detection equipment manufacturer's representative. The operator must demonstrate proficiency in the rail defect detection process, including the equipment to be utilized, prior to initial qualification and authorization by the employer for each type of equipment.

(d) Each employer shall reevaluate the qualifications of, and administer any necessary recurrent training for, the operator as determined by and in accordance with the employer's documented program. The reevaluation and recurrent training may consist of a periodic review of test data submitted by the operator. The reevaluation process shall require that the employee successfully complete a recorded examination and demonstrate proficiency to the employer on the specific equipment type(s) to be operated.

(e) Each employer of a qualified operator shall maintain written or electronic records of each qualification in effect. Each record shall include the name of the employee, the equipment to which the qualification applies, date of qualification, and date of the most recent reevaluation, if any.

(f) Any employee who has demonstrated proficiency in the operation of rail flaw detection equipment prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register], is deemed a qualified operator, regardless of the previous training program under which the employee was qualified. Such an operator shall be subject to paragraph (d) of this section.

(g) Records concerning the qualification of operators, including copies of equipment-specific training programs and materials, recorded examinations, demonstrated proficiency records, and authorization records, shall be kept at a location designated by the employer and available for inspection and copying by FRA during regular business hours.

7. Section 213.241 is amended by redesignating paragraphs (d) and (e) as (f) and (g), by revising paragraph (c), by adding paragraphs (d) and (e), and by revising newly redesignated paragraphs (f) and (g) to read as follows:

§ 213.241 Inspection records.

* * * * *

(c) Records of internal rail inspections required by § 213.237 shall specify the—

- (1) Date of inspection;
- (2) Track inspected, including beginning and end points;
- (3) Location and type of defects found under § 213.113;

(4) Size of defects found under § 213.113, if not removed prior to the next train movement;

(5) Initial remedial action taken and the date thereof; and

(6) Location of any track not tested pursuant to § 213.237(g).

(d) The track owner shall retain a rail inspection record under paragraph (c) of this section for at least two years after the inspection and for one year after initial remedial action is taken.

(e) The track owner shall maintain records sufficient to demonstrate the means by which it computes the service failure rate on all track segments subject to the requirements of § 213.237(a) for the purpose of determining compliance with the applicable service failure rate target.

(f) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by FRA upon request.

(g) For purposes of complying with the requirements of this section, a track owner may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system is designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or another means, which uniquely identifies the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data;

(6) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this part shall be made available for inspection and copying by FRA at the locations specified in paragraph (b) of this section; and

(7) Track inspection records shall be kept available to persons who performed the inspections and to

persons performing subsequent inspections.

Issued in Washington, DC, on October 12, 2012.

Karen J. Hedlund,
Deputy Administrator.

[FR Doc. 2012-25620 Filed 10-18-12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2012-0082; 4500030114]

RIN 1018-AY20

Endangered and Threatened Wildlife and Plants; Proposed Revision of Critical Habitat for the Comal Springs Dryopid Beetle, Comal Springs Riffle Beetle, and Peck's Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designation of critical habitat for the Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Peck's cave amphipod (*Stygobromus pecki*), under the Endangered Species Act of 1973, as amended (Act). In total, approximately 169 acres (68 hectares) are being proposed for revised critical habitat. The proposed revision of critical habitat is located in Comal and Hays Counties, Texas.

DATES: We will accept comments received or postmarked on or before December 18, 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 **FOR FURTHER INFORMATION CONTACT** by December 3, 2012.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-2-ES-2012-0082, which is the docket number for this rulemaking. 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–2012–008.; 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 Information Requested section below for more information).

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/>), www.regulations.gov at Docket No. FWS–R2–ES–2012–0082, 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 Fish and Wildlife Service Web site and field office set out above, and may also be included in the preamble and/or at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone at 512–490–0057 extension 248; or by facsimile at 512–490–0974. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, any species that is determined to be threatened or endangered requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. This is a proposed rule to revise critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod. With this rule, we are proposing to revise critical habitat for the three endangered invertebrates as follows:

- Comal Springs dryopid beetle: 39.4 acres (ac) (15.56 hectares (ha)) of surface and 139 ac (56 ha) of subsurface critical habitat. The original designation was surface critical habitat of 39.5 ac (16.0 ha) without subsurface;
- Comal Springs riffle beetle: 54 ac (22 ha) of surface critical habitat only.

The original designation was surface critical habitat of 30.3 ac (12.3 ha); and

- Peck's cave amphipod: 38.4 ac (15.16 ha) surface and 138 ac (56 ha) of subsurface critical habitat. The original designation was surface critical habitat of 38.5 ac (15.6 ha) without subsurface.
- Areas that meet the definition of critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod species that are covered by the Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan are being considered for exclusion from the final critical habitat designation.

The proposed critical habitat revision is located in Comal and Hays Counties, Texas.

The basis for our action. Previously, we designated critical habitat for these three invertebrates on July 17, 2007 (72 FR 39248). However, on January 14, 2009, the Center for Biological Diversity, Citizens Alliance for Smart Expansion, and Aquifer Guardians in Urban Areas (*CBD, et al. v. Kempthorne*, No. 1:09–cv–00031–LY (W.D. Tex.)) filed suit in Federal Court (Western District of Texas) alleging that the Service failed to use the best available science in the critical habitat designation. On December 18, 2009, the parties filed a settlement agreement where we agreed to submit a revised proposed critical habitat determination for publication in the **Federal Register** by October 17, 2012, and a final revised determination by October 13, 2013. This proposed rule is published in accordance with that agreement.

We are preparing an economic analysis. To ensure that we consider the economic impacts, we are preparing a new economic analysis of the proposed designation. We will publish an announcement and seek public comments on the draft economic analysis when it is completed.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our specific assumptions in this revision of the critical habitat designations. Because we will consider all comments and information received 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 government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of the three invertebrates' habitats;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Comal Springs dryopid beetle, Comal Springs riffle beetle, Peck's cave amphipod, or their proposed critical habitat revision.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Any data documenting the extent of subsurface areas used by any of the species for breeding, feeding, or sheltering.

(7) 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, in particular for those areas that may benefit from the proposed Edwards Aquifer Recovery Implementation

Program Habitat Conservation Plan (HCP). Copies of the draft HCP are available from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The final rule to list Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod as endangered species was published in the **Federal Register** on December 18, 1997 (62 FR 66295). Critical habitat was not designated at the time of listing due to the determination by the Service that designation for the three invertebrate species would not provide benefits to the species beyond listing and any evaluation of activities required under section 7 of the Act. The lack of designated critical habitat for these species was subsequently challenged by the Center for Biological Diversity in the U.S. District Court for the District of Columbia. As part of a stipulated settlement agreement between the plaintiff and the Service, the Service subsequently proposed critical habitat on July 17, 2006 (71 FR 40588), and designated critical habitat for the species on July 17, 2007 (72 FR 39248).

On August 28, 2007, the Center for Biological Diversity, Citizens Alliance for Smart Expansion, and Aquifer Guardians in Urban Areas provided us with a 60-day notice of intent to sue on

the final critical habitat rule. On January 14, 2009, the plaintiffs filed suit in Federal Court (Western District of Texas) alleging that the Service failed to use the best available science. On December 18, 2009, the parties filed a settlement agreement where we agreed to submit a revised proposed critical habitat determination for publication in the **Federal Register** by October 17, 2012, and a final revised determination by October 13, 2013. This proposed rule is published in accordance with that agreement.

Background

For more information on these species, refer to the final rule listing the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod that published in the **Federal Register** on December 18, 1997 (62 FR 66295) and the San Marcos & Comal Springs & Associated Aquatic Ecosystems (Revised) Recovery Plan (Service 1996), available online at http://ecos.fws.gov/docs/recovery_plan/960214.pdf.

Species Information

The Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod are all freshwater invertebrates (Gibson *et al.* 2008, p. 74). The Comal Springs dryopid beetle has been found in two spring systems (Comal Springs and Fern Bank Springs) that are located in Comal and Hays Counties, Texas, respectively (Barr and Spangler 1993, pp. 3, 41). The Comal Springs dryopid beetle is a subterranean insect with vestigial (poorly developed, nonfunctional) eyes (Barr and Spangler 1992, pp. 40–41). The Comal Springs dryopid beetle larvae are thought to inhabit moist areas associated with roots, debris, and soil lining the ceiling of subterranean cavities and spring orifices (Barr and Spangler 1992, p. 41; Gibson, R. 2012d, pers. comm.).

The Comal Springs riffle beetle is an aquatic insect that is primarily surface-dwelling associated with Comal Springs in Comal County and San Marcos Springs in Hays County (Gibson *et al.* 2008, pp. 74, 76).

The Peck's cave amphipod is an eyeless, subterranean (below ground) arthropod that has been found in Comal Springs and Hueco Springs (also spelled Waco Springs), both located in Comal County (Barr 1993, pp. 3, 37, 52). The Peck's cave amphipod is likely an omnivore capable of consuming detritus and microorganisms from decaying roots near spring outlets as well as acting as a scavenger or predator inside the aquifer (Gibson, R. 2005, pers. comm.).

Potential food sources for all three invertebrate species include detritus (decomposed materials), leaf litter, and decaying roots. Roots not only provide a food source to these invertebrates, but penetrate underground into water pools where they can also serve as habitat for the amphipod and dryopid beetle. These invertebrate species are typically found on roots where they feed on fungus and bacteria (Gibson *et al.* 2008, p. 77, Gibson, R. 2012d pers. comm.).

Habitat Information

The four spring systems—Comal, San Marcos, Hueco, and Fern Bank—where these three invertebrate species occur are produced by discharge of aquifer water along the Balcones Fault Zone at the edge of the Edwards Plateau in central Texas (Gibson *et al.* 2008, p. 74). These spring systems vary in size. Comal Springs and San Marcos Springs are the two largest spring systems in Texas with respective mean annual flows of 284 and 170 cubic feet per second (8 and 5 cubic meters per second) (Fahlquist and Slattery 1997, p. 1; Slattery and Fahlquist 1997, p. 1). Fern Bank Springs and Hueco Springs have considerably smaller flows, and each consists of one main spring with several satellite springs or seep areas.

The source of water flows for Comal Springs and San Marcos Springs is the San Antonio segment of the Edwards Aquifer (Lindgren *et al.* 2004, pp. 4–6; Lindgren *et al.* 2009, p. 2). This aquifer is characterized by highly varied, below ground spaces that have been hollowed out within limestone bedrock through dissolution by rainwater. Hueco Springs is recharged from the local watershed basin and possibly by the San Antonio segment of the Edwards Aquifer (Guyton and Associates 1979, p. 2). The source of water for Fern Bank Springs has not been determined, but it is speculated it could be drainage from the nearby Edwards Aquifer Recharge Zone, water lost from the Blanco River, or a combination of these possible sources (Veni, G. 2006, pers. comm.).

The four spring systems proposed for critical habitat revision are characterized by high water quality and relatively constant water flows. Although flows from San Marcos Springs can vary according to fluctuations in the source aquifer, records indicate that this spring system has never ceased flowing since 1894 (Puente 1976, p. 27). Comal Springs has a flow record nearly comparable; however, Comal Springs ceased flowing from June 13 to November 3, 1956, during a severe drought in conjunction with water being pumped from the aquifer (U.S. Army Corps of Engineers

1965, p. 59). Unlike the Comal and San Marcos Springs, the Hueco Springs has gone dry a number of times in the past during drought periods (Puente 1976, p. 27; Guyton and Associates 1979, p. 46). Although flow records are unavailable for Fern Bank Springs, the spring system may be perennial (Barr 1993, p. 39).

Each of the four spring systems and related subterranean aquifers typically provide adequate resources to sustain life cycle functions for resident populations of the Comal Springs dryopid beetle, Comal springs riffle beetle, and the Peck's cave amphipod except during extreme drought periods or from excessive groundwater pumping.

New Genetic Information Since the 2007 Final Critical Habitat Rule

A recent analysis of known Peck's cave amphipod populations examined genetic variation to assess population structure within the species (Nice and Ethridge 2011, p. 2). This study estimated the degree to which the sampling localities of this species were differentiated or isolated from each other. Nice and Ethridge (2011, pp. 7–8) found that genetic sequences showed high levels of differentiation within and among Peck's cave amphipod localities. They also found sequences from two distinct haplotypes (a genetic segment or group of genes inherited from a single parent) with deep divergence (Nice and Ethridge 2011, pp. 7–8). The two haplotypes were not geographically separated and often co-occurred in similar proportions. This observation suggests that what appears to be a single species of Peck's cave amphipod might instead be two similar-looking species living together that do not interbreed. Another explanation could be that a common ancestor separated some time ago causing divergence that resulted in two core subterranean populations isolated by hydrogeology. Then over time, these populations reconnected at Comal Springs via a downstream dispersal mechanism while dispersal upstream into the aquifer (mixing of core populations) might be hindered. For example, predation and competition with the established community and hydrogeological features such as underground waterfalls, tight interstitial spaces, and high flow conduits might allow immature individuals to pass downstream but block upstream dispersal (Gibson 2012a, pers. comm.). Despite this new information, a formal, peer-reviewed description of the two possible species has not been published. Therefore, we do not recognize a separation of the Peck's cave amphipod into two species because this split has

not been recognized by the scientific community.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner 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 and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical 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 specific elements of physical or biological features that provide for a species' life-history processes and 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (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 human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism for any of these species, and identification and mapping of critical habitat is not expected to initiate any such threat. 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. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (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 the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod, and reaffirmed our previous determination concerning the prudency of designating critical habitat for these species.

Critical Habitat Determinability

Having reaffirmed that designation is prudent, under section 4(a)(3) of the Act we then evaluate whether critical habitat for the eight species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod.

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 geographical 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 essential for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on December 18, 1997 (62 FR 66295), the previous critical habitat designation (72 FR 39248, July 17, 2007), the Revised Recovery Plan (Service 1996), and the draft Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan (HCP). We have determined that the following physical or biological features are essential for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod:

Space for Individual and Population Growth and for Normal Behavior

Very little is known regarding the space needed by the three invertebrate species for individual and population growth and for normal behavior. The Peck's cave amphipod and Comal Springs dryopid beetle are most commonly found in subterranean areas where plant roots are inundated or otherwise influenced by aquifer water. Gibson *et al.* (2008) found Peck's cave amphipod in gravel, rocks, and organic debris (leaves, roots, wood) immediately inside of or adjacent to springs, seeps, and upwellings of Comal Springs and their impoundment, Landa Lake. They were not observed in nearby surface habitats. Gibson *et al.* (2008, p. 76) collected Peck's cave amphipods in drift nets (a net that floats freely on surface water) which were placed over spring openings at Hueco and Comal springs. At Panther Canyon Well, specimens were collected in a baited bottle trap, which is located about 360 feet (ft) (110 meters (m)) from Comal Spring Run No. 1 (Gibson *et al.* 2008, p. 76; R. Gibson 2012b, pers. comm.). Gibson *et al.* (2008, p. 77), also found Comal Springs riffle beetles in drift nets at Comal Springs that were placed in or over spring openings. Therefore, based on the information above, we identify springs, associated streams, and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings to be a primary component of the physical or biological features essential to the conservation of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food—Although specific food requirements of the three invertebrate species are unknown, potential food sources for all three invertebrate species include detritus (decomposed plant materials), leaf litter, and decaying roots. It is possible that the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod all feed on microorganisms such as bacteria and fungi associated with decaying riparian vegetation. Both beetle species likely are detritivores (detritus-feeding animals) that consume detrital materials from spring-influenced riparian (associated with rivers, creeks, or other water bodies) zones (Brown 1987, p. 262; Gibson *et al.* 2008, p. 77). Riparian vegetation is likely important for these species as they are typically found on roots where they feed on fungus and bacteria

(Gibson *et al.* 2008, p. 77, Gibson 2012c, pers. comm.). Larvae of the Comal Springs dryopid beetle are also presumed to feed on bacteria and fungi associated with roots, debris, and soil lining the ceilings of subterranean cavities (Barr and Spangler 1992, p. 41). Available evidence suggests Peck's cave amphipod is likely an omnivore (consumes everything available including both animal and plant matter). It can feed as a scavenger or predator within the aquifer and as a detritivore where plant roots are exposed providing a medium for microbial growth as well as a food source to potential prey (Gibson 2012a, pers. comm.). Among other things, trees and shrubs in riparian areas adjacent to the spring system provide plant growth necessary to maintain food sources such as decaying material for these invertebrates. Roots from trees and shrubs in proximity to spring outlets are most likely to penetrate underground down to the water pools where these roots can serve as habitat for the amphipod and dryopid beetle.

Therefore, based on the information above, we identify sources of detritus (decomposed materials), leaf litter, and decaying roots of riparian vegetation to be primary components of the physical or biological features essential to the conservation of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod.

Water—The Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod are all spring-adapted, aquatic species dependent on high-quality, unpolluted groundwater that has low levels of salinity and turbidity. The two beetle species are generally associated with water that has adequate levels of dissolved oxygen for respiration (Brown 1987, p. 260; Arsuffi 1993, p. 18). High-quality discharge water from springs and adjacent subterranean areas help sustain habitat components essential to these three aquatic invertebrate species.

The temperature of spring water emerging from the Edwards Aquifer at Comal Springs and San Marcos Springs ordinarily occurs within a narrow range of approximately 72 to 75 Fahrenheit degrees (°F) (22 to 24 Celsius degrees (°C)) (Fahlquist and Slattery 1997, pp. 3–4; Groeger *et al.* 1997, pp. 282–283). Hueco Springs and Fern Bank Springs have temperature records of 68 to 71 °F (20 to 22 °C) (George 1952, p. 52; Brune 1975, p. 94; Texas Water Development Board 2006, p. 1). The three listed invertebrate species complete their life-cycle functions within these relatively narrow temperature ranges.

Each of these four spring systems typically provide adequate resources to sustain life-cycle functions for resident populations of the Comal Springs dryopid beetle, Comal Springs riffle beetle, or Peck's cave amphipod. However, a primary threat to the three invertebrate species is the potential failure of spring flow due to drought or groundwater pumping, which could result in loss of aquatic habitat for the species.

Barr (1993, p. 55) found Comal Springs dryopid beetles in spring flows with low- and high-volume discharge and suggested that presence of the species was not necessarily dependent on high spring flow. However, Barr (1993, p. 61) noted that effects on both subterranean species (dryopid beetle and amphipod) from extended loss of spring flow and low aquifer levels could not be predicted since details of their life cycles are unknown.

Riffle beetles are most commonly associated with flowing water that has shallow riffles or rapids (Brown 1987, p. 253). Riffle beetles are restricted to waters with high dissolved oxygen due to their reliance on a plastron (thin sheet of air held by water-repellent hairs of some aquatic insects) that is held next to the surface of the body by a mass of water-repellent hairs. The mass of water-repellent hairs function as a physical gill by allowing oxygen to passively diffuse from water into the plastron in order to replace oxygen absorbed during respiration (Brown 1987, p. 260). However, slow-moving insects like riffle beetles are limited to habitats with high oxygen levels because oxygen will diffuse away from the beetle if concentrations are higher in the plastron than in the surrounding water (Resh *et al.* 2008, pp. 44–45).

Bowles *et al.* (2003, p. 379) pointed out that the mechanism by which the Comal Springs riffle beetle survived the 1950s drought and the extent to which its population was negatively impacted are unknown. Bowles *et al.* (2003, p. 379) speculated that the riffle beetle may be able to retreat back into spring openings or burrow down to the hyporheos (groundwater zone) below the stream channel. In reference to the Comal Springs population of the riffle beetle, Bowles *et al.* (2003, p. 380) stated that “Reductions in water levels in the Edwards Aquifer to the extent that spring-flows cease likely would have devastating effects on * * * [this] population of this species and could result in its extinction.”

Therefore, based on the information above, we identify unpolluted, high-quality water with stable temperatures flowing through subterranean habitat

and exiting at spring openings to be primary components of the physical or biological features essential to the conservation of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

These freshwater invertebrates rely on spring water that follows established hydrological flow paths within a limestone aquifer before emerging. Water inside limestone aquifers flows through fractures, pores, cave stream channels, and conduits (open channels) that have been hollowed out within the limestone by dissolution processes (White 1988, pp. 119–148, 150–151). Alteration of subsurface water flows through destruction of geologic features (for example, excavation) or creation of impediments to flow (for example, concrete filling) in proximity to spring outlets could negatively alter the hydraulic connectivity necessary to sustain these species. Areas of subsurface habitat must remain intact to provide adequate space for feeding, breeding, and sheltering of the two subterranean species (amphipod and dryopid beetle). In addition, subsurface habitat must remain intact with sufficient hydraulic connectivity of flow paths and conduits to ensure that other constituent elements (water quality, water quantity, and food supply) for the proposed critical habitat remain adequate for all three listed invertebrates.

Although Comal Springs riffle beetles occur in conjunction with a variety of bottom substrates that underlay these flow paths, Bowles *et al.* (2003, p. 372) found that these beetles mainly occurred in areas with gravel and cobble ranging between 0.3 to 5.0 in (inches) (8 to 128 millimeters (mm)) and did not occur in areas dominated by silt, sand, and small gravel. Collection efforts in areas of high sedimentation generally do not yield riffle beetles (Bowles *et al.* 2003, p. 376; Gibson, 2012d, pers. comm.).

Therefore, based on the information above, we identify spring water that follows established hydrological flow paths within a limestone aquifer to be a primary component of the physical or biological features essential to the conservation of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod.

Primary Constituent Elements for the Comal Springs Dryopid Beetle, Comal Springs Riffle Beetle, and Peck's Cave Amphipod

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the three invertebrates 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 provide for a species' life-history processes and 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 the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod are:

(1) Springs, associated streams, and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings that include:

(a) High-quality water with no or minimal pollutant levels of soaps, detergents, heavy metals, pesticides, fertilizer nutrients, petroleum hydrocarbons, and semivolatile compounds such as industrial cleaning agents; and

(b) Hydrologic regimes similar to the historical pattern of the specific sites must be present, with continuous surface flow from the spring sites and in the subterranean aquifer.

(2) Spring system water temperatures that range from 68 to 75 °F (20 to 24 °C).

(3) Food supply that includes, but is not limited to, detritus (decomposed materials), leaf litter, living plant material, algae, fungi, bacteria, other microorganisms, and decaying roots.

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 features' primary constituent elements sufficient to support the life-history processes of the species. All units proposed to be revised as critical habitat designation are currently occupied by one or more of the three invertebrates 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 geographic 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.

For the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod, threats to adequate water quantity and quality (PCEs 1 and 2) include alterations to the natural flow regimes affecting the aquifer recharge system and its associated springs, streams, and riparian areas. Threats to water quantity and quality include water withdrawals, impoundment, and diversions; hazardous material spills; stormwater drainage pollutants including soaps, detergents, pharmaceuticals, heavy metals, fertilizer nutrients, petroleum hydrocarbons, and semivolatile compounds such as industrial cleaning agents; pesticides and herbicides associated with pathogenic organisms or invasive species; invasive species altering the surface habitat; excavation and construction surrounding the springs and in the watershed; and climate change. All of these threats are known to be ongoing at various levels in and around the Edwards Aquifer ecosystem. Examples of management actions that would ameliorate these threats include: (1) Maintenance of sustainable groundwater use and subsurface flows; (2) use of adequate buffers for water quality protection; (3) selection of appropriate pesticides and herbicides; and (4) implementation of integrated pest management plans to manage existing invasive species as well as preventing the introduction of additional invasive species.

Climate change could potentially affect water quantity and spring flow as well as the food supply (PCEs 1, 2, and 3) for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's Cave amphipod. 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 southwestern 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).

The degree to which climate change will affect habitats of the Comal Springs

dryopid beetle, Comal Springs riffle beetle, and Peck's Cave amphipod is uncertain. Climate change will be a particular challenge for biodiversity in general because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facets of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; IPCC 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504).

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 spring flows given increasing pumping demands (Loaiciga *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). Barton Springs is fed by the Barton Springs segment of the Edwards Aquifer, not far to the north of the area used by these invertebrates. 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 2008–2009 and 2010–2011 were two of the worst short-term droughts 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 (Lower Colorado River Authority (LCRA) 2011, p. 1). As a result, the effects of climate change could compound the threat of decreased water quantity due to drought.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information

pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing in 1997.

During our preparation for proposing critical habitat for these three endangered invertebrate species, we reviewed the best available scientific information including: (1) Historical and current occurrence records, (2) information pertaining to habitat features for these species, and (3) scientific information on the biology and ecology of each species. We have also reviewed a number of studies and surveys of the three listed invertebrates including: Holsinger (1967), Bosse *et al.* (1988), Barr and Spangler (1992), Arsuffi (1993), Barr (1993), Bio-West (2001), Bio-West (2002a), Bio-West (2002b), Bio-West (2003), Bowles *et al.* (2003), Bio-West (2004), Fries *et al.* (2004), and Gibson *et al.* (2008).

Based on this review, the proposed critical habitat areas described below constitute our best assessment at this time of areas that: (1) Are within the geographical range occupied by at least one of the three invertebrate species, and (2) contain features essential to the conservation of these species which may require special management considerations or protections. All areas proposed to be designated as critical habitat are occupied by at least one of the three invertebrates and contain sufficient primary constituent elements to support the life functions of the resident species. We defined the boundaries of each species based on the below criteria.

Comal Springs Dryopid Beetle

We identified both surface and subsurface components of critical habitat for this species, which has been found in Comal Springs and Fern Bank Springs in Comal and Hays Counties, Texas. However, this species was recently collected from Panther Canyon Well, located about 360 ft (110 m) away from the spring outlet of Spring Run No. 1 (Barr and Spangler 1992, p. 42; Gibson 2012e, pers. comm.). Collections made from 2003 to 2009 further extended the known range of the beetle within the Comal Springs system to all major spring runs, seeps along the western shoreline of Landa Lake (the impounded portion of the Comal Springs system), Landa Lake upwellings in the Spring

Island area, and Panther Canyon Well (Bio-West, Inc. 2003, p. 34; Bio-West 2004, pp. 5–6; Bio-West 2005, pp. 5–6; Bio-West 2006, p. 37; Bio-West to 2009, pp. 40–43; R. Gibson 2012e, pers. comm.). This information indicates that the Comal Springs dryopid beetle can travel through the aquifer up to a distance of 360 ft (110 m); therefore, we used this distance from spring outlets to identify the subsurface area of critical habitat for this species.

To determine surface critical habitat, we used an area consisting of a 50-ft (15-m) distance from spring outlets. We used this area because this distance has been found to contain food sources where plant roots interface with water flows of the spring systems. This 50-ft (15-m) distance defines the lateral extent of surface critical habitat that contains elements necessary to provide for life functions of this species with respect to roots that can penetrate into the aquifer. The 50-ft (15-m) distance was calculated from evaluations of aerial photographs and is based on tree and shrub canopies occurring in proximity to spring outlets. Extent of canopy cover reflects the approximate distances where plant root systems interface with water flows of the two spring systems. Critical habitat unit boundaries were delineated by creating approximate areas for the units by screen-digitizing polygons (map units) using ArcMap, version 10 (Environmental Systems Research Institute, Inc.) and 2011 aerial imagery.

Comal Springs Riffle Beetle

For the Comal Springs riffle beetle, we only identified surface critical habitat because this species' habitat is primarily restricted to surface water, which is located in two impounded spring systems in Comal and Hays Counties, Texas. In Comal County, this aquatic beetle is found in various spring outlets of Comal Springs that occur within Landa Lake over a linear distance of approximately 0.9 mi (1.4 km). The species has also been found in outlets of San Marcos Springs in the upstream portion of Spring Lake in Hays County. However, populations of Comal Springs riffle beetles may exist elsewhere in Spring Lake (excluding a slough portion that lacks spring outlets), but sampling for riffle beetles at spring outlets within the lake has only been done on a limited basis. Excluding the slough portion that lacks spring outlets, the approximate linear distance of Spring Lake at its greatest length is 0.2 mi (0.3 km). Critical habitat unit boundaries for surface area were delineated using the same criteria as described above for the Comal Springs dryopid beetle.

Peck's Cave Amphipod

We identified both surface and subsurface components of critical habitat for this species, which has been found in Comal Springs and Hueco Springs, both located in Comal County, Texas. The extent to which this subterranean species exists below ground away from spring outlets is unknown; however, other species within the genus *Stygobromus* are widely distributed in groundwater and cave systems (Holsinger 1972, p. 65). Like the Comal Springs dryopid beetle, the Peck's cave amphipod has been collected from the bottom of Panther Canyon Well, which is located about 360 ft (110 m) away from the spring outlet of Spring Run No. 1 in the Comal Springs complex (Barr and Spangler 1992, p. 42; Gibson *et al.* 2008, p. 76). To determine surface critical habitat, we used a 50-ft (15-m) distance from the shoreline of both Comal Springs and Hueco Springs (including several satellite springs that are located between the main outlet of Hueco Springs and the Guadalupe River) to include amphipod food sources in the root-water interfaces around spring outlets. Critical habitat unit boundaries were delineated using the same criteria as described above for the other two invertebrate species.

The definition of critical habitat under the Act includes areas outside the geographical area occupied by the species at the time of listing, if those areas are found to be essential to the conservation of the species. In the case of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod, the geographical area occupied by the species at the time of listing encompasses the known historic range of these species. As such, we have not found any areas outside the geographical areas occupied by these species at the time of their listing to be essential to the conservation of these species and, therefore, we are not proposing to designate any unoccupied areas as critical habitat.

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 on the surface that lack physical or biological features necessary for the Comal Springs dryopid beetle, Comal Springs riffle beetle and Peck's cave amphipod. Subterranean critical habitat for the Comal Springs dryopid beetle and Peck's cave amphipod may extend under such structures and remains part of the critical habitat. 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 adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species.

Units were proposed for designation based on sufficient elements of physical or biological features being present to support Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod life-history processes. All units contain all of the identified elements of physical or biological features and support multiple life-history processes.

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://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0082, on our Internet sites <http://www.fws.gov/southwest/es/austintexas/>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision of the areas we designated as critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod on July 17, 2007 (72 FR 39248). The significant differences between the 2007 rule and this proposal are:

(1) In the 2007 critical habitat rule for these species, we did not designate subsurface critical habitat. However, we are designating subsurface critical habitat for the Comal Springs dryopid beetle and the Peck's cave amphipod in this rule.

(2) The amount of critical habitat is increasing in this proposed rule because (1) we are including subsurface habitat for the Comal Springs dryopid beetle and Peck's Cave amphipod, and (2) we are including the area 50 ft (15 m) from the shoreline for the Comal Springs riffle beetle.

(3) The primary constituent elements have been consolidated from five in the original critical habitat rule to three to better incorporate and define subsurface attributes.

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the three invertebrates. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod. The four units we propose as critical habitat are: (1) Comal Springs, (2) Hueco Springs, (3) Fern Bank Springs, and (4) San Marcos Springs. Table 1 shows the occupied units, and Tables 2, 3, and 4 provide the approximate area of each proposed critical habitat unit for each species.

TABLE 1—OCCUPANCY OF COMAL SPRINGS DRYOPID BEETLE, COMAL SPRING RIFFLE BEETLE, AND PECK'S CAVE AMPHIPOD BY PROPOSED CRITICAL HABITAT UNITS

Unit	Occupied at time of listing?	Currently occupied?	Listed species in unit
1. Comal Springs	Yes	Yes	Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod.
2. Hueco Springs	Yes	Yes	Peck's cave amphipod.
3. Fern Bank Springs	Yes	Yes	Comal Springs dryopid beetle.

TABLE 1—OCCUPANCY OF COMAL SPRINGS DRYOPID BEETLE, COMAL SPRING RIFFLE BEETLE, AND PECK’S CAVE AMPHIPOD BY PROPOSED CRITICAL HABITAT UNITS—Continued

Unit	Occupied at time of listing?	Currently occupied?	Listed species in unit
4. San Marcos Springs	Yes	Yes	Comal Springs riffle beetle.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE COMAL SPRINGS DRYOPID BEETLE. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Critical habitat units for the Comal Springs Dryopid Beetle	Land ownership by type	Size of unit in acres (hectares) (subsurface critical habitat)	Size of unit in acres (hectares) (surface critical habitat)
1. Comal Springs	State, City, Private	124 (50)	38 (15)
2. Fern Bank Springs	Private	15 (6)	1.4 (0.56)
Total .....	.....	139 (56)	39.4 (15.56)

Note: Area sizes may not sum due to rounding.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR THE COMAL SPRINGS RIFFLE BEETLE. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Critical habitat units for the comal springs riffle beetle	Land ownership by type	Size of unit in acres (hectares) (surface critical habitat)
1. Comal Springs	State, City, Private	38 (15)
2. San Marcos Springs	State	16 (6)
Total .....	.....	54 (22)

Note: Area sizes may not sum due to rounding.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR THE PECK’S CAVE AMPHIPOD. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Critical habitat units for the Peck’s Cave amphipod	Land ownership by type	Size of unit in acres (hectares) (subsurface critical habitat)	Size of unit in acres (hectares) (surface habitat)
1. Comal Springs	State, City, Private	124 (50)	38 (15)
2. Hueco Springs	Private	14 (6)	0.4 (0.16)
Total .....	.....	138 (56)	38.4 (15.16)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck’s cave amphipod, below.

Unit 1: Comal Springs Unit

The purpose of this unit is to independently support a population of Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck’s cave amphipod in a functioning spring system with associated streams and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings that provide suitable water quality, supply, and detritus (decomposed plant material).

Unit 1 contains Comal Springs and consists of 124 ac (50 ha) of subsurface critical habitat for the Comal Springs

dryopid beetle and the Peck’s cave amphipod (Table 2 and 4). Unit 1 also contains 38 ac (15 ha) of surface habitat for these two species along with the Comal Springs riffle beetle (Table 3). This unit was occupied at the time of listing and is still occupied by the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck’s cave amphipod (Table 1).

The Comal Springs Unit is owned by the State, City of New Braunfels, and private landowners in southern Comal County, Texas. A large portion of the unit is operated as a city park (Landa Park) with private residences and landscaped yards along the edge of the lower part of the unit. The surface water and bottom of Landa Lake are State-owned. The City of New Braunfels owns approximately 40 percent of the land surface adjacent to the lake, and private

landowners own approximately 60 percent. This nearly L-shaped lake is surrounded by the City of New Braunfels. The spring system primarily occurs as a series of spring outlets that lie along the west shore of Landa Lake and within the lake itself. Practically all of the spring outlets and spring runs associated with Comal Springs occur within the upper part of the lake above the confluence of Spring Run No. 1 to the lake. The unit is also occupied by the federally listed fountain darter (*Etheostoma fonticola*).

This unit contains all of the essential physical and biological features for these species. The physical or biological features in this unit require special management or protection because of the potential for depletion of spring flow from water withdrawals, hazardous materials spills from a variety of sources

in the watershed, pesticide use throughout the watershed, excavation and construction surrounding the springs and in the watershed, stormwater pollutants in the watershed, and invasive species impacts on the surface habitat.

Unit 2: Hueco Springs

The purpose of this unit is to independently support a population of Peck's cave amphipod in a functioning spring system with associated streams and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings that provide suitable water quality, supply, and detritus (decomposed plant material).

Unit 2 contains Hueco Springs and consists of 14 ac (6 ha) of surface and 0.4 ac (0.16 ha) of subsurface critical habitat for the Peck's cave amphipod (Table 4). This unit was occupied at the time of listing and is still occupied by the Peck's cave amphipod (Table 1).

The Hueco Springs Unit is on private land in Hays County, Texas. The property is primarily undeveloped. The spring system has a main outlet that is located approximately 0.1 mi (0.2 km) south of the junction of Elm Creek with the Guadalupe River in Comal County. The main outlet itself lies approximately 500 ft (152 m) from the west bank of the Guadalupe River. Several satellite springs lie further south between the main outlet and the river. The main outlet of Hueco Springs is located on undeveloped land, but the associated satellite springs occur within a privately owned campground for recreational vehicles. There is an access road to a field for parking, but no facilities or utilities.

This unit contains all of the essential physical and biological features for this species. The physical or biological features in this unit require special management because of the potential for depletion of spring flow from water withdrawals, pesticide use throughout the watershed, and excavation and construction surrounding the springs and in the watershed.

Unit 3: Fern Bank Springs

The purpose of this unit is to independently support a population of Comal Springs dryopid beetle in a functioning spring system with associated streams and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings that provide suitable water quality, supply, and detritus (decomposed plant material).

Unit 3 contains Fern Bank Springs and consists of 15 ac (6 ha) of surface and 1.4 ac (0.56 ha) subsurface critical

habitat for the Comal Springs dryopid beetle (Table 2). This unit was occupied at the time of listing and is still occupied by the Comal Springs dryopid beetle (Table 1).

The Fern Bank Springs Unit is on private land in Hays County, Texas, approximately 0.2 mi (0.4 km) east of the junction of Sycamore Creek with the Blanco River. The property and surrounding area are primarily undeveloped. However, there is one rural residential home with property overlooking the springs which is a small portion of this unit. The spring system consists of a main outlet and a number of seep springs that occur at the base of a high bluff overlooking the Blanco River.

This unit contains all of the essential physical and biological features for this species. The physical or biological features in this unit require special management because of the potential for depletion of spring flow from water withdrawals, pesticide use throughout the watershed, and excavation and construction surrounding the springs and in the watershed.

Unit 4: San Marcos Springs

The purpose of this unit is to independently support a population of Comal Springs riffle beetle in a functioning spring system with associated streams that provide suitable water quality, supply, and detritus (decomposed plant material).

Unit 4 contains San Marcos Springs and consists of 16 ac (6 ha) of surface critical habitat for the Comal Springs riffle beetle (Table 3). This unit was occupied at the time of listing and is still occupied by the Comal Springs riffle beetle (Table 1).

This unit is located on State lands in the City of San Marcos, Hays County, Texas. In addition to the Comal Springs riffle beetle, the San Marcos Springs system provides habitat for five other federally listed species: (1) The endangered fountain darter, (2) the endangered San Marcos gambusia (*Gambusia georgei*), (3) the threatened San Marcos salamander (*Eurycea nana*), (4) the endangered Texas blind salamander (*Typhlomolge rathbuni*), and (5) the endangered Texas wild-rice (*Zizania texana*). Critical habitat has been designated for the fountain darter, San Marcos gambusia, San Marcos salamander, and Texas wild-rice within San Marcos Springs and portions of the San Marcos River that lie downstream from Spring Lake.

This unit contains all of the essential physical and biological features for this species. The physical or biological features in this unit require special

management or protection because of the potential for depletion of spring flow from water withdrawals, hazardous materials spills from a variety of sources in the watershed, pesticide use throughout the watershed, excavation and construction surrounding the springs and in the watershed, stormwater pollutants in the watershed, and invasive species impacts on the surface habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal

Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate 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 reinstatement 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 Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod. 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 three invertebrates. These activities include, but are not limited to:

(1) Actions that would change the existing flow regimes and would thereby significantly and detrimentally alter the primary constituent elements necessary for conservation of these species. Such activities could include, but are not limited to, water withdrawal, impoundment, and water diversions. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of these species.

(2) Actions that would introduce, spread, or augment nonnative species could destroy or adversely modify the critical habitat of any listed invertebrate species. Such actions could include, but are not limited to, stocking or otherwise transporting nonnative species into critical habitat for any purpose.

(3) Actions that would alter current habitat conditions. Such actions include, but are not limited to, the release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions to a point that extend beyond the tolerances of the Comal

Springs dryopid beetle, Comal Springs riffle beetle, or Peck's cave amphipod, and result in direct or cumulative adverse effects to these individuals and their life cycles or eliminate or reduce the habitat necessary for the growth, reproduction, and survival of these invertebrate species.

(4) Actions that would physically remove or alter the habitat used by the three invertebrates. These activities could lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Comal Springs dryopid beetle, Comal Springs riffle beetle, or Peck's cave amphipod. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, and excessive sedimentation from road construction, vegetation removal, recreational facility development, and other watershed disturbances.

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 with a completed INRMP 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.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and 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.

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. The proposed critical habitat areas include Federal, State, tribal, and private lands, some of which are used for mining and recreation (such as hiking, camping, horseback riding, and hunting). Other land uses that may be affected will be identified as we develop the draft economic analysis for the proposed designation.

Key findings in the economic analysis for the 2007 final rule designating critical habitat predicted for the next 20 years are impacts primarily associated with water use changes including reductions in water withdrawals, and subsequently, increased water costs. Other costs included conservation efforts and a restoration project specific to San Marcus and Comal Springs. The majority of the economic impacts quantified in this analysis were a result of the presence of eight endangered species including the three Comal Springs invertebrates. Because all the species reside in the same habitat, separating future impacts of these three invertebrates from the other listed species in the aquifer was not possible.

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 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 the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending 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 Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan may fulfill the above criteria, and will consider the exclusion of the lands covered by this plan that provide for the conservation of the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod. The EARIP HCP is intended to resolve the longstanding conflict between the federal mandate to protect threatened and endangered species associated with the Edwards Aquifer and the region's dependence on the same aquifer as its primary water resource. Through the EARIP HCP, the Edwards Aquifer Authority, San Antonio Water System, City of New Braunfels, City of San Marcos, and Texas State University will be implementing actions to minimize and mitigate the effects of pumping, to conserve the Aquifer-dependent spring ecosystems, and contribute to the recovery of the covered species. The Notice of Availability for the Draft Environmental Impact Statement and Draft EARIP Habitat Conservation Plan was published in the **Federal Register** on July 20, 2012, and the public comment period remains open until October 18, 2012. Once the public comment period is closed and any

substantive comments are addressed, the Service will make a decision on the issuance of an Incidental Take Permit under section 10 of the Act. We are requesting comments on the benefit to the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod from the EARIP HCP.

In preparing this proposal, we have also determined that the proposed designation does not include any tribal lands or trust resources. Accordingly, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on other relevant impacts. We are not considering any areas for exclusion at this time from the final designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. In this proposed rule, we are seeking input from the public on the benefit to the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod from the EARIP HCP. Please see the **ADDRESSES** section, above, of this proposed revised rule for instructions on how to submit comments.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received 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 **FOR FURTHER INFORMATION CONTACT**. 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 Orders 12866 and 13563)

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 (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended 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.

The economic analysis of the previous proposed designation for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod examined the potential for conservation efforts for the three species to affect small entities. This analysis was based on the estimated impacts associated with the proposed critical habitat designation and evaluated the potential for economic impacts related to water use for agricultural activities, construction or development, and aquatic restoration. Aquatic restoration activities were not anticipated to affect small entities, as these activities will be carried out by a Federal agency (U.S. Army Corps of Engineers). The economic analysis for the previous proposed rule for these species determined that the proposed rule was not likely to affect a substantial number of small entities (72 FR 39263, July 17, 2007), and we believe that the effects of this proposed rule will not change the previous determination.

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, we 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 there are no pipelines, distribution facilities, power grid stations, or other significant energy facilities within the boundaries of proposed critical habitat. 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 will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support

Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the economic analysis for the previous proposed rule for these species determined that the proposed rule was not likely to affect a substantial number of small governments (72 FR 39263, July 17, 2007). Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our updated economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications

assessment concludes that this designation of critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Texas. The designation of critical habitat in areas currently occupied by the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have a 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 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 Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge

our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that were occupied by the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Comal Springs dryopid beetle, Comal Springs riffle beetle, and Peck's cave amphipod on tribal lands.

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.

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.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95 by:

- a. In paragraph (h), revising the critical habitat entry for “Peck’s cave amphipod (*Stygobromus pecki*)”; and
- b. In paragraph (i), revising the critical habitat entries for “Comal Springs dryopid beetle (*Stygoparnus comalensis*)” and “Comal Springs riffle beetle (*Heterelmis comalensis*)”, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Peck’s Cave Amphipod (*Stygobromus pecki*)

(1) Critical habitat units are depicted for this species in Comal 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 Peck’s cave amphipod consist of three components:

(i) Springs, associated streams, and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings that include:

(A) High-quality water with no harmful levels of pollutants such as soaps, detergents, heavy metals, pesticides, fertilizer nutrients, petroleum hydrocarbons, and semivolatiles compounds such as industrial cleaning agents; and

(B) Hydrologic regimes similar to the historical pattern of the specific sites, with continuous surface flow from the spring sites and in the subterranean aquifer;

(ii) Spring system water temperatures that range from approximately 68 to 75 °F (20 to 24 °C); and

(iii) Food supply that includes, but is not limited to, detritus (decomposed materials), leaf litter, living plant material, algae, fungi, bacteria, other microorganisms, and decaying roots.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other

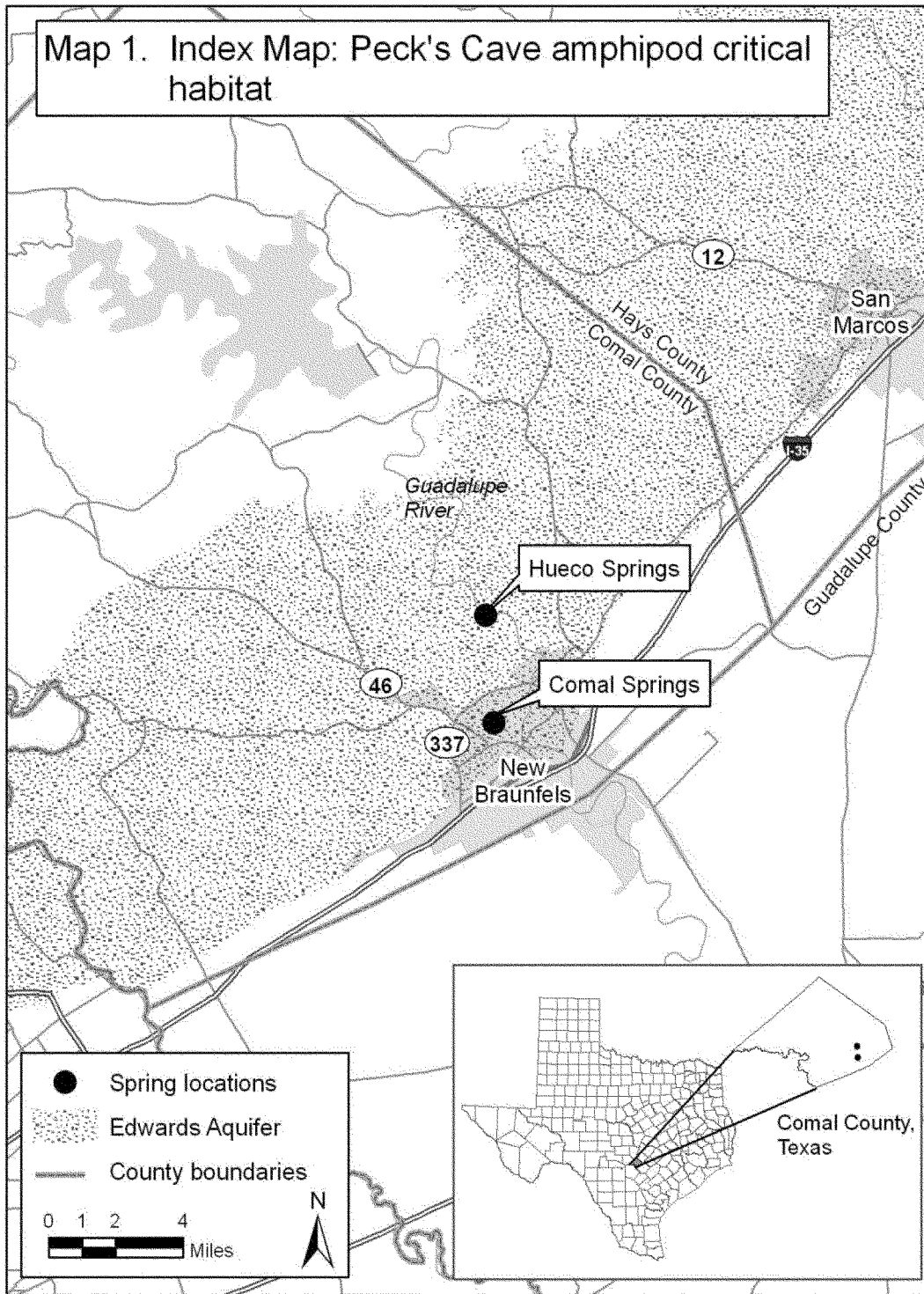
paved areas) and the land on which they are located existing on the surface within the legal boundaries on [DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

(4) *Critical habitat map units.* Data layers defining map units were created using geographic information systems (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5’ quadrangles. Points were placed in the GIS. 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 Service’s internet site,

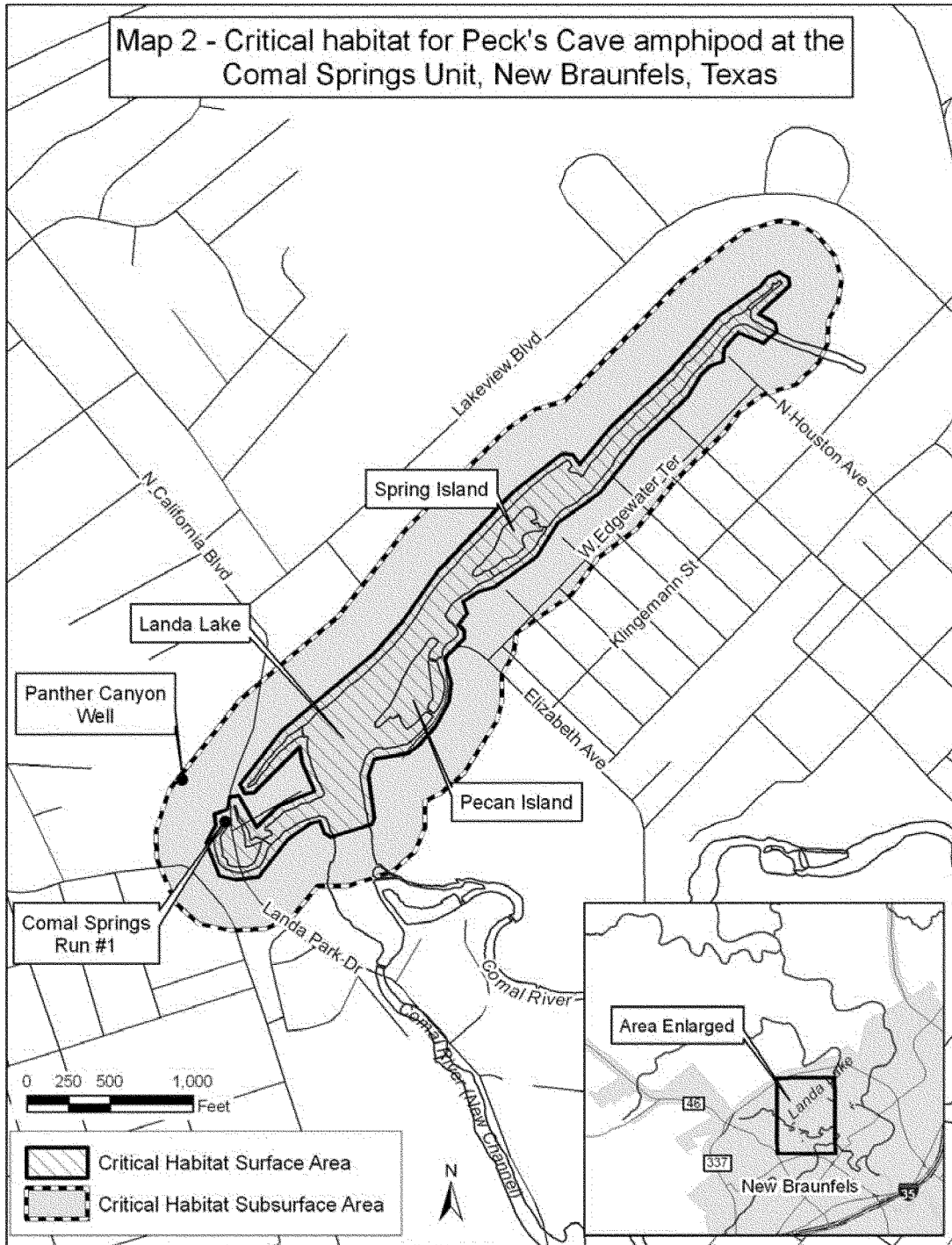
(<http://www.fws.gov/southwest/es/austintexas/>), <http://www.regulations.gov> at Docket No. FWS–R2–ES–2012–0082, and at the field office responsible for this critical habitat designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* An index map of the critical habitat units for the Peck’s cave amphipod, a map of the Comal Springs unit, and a map of the Hueco Springs unit follow:

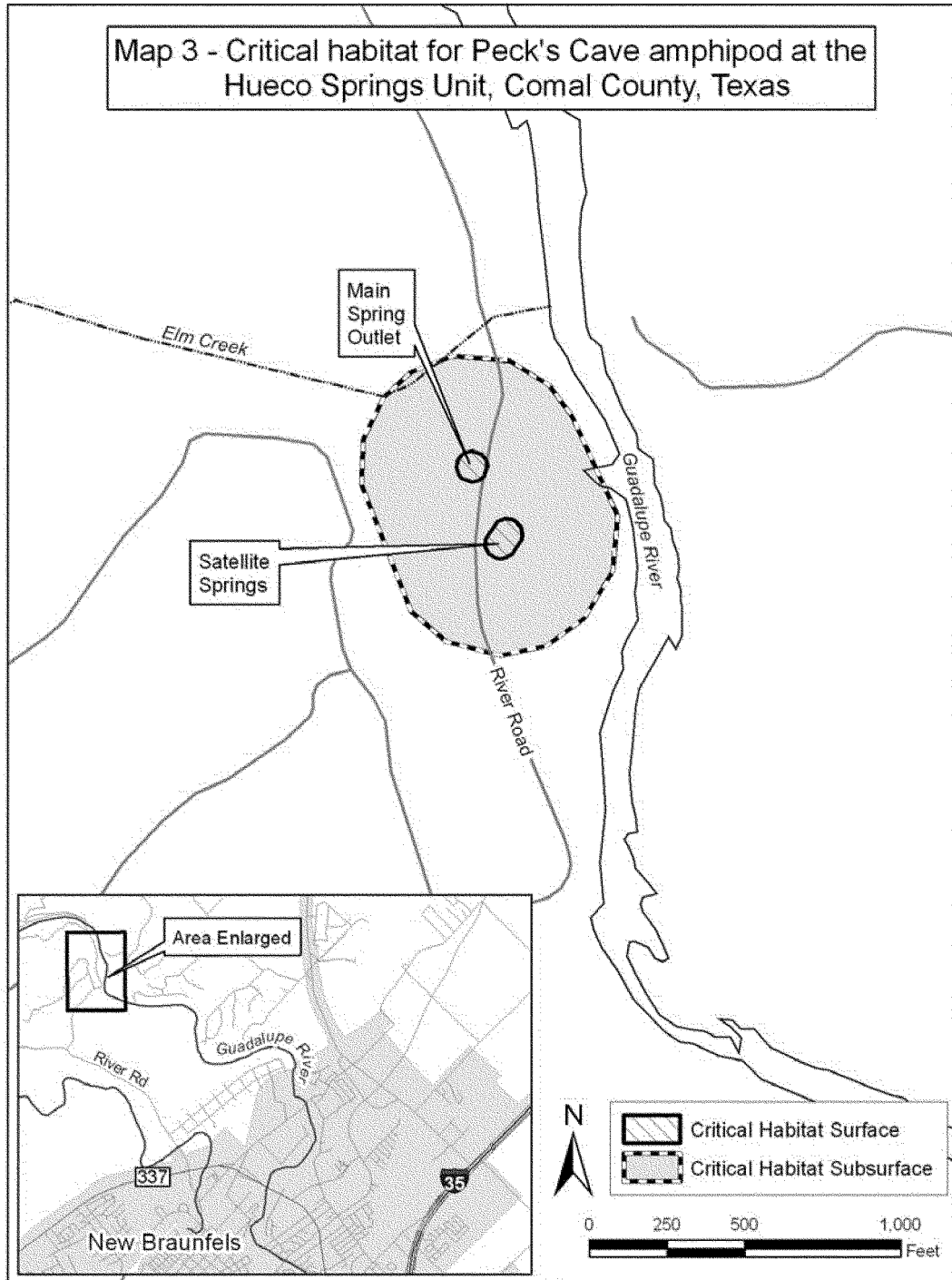
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(6) Unit 1: Comal Springs Unit, Comal County, Texas. Map of the Comal Springs Unit follows:



(7) Unit 2: Hueco Springs Unit, Comal County, Texas. Map of the Hueco Springs Unit follows:



(i) *Insects.*

* * * * *

Comal Springs Dryopid Beetle
(*Stygoparnus comalensis*)

(1) Critical habitat units are depicted for this species in Comal and Hays Counties, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the Comal Springs dryopid beetle consist of these components:

(i) Springs, associated streams, and underground spaces immediately inside

of or adjacent to springs, seeps, and upwellings that include:

(A) High-quality water with no harmful levels of pollutants such as soaps, detergents, heavy metals, pesticides, fertilizer nutrients, petroleum hydrocarbons, and

semivolatile compounds such as industrial cleaning agents; and

(B) Hydrologic regimes similar to the historical pattern of the specific sites, with continuous surface flow from the spring sites and in the subterranean aquifer;

(ii) Spring system water temperatures that range from approximately 68 to 75 °F (20 to 24 °C); and

(iii) Food supply that includes, but is not limited to, detritus (decomposed materials), leaf litter, living plant material, algae, fungi, bacteria, other microorganisms, and decaying roots.

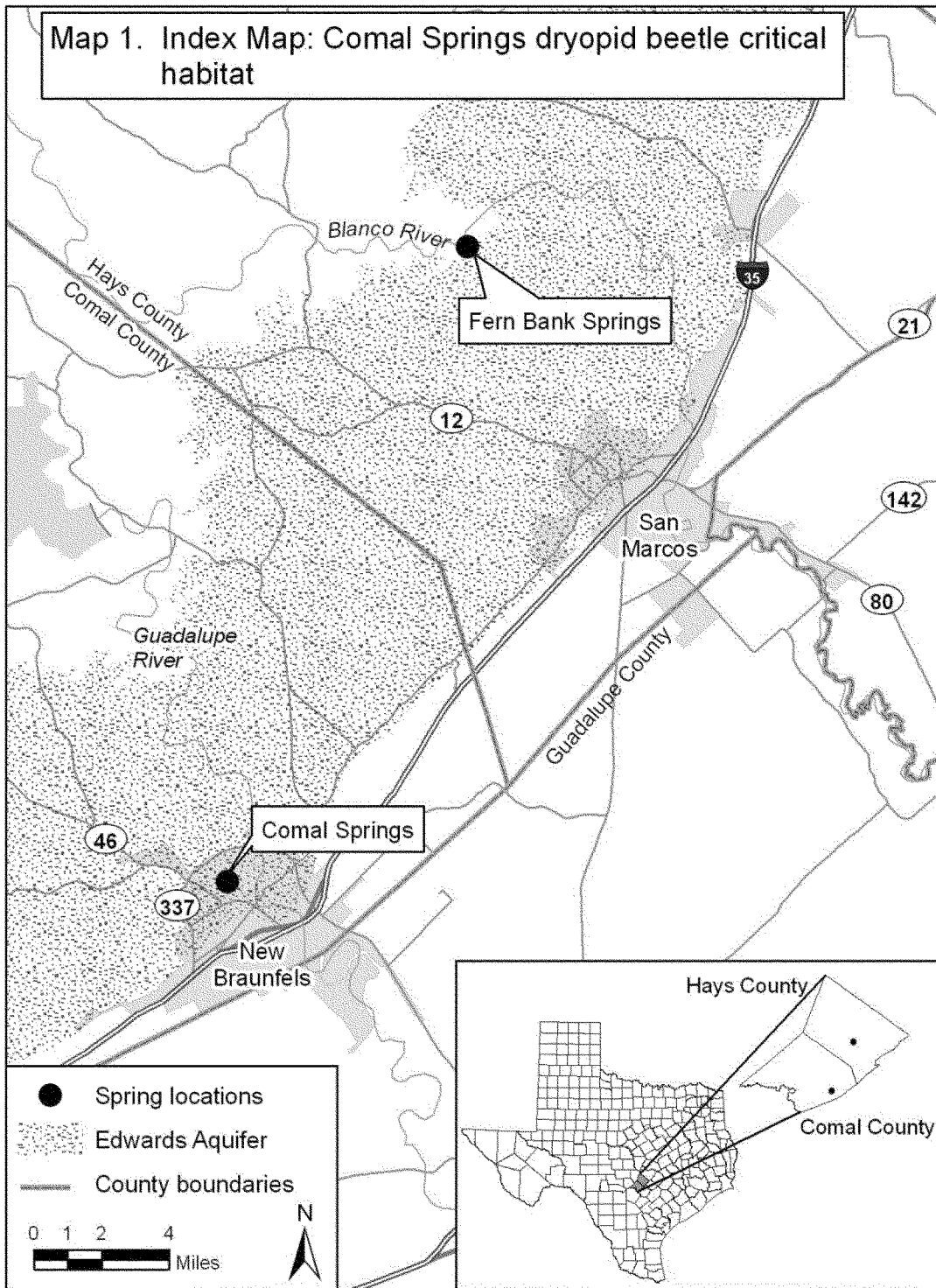
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other

paved areas) and the land on which they are located existing on the surface within the legal boundaries on [DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

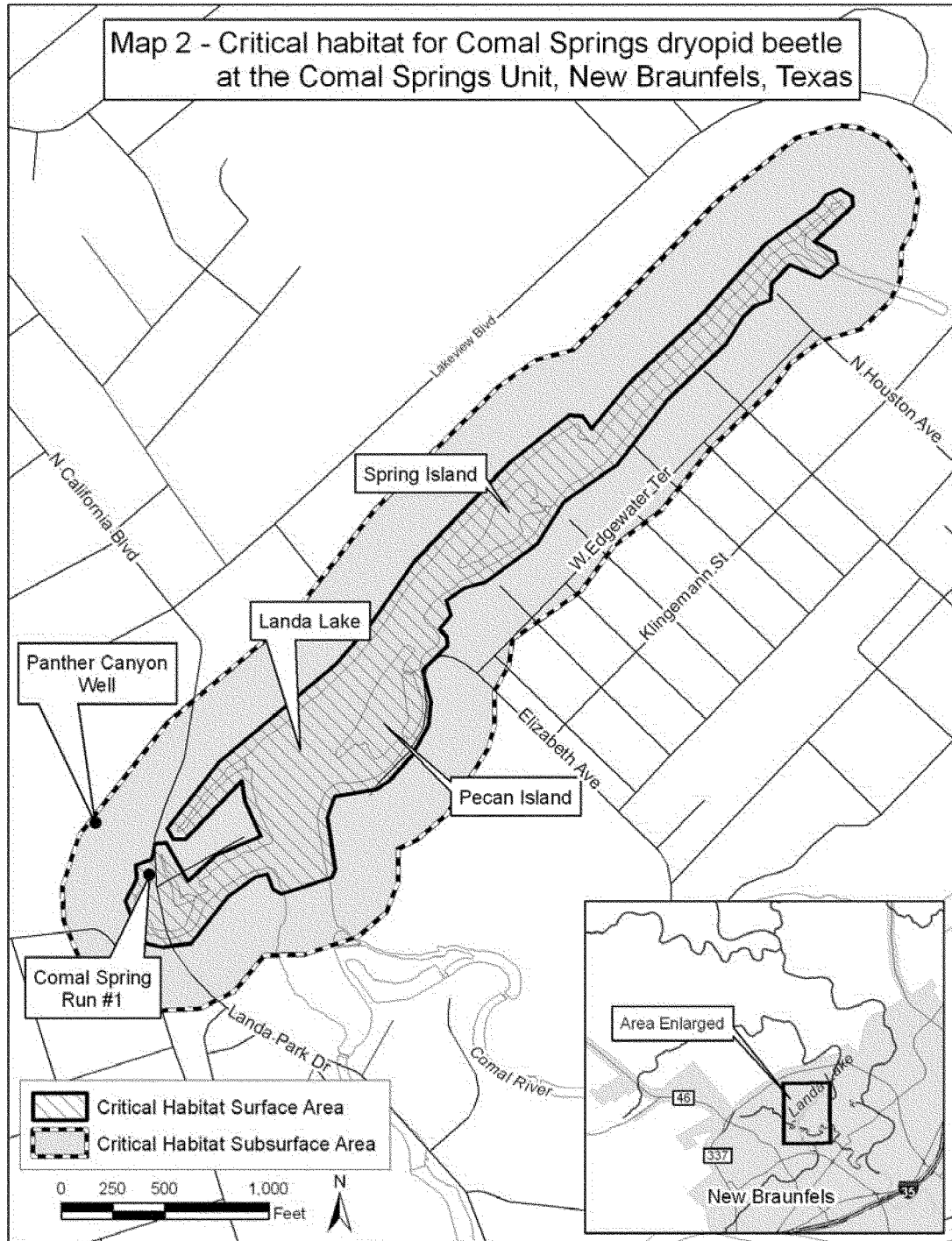
(4) *Critical habitat map units.* Data layers defining map units were created using geographic information systems (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5' quadrangles. Points were placed in the GIS. The maps in this entry, as modified 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 Service's Internet site, (<http://www.fws.gov/southwest/es/austintexas/>), <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0082, and at the field office responsible for this critical habitat designation. 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.

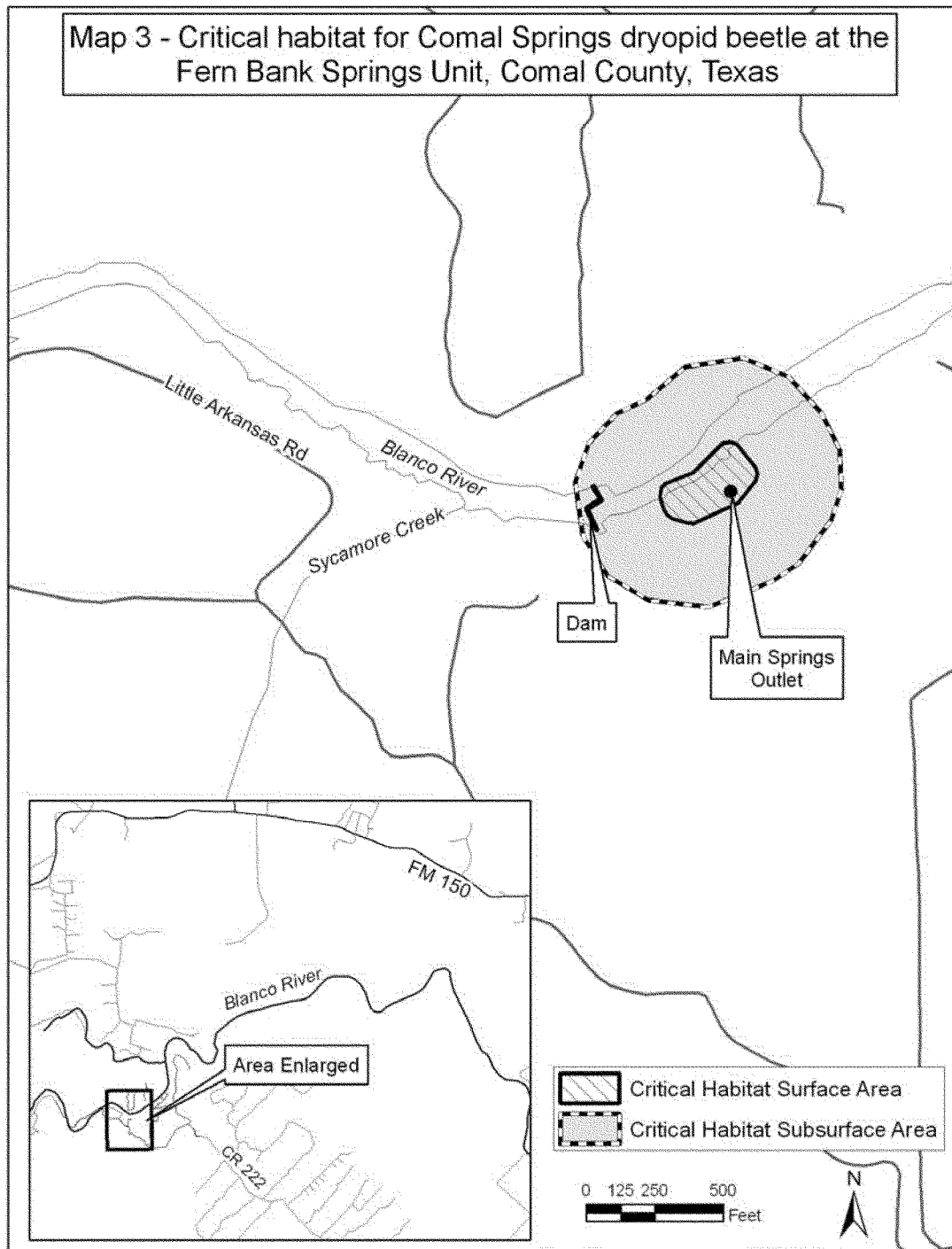
(5) *Note:* An index map of the critical habitat units for the Comal Springs dryopid beetle, a map of the Comal Springs unit, and a map of the Fern Bank Springs unit follow:



(6) Unit 1: Comal Springs Unit, Comal County, Texas. Map of the Comal Springs Unit follows:



(7) Unit 3: Fern Bank Springs Unit, Hays County, Texas. Map of the Fern Bank Springs Unit follows:



Comal Springs Riffle Beetle (*Heterelmis comalensis*)

(1) Critical habitat units are depicted for this species in Comal and Hays Counties, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the

Comal Springs dryopid beetle consist of these components:

(i) Springs, associated streams, and underground spaces immediately inside of or adjacent to springs, seeps, and upwellings that include:

(A) High-quality water with no harmful levels of pollutants such as

soaps, detergents, heavy metals, pesticides, fertilizer nutrients, petroleum hydrocarbons, and semivolatle compounds such as industrial cleaning agents; and

(B) Hydrologic regimes similar to the historical pattern of the specific sites, with continuous surface flow from the

spring sites and in the subterranean aquifer;

(ii) Spring system water temperatures that range from approximately 68 to 75 °F (20 to 24 °C); and

(iii) Food supply that includes, but is not limited to, detritus (decomposed materials), leaf litter, living plant material, algae, fungi, bacteria, other microorganisms, and decaying roots.

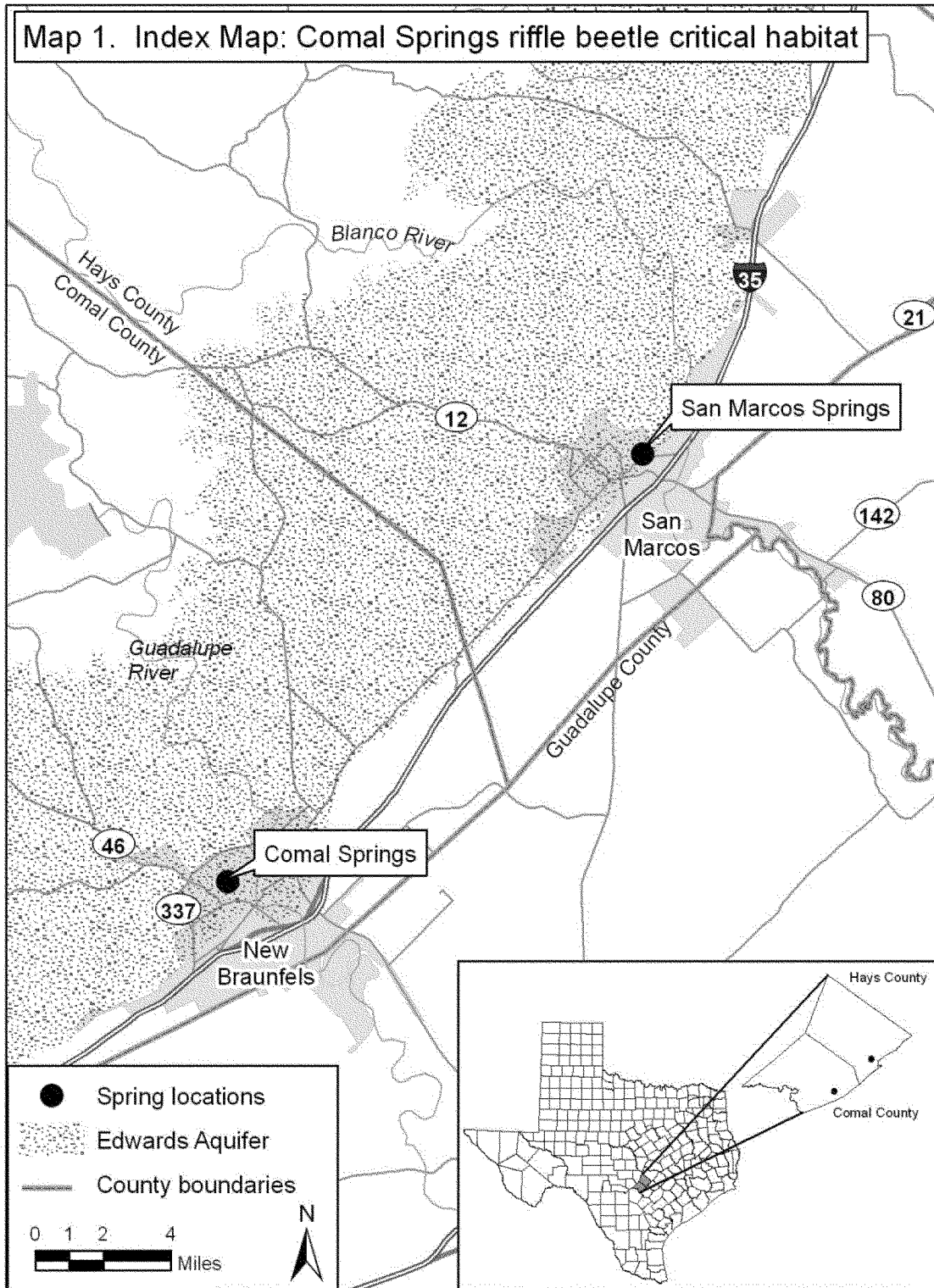
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing on the surface within the legal boundaries on [DATE

30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

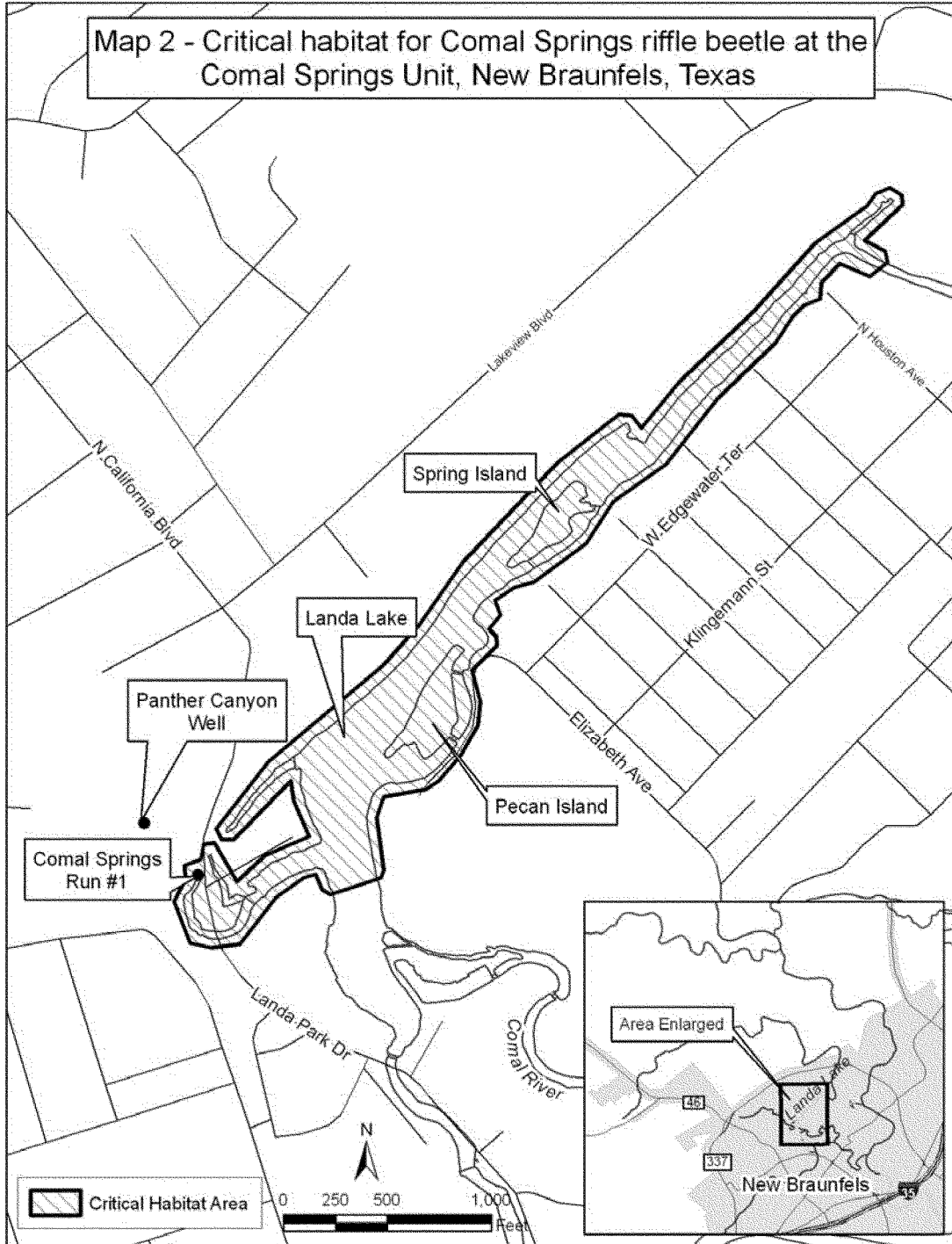
(4) *Critical habitat map units.* Data layers defining map units were created using geographic information systems (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and USGS 7.5' quadrangles. Points were placed on the GIS. The maps in this entry, as modified 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 Service's Internet site, ([\[www.fws.gov/southwest/es/austintexas/\]\(http://www.fws.gov/southwest/es/austintexas/\)\), <http://www.regulations.gov> at Docket No.](http://</p></div><div data-bbox=)

FWS-R2-ES-2012-0082, and at the field office responsible for this critical habitat designation. 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.

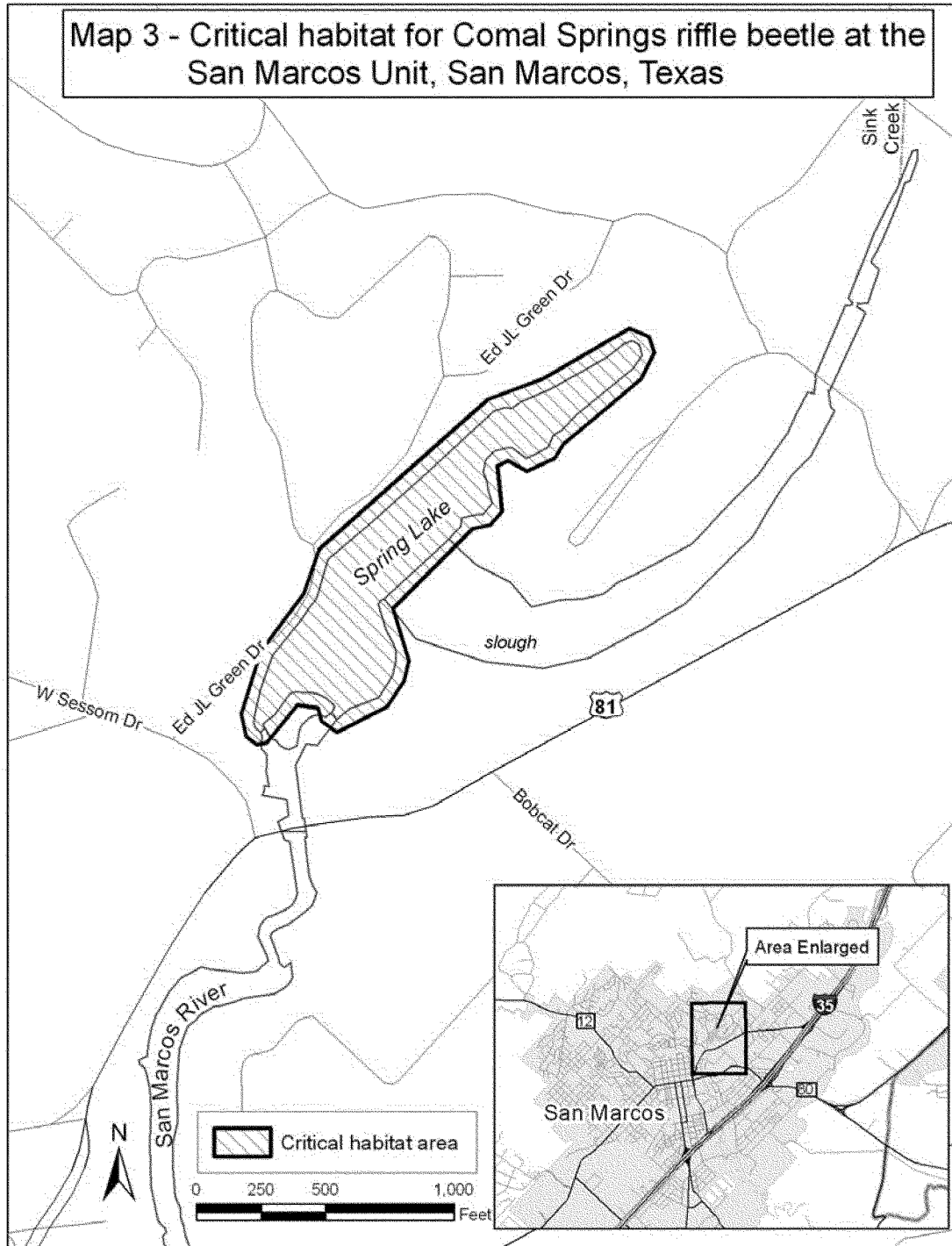
(5) *Note:* An index map of critical habitat units for the Comal Springs riffle beetle, a map of the Comal Springs unit, and a map of the San Marcos Springs unit follow:



(6) Unit 1: Comal Springs Unit, Comal County, Texas. Map of Comal Springs Unit, follows:



(7) Unit 4: San Marcos Springs Unit,
Hays County, Texas. Map of San Marcos
Springs Unit, follows:



* * * * *

Dated: October 5, 2012.

Eileen Sobeck,Deputy Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 2012-25578 Filed 10-18-12; 8:45 a.m.]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****50 CFR Part 622**

[Docket No. 120717247-2533-01]

RIN 0648-BC37

**Fisheries of the Caribbean, Gulf of
Mexico, and South Atlantic; Reef Fish
Fishery of the Gulf of Mexico;
Amendment 38****AGENCY:** National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.**ACTION:** Proposed rule; request for
comments.**SUMMARY:** NMFS proposes to implement
management measures described in
Amendment 38 to the Fishery
Management Plan for the Reef Fish
Resources of the Gulf of Mexico (FMP)
prepared by the Gulf of Mexico (Gulf)
Fishery Management Council (Council).
If implemented, this rule would modify
post-season accountability measures
(AMs) that affect shallow-water grouper
species (SWG), change the trigger for
AMs, and revise the Gulf reef fish
framework procedure. The intent of this
proposed rule is to achieve optimum
yield (OY) while ensuring the fishery
resources are utilized efficiently.**DATES:** Written comments must be
received on or before November 19,
2012.**ADDRESSES:** You may submit comments
on the proposed rule identified by
"NOAA-NMFS-2012-0149" 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:* Steve Branstetter, 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. NMFS will
accept anonymous comments (enter N/
A in the required field if you wish to
remain anonymous).

To submit comments through the
Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2012-0149" in the search field
and click on "search." After you locate
the proposed rule, click the "Submit a
Comment" link in that row. This will
display the comment web form. You can
then 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 10 MB) 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 Amendment 38,
which includes an environmental
assessment, fishery impact statement,
regulatory flexibility act analysis, and a
regulatory impact review, may be
obtained from the Southeast Regional
Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT:
Steve Branstetter, Southeast Regional
Office, NMFS, telephone: 727-824-
5305; email:
Steve.Branstetter@noaa.gov.**SUPPLEMENTARY INFORMATION:** The reef
fish fishery of the Gulf is managed
under the FMP. The FMP was prepared
by the Council and is implemented
through regulations at 50 CFR part 622
under the authority of the Magnuson-
Stevens Fishery Conservation and
Management Act (Magnuson-Stevens
Act).**Background**

The Magnuson-Stevens Act requires
NMFS and regional fishery management
councils to prevent overfishing and
achieve, on a continuing basis, the OY
for federally managed fish stocks. The
reauthorized Magnuson-Stevens Act, as
amended through January 12, 2007,
requires the councils to establish annual
catch limits (ACLs) for each stock/stock
complex and AMs to ensure these ACLs
are not exceeded. The intent of this
proposed rule is to modify post-season

recreational AMs for SWG species (*i.e.*,
gag, red grouper, black grouper, scamp,
yellowfin grouper, and yellowmouth
grouper) and allow modifications to
AMs for FMP species in the future
under the FMP framework procedure to
achieve OY while ensuring the fishery
resources are utilized efficiently.

Through Amendment 30B to the FMP
(74 FR 17603, April 16, 2009), NMFS
established AMs for gag and red
grouper. These AMs included a
provision that if the recreational sector
ACL for gag or red grouper is exceeded
in the current year, the recreational
season for all SWG is shortened the
following year to ensure that the gag or
red grouper recreational sector ACL is
not exceeded again the following year.
Regulations implemented through
Amendment 32 to the FMP (77 FR 6988,
February 10, 2012) added more AMs,
including in-season closures for gag and
red grouper, and overage adjustments
for gag and red grouper if they are
overfished.

**Management Measures Contained in
This Proposed Rule**

If implemented, this rule would
modify post-season AMs for SWG
species, change the trigger for AMs, and
revise the Gulf reef fish framework
procedure. This rule would modify the
post-season AMs for gag and red
grouper so that the shortening of the
season following a season with an ACL
overage applies only to the species with
landings that exceeded the ACL the
prior year. Modifying the AMs would
improve the likelihood of achieving OY
for red grouper and avoid unnecessary
closures of all SWG species (*i.e.*, gag, red
grouper, black grouper, scamp,
yellowfin grouper, and yellowmouth
grouper).

The current method for determining if
post-season AMs have been triggered for
red grouper or gag is to compute a 1 to
3-year moving average of recreational
landings, and to compare that moving
average of landings to the ACL.
However, the use of a moving average
has not been practicable due to the
frequent changes that have occurred in
the ACLs. In addition, the use of moving
averages could potentially delay the
implementation of AMs by unduly
masking sizeable harvest overages and
potentially slowing down the recovery
of stocks under rebuilding. This rule
would remove the 3-year moving
average, allowing AMs to be based on a
comparison of the ACL to the current
year's landings. A simple comparison of
the current year's landings to the ACL
could provide greater protection to the
gag and red grouper stocks, be easier for

fishermen to understand, and be less burdensome to administer.

This rule proposes to revise the list of management measures contained in the regulations that may be established or modified by the framework procedure specified in the FMP to match those that are contained in the FMP. Amendment 38 would add a list of the AMs that may be revised through the Gulf reef fish framework process. Typically, the process for implementing framework actions take less than a year and the actions are effective until amended. Changes to AMs through the framework may result in faster implementation of measures beneficial to fish stocks and fishery participants. No changes to the regulatory text are required to implement the action to add AMs to the framework process because NMFS previously erroneously included AMs in § 622.48(d) in the rule implementing the Generic ACL Amendment (76 FR 82044, December 29, 2011). Sale and purchase restrictions, and transfer at sea provisions were also previously erroneously included in the rule implementing the Generic ACL Amendment. Thus, NMFS proposes to remove these two items from the list in § 622.48(d). NMFS also proposes removing total allowable catch (TAC) from § 622.48(d). Total allowable catch has been included in the regulations since the adjustment of management measures was first codified in 1992 (57 FR 11914, April 8, 1992). With the implementation of ACLs and ACTs, TAC is no longer used in the management of Gulf reef fish.

Additional Measure Contained in Amendment 38

Amendment 38 would also update language in the framework procedure related to Council advisory panels and committees. More general language in reference to Council committees and advisory panels would replace specific references that are no longer accurate.

Other Changes Not Contained in Amendment 38

In § 622.49, paragraphs (a)(4)(ii)(C) and (a)(5)(ii)(C), NMFS proposes to clarify language regarding the management of an ACL overage. Currently, if gag or red grouper are overfished and the ACL is exceeded, NMFS deducts the overage from the ACL established for the following year and from the ACT, as determined in § 622.49, paragraph (a)(4)(ii)(B) or (a)(5)(ii)(B). This means that the overage could be deducted from the ACT of the prior fishing year, if the ACT is maintained the following fishing year. Conversely, the overage could be

deducted from the following year's ACT if the best scientific information available determines that maintaining the prior year's ACT is unnecessary. This process was not made express in the final rule for Amendment 32 to the FMP (77 FR 6988, February 10, 2012); however, this is consistent with not allowing the ACT to increase above the ACL after an overage occurs, maintains a larger buffer between the ACT and ACL when an overage occurs, and was the intent of Amendment 32. Thus, NMFS proposes to amend the regulations to expressly state that the ACT referred to in § 622.49, paragraphs (a)(4)(ii)(C) and (a)(5)(ii)(C), is the ACT as determined in § 622.49, paragraph (a)(4)(ii)(B) or (a)(5)(ii)(B).

NMFS also proposes to delete the following sentence in the regulations at § 622.49, paragraph (a)(4)(ii)(A) and move it to paragraph (a)(4)(ii)(B): "In addition, the notification will reduce the length of the recreational gag fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year." This change will keep only in-season AMs in paragraph (a)(4)(ii)(A) and include the post-season AMs in paragraph (a)(4)(ii)(B).

Additionally, NMFS identified an inadvertent inconsistency between the regulatory text in the proposed rule for Amendment 32 to the FMP (76 FR 67656, November 2, 2011) and the second proposed rule for Amendment 32 to the FMP (77 FR 1910, January 12, 2012). To correct this mistake, in § 622.49, paragraph (a)(4)(ii)(B), NMFS revises the phrase "If gag are not overfished" to read "Without regard to overfished status," and in paragraph (a)(5)(ii)(B), NMFS revises the phrase "If red grouper are not overfished" to read "Without regard to overfished status."

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the AA has determined that this proposed rule is consistent with Amendment 38, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to modify post-season recreational AMs for SWG and allow modifications to AMs for Gulf reef fish species in the future under the FMP framework procedure to achieve OY while ensuring the fishery resources are utilized efficiently. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This rule, if implemented, is expected to directly affect 1,376 vessels that possess a reef fish for-hire permit. The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charter vessel is estimated to earn approximately \$76,000 (2009 dollars) in annual revenue, while the average headboat is estimated to earn approximately \$230,000 (2009 dollars).

No other small entities are expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

Neither of the two actions considered in Amendment 38 and included in this proposed rule are expected to result in any reduction in profit for any small entities. One action would modify the FMP framework procedure, while the other action would revise the post-season AMs for SWG species. The proposed modifications to the FMP framework procedure would expand the range of management actions that could be taken under framework procedures and improve the opportunity to access quality advice during the management process. Expanding the range of management actions that could be taken under framework procedures is expected to result in more responsive and efficient management change, when necessary.

The current framework narrowly defines the groups that can provide recommendations to the Council on proposed framework actions. The proposed modification would broaden this definition, thereby potentially allowing more expert participation to

inform the management process. As a result, this action is expected to result in better and timelier management decisions and increased economic benefits to small entities that harvest reef fish. However, modifying the FMP framework procedure is an administrative action that only indirectly affects small entities. Such entities would be directly affected through future management actions taken under the new framework procedures. Any effects would be analyzed in those rulemaking actions. As a result, because the effects on small entities of implementing this action are indirect, this component of the proposed rule is outside the scope of the Regulatory Flexibility Act (RFA).

Accountability measures are intended to ensure harvest overages do not occur and to correct or mitigate for overages if they do occur. Post-season AMs are invoked only if a harvest overage occurs. Although implementing AMs is expected to result in direct economic effects on affected small entities, the establishment of AMs, or their modification, are administrative actions that are expected to have only indirect effects on any small entities. Direct effects of implementing AMs would be accounted for in any rulemaking actions applying the AMs. Because the proposed action would only modify the current AMs, no direct effects are expected to accrue to any small entities. As a result, this component of the proposed rule is also outside the scope of the RFA.

However, because implementing post-season AMs is expected to restrict fishing operations and result in direct short-term reductions in revenue and profit, further discussion of the potential significance of these effects is provided. The proposed modification to the AMs is expected to result in less restrictive measures than the current AMs, by supporting more timely response to harvest overages and limiting any necessary corrective harvest restrictions to just gag or red grouper, rather than imposing restrictions on fishing for all species in the SWG complex. As a result, the proposed modification is expected to result in lower short-term adverse economic effects on small entities than the current AMs. More timely response to harvest overages is also expected to limit resource harm and reduce the scope of necessary corrective action, thereby reducing the magnitude of any short-term adverse economic effects and better preserving the long-term economic benefits to small entities. Limiting corrective action to the harvest of gag or red grouper allows the fleet to

continue fishing for and harvesting other SWG species, along with the continued economic benefits associated with these activities. As a result, the proposed changes to the AMs are expected to increase economic benefits to small entities relative to the status quo.

While NMFS expects the modifications to the AMs will benefit the affected entities, any change is expected to be minor relative to the affected vessels' overall fishing effort. Based on 2005–2009 recreational data, an average of only approximately 2.5 percent of charter vessel anglers reported targeting any SWG species. Gag and red grouper are the dominant target species in the SWG complex, and account for approximately two percent and one percent of charter vessel individual angler trips, respectively (overlap prevents summing of these, and subsequent, percentages). Between 2005 and 2009, on trips where charter vessels targeted SWG species, they targeted gag grouper approximately 99 percent of the time, and red grouper 98 percent of the time. In other words, if both gag and red grouper are removed from the list of targeted SWG species, less than one tenth of one percent of charter vessel anglers reported targeting any of the remaining SWG species (*i.e.*, Other SWG). Similar data are not available for headboat anglers because information on target intent is not collected for this sector. However, for the purpose of this analysis, target behavior in the charter vessel component of the recreational sector is used as a proxy for target behavior in the headboat component of the recreational sector. While some individual vessels may be more dependent on the subject species, these results indicate that, for the average small entity that may be affected by this proposed rule, any economic effects are marginal. Additionally, these results represent annual target rates. Because any AM implemented will only affect the fishing for a portion of the year, the likelihood that any economic effects would be significant is further reduced.

In addition to the two actions considered in Amendment 38 and included in this proposed rule, this proposed rule would make three changes to the regulatory text in § 622.49. These proposed changes are described in the preamble. These changes clarify language associated with prior regulatory action and better meet the intent of the Council's actions in Amendment 32 to the FMP. As a result, none of these proposed changes in the regulatory text would be expected to result in any reduction in profits to any small entities. Based on the discussion

above, NMFS determines that this rule, if implemented, will not have a significant economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 15, 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.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.48, paragraph (d) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(d) *Gulf reef fish.* For a species or species group: reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

* * * * *

3. In § 622.49, paragraphs (a)(4)(ii), (a)(5)(ii)(B), (a)(5)(ii)(C), and (a)(5)(ii)(D) are revised to read as follows:

§ 622.49 Annual Catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(4) * * *
(ii) * * *

(A) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gag in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) Without regard to overfished status, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the length of the recreational gag fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(C) If gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, and gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(4)(ii)(D) of this section, the following measures will apply. In addition to the measures specified in paragraphs (a)(4)(ii)(A) and (B) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (a)(4)(ii)(B), by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for

2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational ACTs for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years.

(5) * * *

(ii) * * *

(B) Without regard to overfished status, and in addition to the measures specified in paragraph (a)(5)(ii)(A) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (a)(5)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the bag limit by one fish and reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(C) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the following measures will apply. In addition to the measures specified in paragraphs (a)(5)(ii)(A) and (B) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (a)(5)(ii)(B), by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012 and subsequent fishing years. The recreational ACT for red grouper, in gutted weight, is 1.730 million lb (0.785

million kg) for 2012 and subsequent fishing years.

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[FR Doc. 2012-25823 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BC48

Fisheries of the Northeastern United States; Northeast Multispecies; Amendment 19

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council has submitted Amendment 19 to the Northeast Multispecies Fishery Management Plan, incorporating a draft Environmental Assessment and an Initial Regulatory Flexibility Analysis, for review and approval by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 19, which was developed by the Council to modify management measures that govern the small-mesh multispecies fishery, including accountability measures, year-round possession limits, and the total allowable landings process.

DATES: Public comments must be received on or before December 18, 2012.

ADDRESSES: A draft environmental assessment (EA) was prepared for Amendment 19 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 19, including the draft EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

You may submit comments, identified by NOAA-NMFS-2012-0170, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the

Federal e-Rulemaking portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "Submit a Comment" icon, then enter NOAA-NMFS-2012-0170 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Fax:** (978) 281-9135, Attn: Comments on Whiting Amendment 19, NOAA-NMFS-2012-0170.

- **Mail and Hand Delivery:** John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Whiting Amendment 19."

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are 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.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

This amendment affects the part of the New England groundfish fishery known as the small-mesh fishery. The small-mesh fishery is composed of a complex of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed through a series of exemptions from the other provisions of the Northeast (NE) Multispecies Fishery Management Plan (FMP). It is managed separately from the other stocks of groundfish such as cod, haddock, and flounders primarily because it is prosecuted with much smaller mesh

and does not generally result in the catch of these other stocks.

The New England Fishery Management Council (Council) initiated Amendment 19 to bring the small-mesh multispecies portion of the FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). However, development of Amendment 19 was delayed, and it was apparent that the amendment would not be submitted until well after the 2011 statutory deadline for implementing mechanisms for establishing ACLs and AMs. To ensure that ACLs and AMs for the small-mesh fishery were implemented closer to the statutory deadline, NOAA initiated, developed, and implemented, with the concurrence of the Council, a Secretarial Amendment (March 30, 2012; 77 FR 19138). The Secretarial Amendment built upon measures already developed by the Council in the initial stages of Amendment 19.

Amendment 19 proposes measures intended to respond to changing conditions in the fishery and opportunities to improve efficiency and accuracy. First, measures are proposed to streamline the specifications setting process, establish new overfishing definitions, and to define the roles and responsibilities of monitoring the fishery on an annual basis. Second, a measure is proposed to require vessels fishing for small-mesh multispecies to submit weekly vessel trip reports. Third, a measure is proposed to modify the total allowable landings (TAL) structure that was implemented through the Secretarial Amendment for the southern stock area. Implementing this measure would result in quarterly TALs in the southern stock area after landings in a given year exceed two-thirds of the TAL. Fourth, a measure is proposed that would increase the incidental possession limit for northern silver hake and southern whiting (silver and offshore hake, combined) that was implemented through the Secretarial Amendment from 1,000 lb (453.6 kg) to 2,000 lb (907.2 kg). The incidental possession limits would be triggered if 90 percent of a stock's TAL is projected to be harvested. Fifth, the amendment proposes to change the post-season AM from a pound-for-pound payback of an ACL overage to a system where the incidental possession limit trigger (i.e., the 90-percent described above) would be reduced by the same percentage by which the ACL was exceeded. For example, if a stock's ACL were exceeded by 5 percent in 2013, then starting in 2015, the incidental possession limit

would be triggered when 85 percent of that stock's TAL is projected to be harvested rather than 90 percent. Finally, Amendment 19 proposes two measures dealing with year-round trip limits. For red hake, a measure is proposed that would establish a 5,000-lb (2,268-kg) trip limit for all gear types in all areas. For whiting (silver and offshore hake, combined) in the southern stock area, the trip limit for vessels fishing with mesh that is 3 inches (7.6 cm) or greater would be increased from 30,000 lb (13,607.8 kg) to 40,000 lb (18,143.7 kg). The increase in the whiting possession limit would only be applicable to vessels fishing exclusively in the Southern New England or Mid-Atlantic Exemption Areas.

Public comments on Amendment 19 and its incorporated documents may be submitted through the end of the comment period stated in this notice of availability. A proposed rule to implement Amendment 19 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 19 to be considered in the approval/disapproval decision on the amendment. All comments received by December 18, 2012, whether specifically directed to Amendment 19 or the proposed rule for Amendment 19, will be considered in the approval/disapproval decision on Amendment 19. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 19. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: October 16, 2012.

Emily H. Menashes,

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

[FR Doc. 2012-25824 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 120905422–2521–01]

RIN 0648–BC50

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exempted Fishery for the Cape Cod Spiny Dogfish Fishery

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels to fish with gillnet and longline gear from June through December, and with handline gear from June through August, in a portion of inshore Georges Bank (GB) each year, outside of the requirements of the NE multispecies fishery. This action would allow vessels to harvest spiny dogfish and other non-groundfish species in a manner that is consistent with the bycatch reduction objectives of the FMP.

DATES: Comments must be received no later than 5 p.m., eastern daylight time, on November 5, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for the Secretarial Amendment that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Secretarial Amendment, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from John K. Bullard, Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

You may submit comments, identified by FDMS docket number NOAA–NMFS–2012–0195, by any one of the following methods:

- Written comments (paper, disk, or CD–ROM) should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, “Comments on Spiny Dogfish Exempted Fishery.”

- Comments also may be sent via facsimile (fax) to (978) 465–3116.
- Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Instructions: Comments will be posted for public viewing as they are received. 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.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Travis Ford, Fishery Policy Analyst, 978–281–9233; fax 978–281–9135; email: travis.ford@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

Current regulations, implementing Framework Adjustment 9 (60 FR 19364, April 18, 1995) and expanded under Amendment 7 to the FMP (61 FR 27710, May 31, 1996), contain a NE multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), GB, and Southern New England (SNE) Exemption Areas found in § 648.80. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop DAS allocation, is fishing on a sector trip, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in § 648.80(a)(8). A fishery may be exempted by the NMFS Regional Administrator (RA), after consultation with the New England Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

Representatives from the NE multispecies sector fleet submitted two exempted fishery requests to the RA in December 2011, requesting we consider

an exempted fishery for gillnet, longline, and handline vessels targeting dogfish in portions of the GOM and GB. Sector vessels targeting spiny dogfish in the requested areas are currently required to fish on a declared NE multispecies trip. Vessels are charged a discard rate for regulated species bycatch that is determined by the NMFS Northeast Fisheries Observer Program (NEFOP) and at-sea monitoring (ASM) discard data. The discard rate is based on the sector, area fished, and gear type, and is referred to as a discard stratum. Because the specified target species (groundfish) is not a distinctive part of each discard stratum, vessels that are targeting spiny dogfish (and catching very little to no groundfish) are being charged the same discard rate as all other declared groundfish trips in that discard stratum. This leads to applying higher than observed discard rates of groundfish when targeting spiny dogfish. Forfeiting the value of these calculated discards, that otherwise could be available for catching and landed for sale on directed regulated species trips, has created an economic burden for sector fishermen. This has particularly affected the sector’s “choke stocks,” i.e., fish for which the sector has a small amount of quota, either because of a low catch history or a small annual catch limit (ACL) for the stock.

The original requests from industry proposed a year-round exempted fishery in statistical areas 514, 515, and 521 for vessels using gillnet gear with large and extra-large mesh (>6.5-inches (16.5-cm)), longline, and handline gear. Due to relatively higher groundfish bycatch in large portions of these requested areas, this action proposes to exempt vessels from the NE multispecies regulations in a smaller portion of statistical area 521 off the coast of Cape Cod, MA. We further modified the time for the exemption to only during the months of June through December for vessels using gillnet and longline gear. In addition, this action proposes to exempt handline gear in the same smaller portion of statistical area 521 for June through August.

NEFOP and ASM data from all declared groundfish trips using large and extra-large mesh gillnets (>6.5-inch (16.5-cm) mesh), longline, and handline gears from 2010 to 2011 were analyzed. The area and months were revised based on information that shows, of a total of 642 observed trips using the proposed gears in fishing years (FY) 2010 and 2011, the average percentage of groundfish caught was 0.09 percent for this proposed alternative (Alternative 1, as referred to in the Environmental Assessment). Further, observed trip data

for Alternative 1 show no trips that caught greater than 5 percent regulated groundfish.

The majority of groundfish bycatch species in the spiny dogfish fishery are GB cod and pollock. In a 2012 operational assessment, GB cod was determined to be overfished and experiencing overfishing. In the Stock Assessment Review Committee 50 assessment in 2010, it was determined that pollock was not overfished and was not subject to overfishing.

For the trips analyzed under Alternative 1, no single month's average NE multispecies catch exceeded 0.38 percent of the total catch. On the 642 trips analyzed, a total of 798.6 lb (362.2 kg) of cod and 324.8 lb (147.3 kg) of pollock were caught. This represents an average of 1.24 lb (0.56 kg) and 0.51 lb (0.23 kg) per trip, respectively. Based on these very low observed amounts, the discards expected from this exemption should not cause the ACL for these species to be exceeded.

We assessed a second alternative exemption for gillnet, longline, and handline gears in the same modified area year-round. The data indicate that Alternative 2 (the non-preferred alternative) would likely result in a higher percentage of groundfish catch because several handline trips caught greater than 5 percent multispecies from September through December. In addition, the RA could not make a determination as to whether regulated groundfish bycatch was < 5 percent during the months of January through May, given little to no observer data were available from the area during this time.

Although this action would exempt vessels using these gears in this area and from the NE multispecies regulations, this action is not likely to increase effort in the spiny dogfish fishery. The existing spiny dogfish fishery is limited by an annual quota and a 3,000-lb (1,360.78-kg) trip limit. Therefore, this action itself is not expected to jeopardize mortality objectives of any stock, but rather ease some of the burden on vessels participating in the NE multispecies fishery.

Proposed Measures

Cape Cod Spiny Dogfish Exemption Area

The RA has determined that an exempted spiny dogfish fishery in a specifically defined portion of inshore GB area meets the exemption requirements in § 648.80(a)(8)(i) because, based on an analysis of available data, the bycatch of regulated species by vessels that would fish under

this exemption is less than 5 percent, by weight, of the total catch and is not expected to jeopardize the fishing mortality objectives of the NE Multispecies FMP. Therefore, this rule proposes to implement an exempted fishery for eligible vessels when using 6.5-inch (16.5-cm) mesh or greater gillnet gear, and longline gear in a portion of inshore Georges Bank off of Cape Cod, MA, from June through December of each year. In addition, this action proposes to exempt handline gear in the same area in June through August. The area of this proposed exempted fishery would be referred to as the Cape Cod Spiny Dogfish Exemption Area.

The Cape Cod Spiny Dogfish Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the RA upon request):

Point	N. lat.	W. long.
CCD 1	42/00'	70/00'
CCD 2	42/00'	69/47.5'
CCD 3	41/40'	69/47.5'
CCD 4	41/29.5'	69/35.5'
CCD 5	41/29.5'	69/23'
CCD 6	41/26'	69/20'
CCD 7	41/20'	69/20'
CCD 8	41/20'	(1)
CCD 9	(2)	70/00'
CCD 10	(3)	70/00'
CCD 11	(4)	70/00'
CCD 1	42/00'	70/00'

(1) The eastern coastline of Nantucket, MA at 41°20' N. lat.

(2) The northern coastline of Nantucket, MA at 70°00' W. long.

(3) The southern coastline of Cape Cod, MA at 70°00' W. long., then along the eastern coastline of Cape Cod, MA to CCD 11.

(4) The northern coastline of Cape Cod, MA at 70°00' W. long.

As required by existing regulations, vessels intending to land spiny dogfish under this exemption would need to hold a Federal spiny dogfish permit and comply with existing spiny dogfish per trip and annual quota limits. A participating vessel may possess and land up to 3,000 lb (1,360.78 kg) of spiny dogfish per trip. In addition, vessels would be limited by the spiny dogfish annual quota that is divided into two seasons to help maintain availability throughout the fishing year.

Establishing the proposed Cape Cod Spiny Dogfish Exemption Area should result in a more accurate discard calculation for spiny dogfish and NE multispecies DAS and sector trips. Because these trips would be exempt from NE multispecies regulations, discards of regulated NE multispecies associated with these trips would no longer be deducted from sector or

common pool sub-ACLs that make up the commercial groundfish sub-ACL. Instead, the calculated discards would be deducted from the "other subcomponents" sub-ACL.

In the NE multispecies fishery, discard rates for regulated species are calculated over an entire discard stratum, i.e., sector, area, and gear type. Currently, when spiny dogfish vessels are fishing on declared groundfish trips, they are charged a calculated discard rate equivalent to trips targeting groundfish in the same discard stratum. For example, a spiny dogfish vessel catching 3,000 lb (1,360.78 kg) of spiny dogfish is charged a groundfish discard rate as if that vessel caught 3,000 lb (1,360.78 kg) of groundfish. These discards are deducted from the sector or common pool sub-ACL. The data analyzed from observed trips under Alternative 1, however, showed that these trips averaged a catch of 0.09 percent of multispecies (an average of 2.65 lb (1.20 kg) per trip). Calculating discards using this more accurate rate results in a lower deduction from the sub-ACL than applying the groundfish discard rate to 3,000 lb (1,360.78 kg) of catch. Granting this exemption would provide vessels the opportunity to catch the groundfish on groundfish targeted trips that was formerly counted as discarded on spiny dogfish trips. Conversely, because the lower multispecies discards observed on spiny dogfish targeted trips will no longer be included when determining the groundfish discard rate for targeted groundfish trips, the actual amounts discarded on declared groundfish trips would likely be more accurately reflected. The increase in the calculated discard rate for targeted groundfish trips is not expected to be significant.

Classification

This proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule, can be found in the preamble to this proposed rule and are not repeated here. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule. This

proposed rule does not include any new reporting, recordkeeping or other compliance requirements. This action proposes to create a new spiny dogfish exemption area for gillnet, longline, and handline vessels off the coast of Cape Cod, MA. Vessels participating in this exemption would declare “out-of-fishery” on their Vessel Monitoring Systems.

This action was compared to two different alternatives for the exemption. Alternatives to the proposed exemption include exempting the same area for a longer period of time, i.e., year-round, and a No Action Alternative, which would continue to require vessels fishing in this area to be on a declared NE multispecies trip from June through December and therefore subject to the NE multispecies discard rate for such trips.

Description and Estimate of the Number of Small Entities To Which This Proposed Rule Would Apply

All of the potentially affected businesses are considered small entities under the standards described in NOAA Fisheries guidelines because they have gross receipts that do not exceed \$4 million annually.

Economic Impacts of This Proposed Action

Compared to the No Action Alternative, the Preferred Alternative (Alternative 1) is expected to benefit the local fishing communities that have historically depended on the spiny dogfish fishery off Cape Cod, MA. This exemption was requested by members of the NE multispecies fishing industry, specifically sector members. The cost of fishing for spiny dogfish has become increasingly high primarily due to the deduction of calculated discards from each vessel’s sector annual catch entitlement (ACE) when fishing on a sector trip. Thus, the proposed action would allow vessels to fish under this exemption outside of the groundfish regulations, which proposes to prevent discards from being deducted from a sector’s ACE at a higher rate than is actually occurring. The EA for this proposed action estimates that the exemption could save vessels fishing under this proposed exemption approximately \$24,000 a year in discards alone.

With the elimination of these low groundfish discard trips from the sector’s discard stratum, the overall discard rate for the sector will likely increase because the spiny dogfish targeted trips that were observed were keeping the discard rate for trips targeting groundfish artificially low.

While this change will result in an increase of the overall sector’s discard rate on groundfish targeted trips, the increase would not represent a significant cost to the sector vessels that are not participating in the exemption. In addition, the calculated discard rates for both groundfish vessels and spiny dogfish vessels would be more accurate as a result of the exemption; more accurate discards are not expected to have an economic effect on the fishing community as a whole. Further, participation in this exemption is voluntary. A vessel may still choose to target spiny dogfish during the exemption period while on a declared groundfish trip should it be to their benefit.

Economic Impacts of Alternatives to the Proposed Action

The impacts of Alternative 2, which extends the exemption for the entire year, would be expected to be similar to the impacts of the Preferred Alternative, but the expanded time would allow more vessels a greater opportunity to participate in the exempted fishery. The EA for this action estimates that Alternative 2 would save the industry an additional \$877.93 compared to Alternative 1. However, the data indicate that Alternative 2 would likely result in a higher percentage of groundfish catch because several handline trips caught greater than 5 percent multispecies from September through December. In addition, the RA could not make a determination as to whether regulated groundfish bycatch was <5 percent during the months of January through May, given little to no observer data were available from the area during this time for all of the gear types. Providing an exemption for trips that caught over 5 percent groundfish, or in areas where no data are available, would be contrary to the purpose and requirements of the Magnuson Stevens Fishery Conservation and Management Act and the NE multispecies regulations. Therefore, this alternative was not selected.

The No Action Alternative would have a negative economic impact on spiny dogfish vessels relative to the Preferred Alternative. Under the No Action Alternative, sector fishermen targeting spiny dogfish would continue fishing on declared groundfish trips only to be charged a higher than observed groundfish discard rate for their trip targeting spiny dogfish. The spiny dogfish fishery is a valuable resource. The groundfish discards that are attributed to these trips come directly out of the vessel’s sector’s ACE, which takes away the opportunity to

catch these fish in the future. Thus, sectors requested an exemption because of the economic burden that the cost of multispecies discards applied to these trips had on sector fishermen targeting other stocks (i.e., spiny dogfish). As described above, it is estimated that this proposed action could save vessels fishing under this exemption approximately \$24,000 a year in discards alone, compared to the No Action alternative.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 15, 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.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, paragraph (k)(5)(i) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(5) * * *

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (a)(19), the Cape Cod Spiny Dogfish Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9),

the SNE Little Tunny Gillnet Exemption Area; (b)(11), the SNE Scallop Dredge Exemption Area; or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

3. In § 648.80, paragraph (a)(3)(vi) is revised, and paragraph (a)(19) is added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

- (a) * * *
- (3) * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18) through (a)(19), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party

or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed as specified in § 648.23(b).

* * * * *

(19) *Cape Cod Spiny Dogfish Exemption Area.* Vessels issued a limited access permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the Cape Cod Spiny Dogfish Exemption Area as defined under paragraph (a)(19)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (a)(19)(ii) of this section.

(i) *Area definition.* The Cape Cod Spiny Dogfish Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

CAPE COD SPINY DOGFISH EXEMPTION AREA

[June 1 through December 31, unless otherwise specified in paragraph (a)(19)(ii)(C) of this section]

Point	N. lat.	W. long.
CCD 1	42/00'	70/00'

CAPE COD SPINY DOGFISH EXEMPTION AREA—Continued

[June 1 through December 31, unless otherwise specified in paragraph (a)(19)(ii)(C) of this section]

Point	N. lat.	W. long.
CCD 2	42/00'	69/47.5'
CCD 3	41/40'	69/47.5'
CCD 4	41/29.5'	69/35.5'
CCD 5	41/29.5'	69/23'
CCD 6	41/26'	69/20'
CCD 7	41/20'	69/20'
CCD 8	41/20'	(¹)
CCD 9	(²)	70/00'
CCD 10	(³)	70/00'
CCD 11	(⁴)	70/00'
CCD 1	42/00'	70/00'

(¹) The eastern coastline of Nantucket, MA at 41°20' N. lat.

(²) The northern coastline of Nantucket, MA at 70°00' W. long.

(³) The southern coastline of Cape Cod, MA at 70°00' W. long., then along the eastern coastline of Cape Cod, MA to Point 11.

(ii) *Requirements.* (A) A vessel fishing in the Cape Cod Spiny Dogfish Exemption Area specified in this paragraph (a)(19) may not fish for, possess on board, or land any NE regulated species.

(B) Vessels may use gillnet gear, as specified in § 648.80(a)(4)(iv) or longline gear as specified in § 648.80(a)(4)(v) from June 1 through December 31.

(C) Vessels may use handline gear from June 1 through August 31.

* * * * *

[FR Doc. 2012-25809 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 77, No. 203

Friday, October 19, 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

Notice of Request for an Extension to a Currently Approved Information Collection

AGENCY: Office of the Assistant Secretary for Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of the Assistant Secretary for Administration's (ASA) intention to request approval from the Office of Management and Budget (OMB) for an extension of the currently approved information collection for the U.S. Department of Agriculture (USDA) 1994 Tribal Scholars Program.

DATES: Comments on this notice must be received by December 18, 2012 to be assured of consideration.

Additional Information or Comments

Contact Lawrence Shorty, Program Director, USDA 1994 Program, USDA, 1400 Independence Ave. SW., Washington, DC 20250; phone: (202) 720-7265; fax: (202) 720-7704.

ADDRESSES: Lawrence Shorty, Program Director, 1994 Program Office, 1400 Independence Avenue SW., Mail Stop 9577, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Title: USDA 1994 Tribal Scholars Program.

OMB Number: 0503-0016.

Expiration Date of Approval: December 31, 2012.

Type of Request: Extension to the currently approved information collection.

Abstract: The purpose of the U.S. Department of Agriculture (USDA) 1994 Tribal Scholars Program is to strengthen the long-term partnership between USDA and the 1994 Land-Grant Institutions to increase the number of students studying and graduating in

food, agriculture, natural resources, and other related fields of study and to offer career opportunities to increase the pool of scientists and professionals to annually fill 50,000 jobs in the food, agricultural, and natural resources system.

This partnership effort is a joint human capital initiative between USDA and the Nation's 1994 Land-Grant Institutions utilizing the Federal USDA Pathways Internship Program. This student internship program offers a combination of paid work experience with the USDA sponsoring agency through a USDA internship applied for under the new Office of Personnel Management Pathways Program guidelines. The program is designed to integrate classroom study in a degree university program that prepares the student for employment in the sponsoring agency's future workforce with paid tuition, fees, books, use of a laptop computer, and Leadership training. The program is conducted in accordance with a planned schedule and a working agreement between USDA agencies and students through a Pathways US Department of Agriculture Internship Program Participant Agreement.

Summary of Collection: Each applicant will be required to submit a USDA Pathways Internship Program application for the USDA 1994 Tribal Scholars Program under the new Office of Personnel Management Pathways Program, including an OF-612 or resume following OF-612 guidance for content, proof of acceptance or enrollment in school via transcript (mandatory for current students and recent graduates); and a letter of acceptance, or proof of registration, or letter from a school official (on official letterhead); Standing Register/Certificate of Eligible; and OF-306 Declaration for Federal Employment.

If selected, each student must sign a Pathways U.S. Department of Agriculture Internship Program Participant Agreement, furnish course registration at the start of each school term, provide verification of academic status at the end of each academic term (grade report or transcript), meet academic standards as set forth by the school they are attending, maintain satisfactory progress in completing academic requirements, and demonstrate satisfactory performance

and conduct. Students will be required to complete all academic requirements for the target position as stipulated by the Office of Personnel Management Qualification Standards.

Need and Use of the Information: The information is needed for identifying and tracking applicants that match the human capital needs of USDA agencies from 1994 Land-Grant Institutions through an internship and an award of an annually reviewed and renewed scholarship with the objective of preparing the student for successful placement into the USDA's permanent workforce.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Individuals attending or interested in attending 1994 Land Grant Institutions, teachers, principals, and guidance counselors.

Estimated Number of Respondents: 480.

Estimated Number of Responses: 1,440.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 1,728 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lawrence Shorty, Program Director, USDA 1994 Program, Office of the Assistant Secretary for Administration, USDA, 1400 Independence Ave. SW., Mail Stop 9577, Washington, DC 20250.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will become a matter of public record.

Lawrence Shorty,

Program Director, USDA 1994 Program, Office of the Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2012-25572 Filed 10-18-12; 8:45 am]

BILLING CODE 3412-88-P

DEPARTMENT OF AGRICULTURE

**Submission for OMB Review;
Comment Request**

October 15, 2012.

The Department of Agriculture will submit 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) 720-8681.

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.

Rural Utilities Service

Title: Certification of Authority.
OMB Control Number: 0572-0074.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended, (RE ACT) and as prescribed by Office of Management and Budget (OMB) Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. A major factor in managing loan programs is controlling the advancement of funds. RUS Form 675 allows this control to be achieved by providing a list of authorized signatures against which signatures requesting funds are compared.

Need and Use of the Information: RUS will collect information to ensure that only authorized representatives of the borrower signs the lending requisition form. Without the information RUS would not know if the request for a loan advance was legitimate or not and the potential for waste, loss, unauthorized use, and misappropriation would be increased.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 25.

Rural Utilities Service

Title: Lien Accommodations and Subordinations 7 CFR Part 1717, Subparts R and S.

OMB Control Number: 0572-0100.

Summary of Collection: The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies.

Need and Use of the Information: RUS will use the information to determine an applicant's eligibility for a lien accommodation or lien subordination under the RE Act; facilitates an applicant's solicitation and acquisition of non-RUS loans as to converse available Government funds; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; and subsequently to granting the lien accommodation or lien subordination, administer each so as to minimize its cost to the Government. If the information were not collected, RUS would not be able to accomplish its statutory goals.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 15.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 290.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-25758 Filed 10-18-12; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

**Shoshone National Forest, WY,
Revised Land and Resource
Management Plan**

AGENCY: Forest Service, USDA.

ACTION: Extension of comment period.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service (USFS), Shoshone National Forest announces the extension of the comment period for the Shoshone National Forest Land Management Plan Revision Draft Environmental Impact Statement. The comment period ends November 26, 2012.

ADDRESSES: Shoshone National Forest, 808 Meadow Lane Avenue, Cody, WY 82414-4549.

FOR FURTHER INFORMATION CONTACT: Carrie Christman, Forest Planner at (307) 578-5118.

Dated: October 11, 2012.

Joseph G. Alexander,
Forest Supervisor.

[FR Doc. 2012-25726 Filed 10-18-12; 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: Understanding Recreational Angler Attitudes and Preferences for Saltwater Fishing.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 6,541.

Average Hours per Response: 20 minutes.

Burden Hours: 2,180.

Needs and Uses: This request is for a new collection of information.

The objective of the survey will be to understand the range of attitudes, preferences, and concerns that recreational anglers hold towards saltwater fishing. NOAA is conducting this survey to improve its understanding of anglers' expectations and how they may change with fish stock recovery. As more stocks recover, the survey is well-timed to inform fisheries management on anglers' satisfaction with current management and the types of goals and objectives that should be pursued (e.g., in developing guidelines). Results of the survey will be used to inform fisheries management and planning and establish a baseline for outreach and education.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

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: October 16, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012-25759 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-74-2012]

Foreign-Trade Zone 176—Rockford, IL, Notification of Proposed Production Activity, AndersonBrecon Inc. (Medical Device Kitting), Rockford, IL

AndersonBrecon Inc. (AndersonBrecon) submitted a notification of proposed production activity for its facility in Rockford, Illinois. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on October 12, 2012.

The AndersonBrecon facility is located within Site 1 of FTZ 176. The facility is used for kitting and related activity by AndersonBrecon on behalf of Ferrosan Medical Devices A/S and Ethicon Inc. Production under FTZ procedures could exempt Ferrosan Medical Devices A/S from customs duty payments on the foreign status components used in export production. On its domestic sales, Ferrosan Medical Devices A/S would be able to choose the duty rate during customs entry procedures that applies to SURGIFLO® Hemostatic Matrix Kits and SURGIFLO® Hemostatic Matrix Kits with Thrombin (duty-free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Sterile water in vials/non-needled syringes, hemostatic gelatin matrix pouches, vial adapters and lyophilized thrombin (duty rate ranges from duty-free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is *November 28, 2012.*

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482-0473.

Dated: October 15, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012-25840 Filed 10-18-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

[Docket No. 121003513-251-01]

Potential Market Impact of the Proposed Fiscal Year 2014 Annual Materials Plan; National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The purpose of this notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed Fiscal Year 2014 National Defense Stockpile Annual Materials Plan. The role of the Market Impact Committee is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals involving the stockpile and related material research and development projects. Public comments are an important element of the Committee's market impact review process.

DATES: To be considered, written comments must be received by November 19, 2012.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue NW., Room 3876, Washington, DC 20230, fax: (202) 482-5650 (Attn: Michael Vaccaro), email: MIC@bis.doc.gov; and Douglas Kramer, U.S. Department of State, Bureau of Energy Resources, Office of Europe, Western Hemisphere, and Africa, 2201 C Street NW., Washington, DC 20520, fax: (202) 647-4037 (Attn: Douglas Kramer), or email: KramerDR@state.gov.

FOR FURTHER INFORMATION CONTACT: Liam McMenamin, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S.

Department of Commerce, Telephone: (202) 482-2233.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979, as amended (the Stock Piling Act) (50 U.S.C. 98, *et seq.*), the Department of Defense's Defense Logistics Agency (DLA), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 9(b)(2)(G)(ii) of the Stock Piling Act (50 U.S.C. 98(h)(b)(2)(G)(ii)) authorizes the National Defense Stockpile Manager to fund material research and development projects to develop new materials for the stockpile.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h-1) formally established a Market Impact Committee (the "Committee") to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile" The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials stored in or of interest to the National Defense Stockpile Manager.

As the National Defense Stockpile Manager, the DLA must produce an Annual Materials Plan proposing the maximum quantity of each listed material that may be acquired, disposed of, upgraded, or sold by the DLA in a particular fiscal year. In Attachment 1, the DLA lists the quantities and type of activity (potential acquisition, potential disposal, potential upgrade, or material research and development project) associated with each material in its proposed FY 2014 Annual Materials Plan. The quantities listed in Attachment 1 are not acquisition,

disposal, upgrade, or sales target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be acquired, disposed of, upgraded, or sold in a particular fiscal year by the DLA as noted. The quantity of each material that will actually be acquired or offered for sale will depend on the market for the material at the time of the acquisition or offering, as well as on the quantity of each material approved for acquisition, disposal, or upgrade by Congress.

The DLA must also include two material research and development projects in its proposed Annual Materials Plans. The two material research projects in its 2014 Annual Materials Plan relate to DLA establishing vendor-owned buffer inventories in the United States for cadmium zinc tellurium (CZT) substrates and triamino trinitrobenzene (TATB) up to the levels enumerated in Attachment 1. DLA is required to account for these two material research and development projects in its proposed FY 2014 Annual Materials Plan, because DLA will be using the Defense National Stockpile Transaction Fund to pay for the two material research and development projects.

In these material research and development projects, DLA would enter into arrangements with vendors to maintain inventories of the two materials with options that DLA could purchase material if needed. The quantities listed in Attachment 1 specific to the two material research and development projects are not acquisition target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be associated with the two material research and development projects in FY 2014. The quantity of each material that will actually be associated with the two material research and development projects will depend on the market for the materials during the fiscal year as well as on the quantity of each material approved for these material research and development projects by Congress. The proposed FY 2014 Annual Materials Plan also includes the acquisition of these two materials, in addition to the material research and development projects.

The Committee is seeking public comments on the potential market impact associated with the proposed FY

2014 AMP as enumerated in Attachment 1. Public comments are an important element of the Committee's market impact review process.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the quantities associated with the proposed FY 2014 AMP. All comments must be submitted to the addresses indicated in this notice. All comments submitted through email must include the phrase "Market Impact Committee Notice of Inquiry" in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on November 19, 2012. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-1900 for assistance.

Dated: October 11, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

Attachment 1

PROPOSED FISCAL YEAR 2014 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
<i>Disposals/Upgrades</i>			
Beryllium Metal	ST	17.5	(1)
Chromium, Ferro	ST	97,056 2.	(2,4)
Chromium, Metal	ST	500	(2)
Manganese, Ferro	ST	100,000	(2)
Manganese, Metallurgical Grade	SDT	100,000	(2)
Talc	ST	1,000	(2,3)
Tin	MT	804	(1)
Tungsten Metal Powder	LB W	198,308	(2,4)
Tungsten Ores and Concentrates	LB W	7,889,653	(2,4)
<i>Acquisitions and Material Research and Development Projects</i>			
Cadmium Zinc Tellurium (CZT) substrates	cm ²	40,000	(5)
Cadmium Zinc Tellurium (CZT) substrates	cm ²	24,000	(6)
Lithium Cobalt Oxide (LCO)	Kg	750	(6)
Lithium Nickel Cobalt Aluminum Oxide (NCA)	kg	540	(6)
Mesocarbon Microbeads (MCMB)	kg	648	(6)
Triamino-Trinitrobenzene (TATB)	LB	24,000	(5)
Triamino-Trinitrobenzene (TATB)	LB	16,000	(6)

¹ Potential Upgrade.

² Potential Disposal.

³ Potential Disposal (landfill).

⁴ Actual quantity will be limited to remaining inventory.

⁵ Potential Material Research and Development Project.

⁶ Potential Acquisition.

[FR Doc. 2012-25734 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-806]

Certain Pasta From Turkey: Rescission of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") is rescinding its administrative review of the countervailing duty order on certain pasta ("pasta") from Turkey for the period January 1, 2011, through December 31, 2011.

DATES: *Effective Date:* October 19, 2012.

FOR FURTHER INFORMATION CONTACT: David Layton at 202-482-0371 or Christopher Siepmann at 202-482-7958, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2012, the Department published a notice of opportunity to request an administrative review of the

countervailing duty order on pasta from Turkey for the period of review January 1, 2011, through December 31, 2011.¹ On July 31, 2012, Marsan Gida Sanayi ve Ticaret A.Ş. ("Marsan"), Bellini Gida Sanayi A.Ş. ("Bellini") and Eksper Gida Pazarlama San. ve Tic. A.Ş. ("Eksper") requested that the Department conduct a review of those companies.²

On August 30, 2012, in accordance with 19 CFR 351.221(c)(1)(i), the Department initiated an administrative review of the countervailing duty order on pasta from Turkey covering Marsan, Bellini and Eksper.³

On September 27, 2012, Marsan, Bellini and Eksper withdrew their request for an administrative review.⁴

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice initiating the review. Marsan, Bellini and Eksper

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 77 FR 39216 (July 2, 2012).

² See Letter from Marsan, Bellini and Eksper to the Department, "Request for Administrative Review" (July 31, 2012).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 77 FR 52688 (August 30, 2012).

⁴ See Letter from Marsan, Bellini and Eksper to the Department, "Withdrawal of Request for Administrative Review" (September 27, 2012).

withdrew their request for review within the 90-day deadline. No other interested party requested an administrative review of Marsan, Bellini, Eksper, or any other entity. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties on all entries of pasta from Turkey at rates equal to the cash deposit of estimated countervailing duties required at the time of entry or withdrawal from warehouse for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 12, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012-25847 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will meet Monday, November 19, 2012 from 8:30 a.m. to 5:00 p.m. Eastern time and Tuesday, November 20, 2012, from 8:30 a.m. to 3:00 p.m. Eastern time. The primary purpose of this meeting is to discuss engineering needs for existing buildings, to review the National Earthquake Hazards Reduction Program (NEHRP) agency updates on their latest activities, and to gather information for the Committee's 2013 Annual Report of the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at <http://nehrrp.gov/>.

DATES: The ACEHR will meet on Monday, November 19, 2012, from 8:30 a.m. until 5:00 p.m. Eastern time. The meeting will continue on Tuesday, November 20, 2012, from 8:30 a.m. until 3:00 p.m. Eastern time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899-8604. Dr. Hayes' email address is jack.hayes@nist.gov and his phone number is (301) 975-5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108-360). The Committee is composed of 12 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities;
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at <http://nehrrp.gov/>.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ACEHR will meet Monday, November 19, 2012 from 8:30 a.m. to 5:00 p.m. Eastern time and Tuesday, November 20, 2012, from 8:30 a.m. to 3:00 p.m. Eastern time. The meeting will be held in the Portrait Room, Administration Building, NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. The primary purpose of this meeting is to discuss engineering needs for existing buildings, to review the NEHRP agency updates on their latest activities, and to gather information for the Committee's 2013 Annual Report of the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at <http://nehrrp.gov/>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On November 20, 2012, approximately one-half hour will be reserved near the conclusion of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements,

those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899-8604, via fax at (301) 975-4032, or electronically by email to info@nehrrp.gov.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern time, Tuesday, November 13, 2012, in order to attend. Please submit your full name, email address, and phone number to Michelle Harman. Non-U.S. citizens must also submit their country of citizenship, title, and employer/sponsor. Mrs. Harman's email address is michelle.harman@nist.gov and her phone number is (301) 975-5324.

Dated: October 12, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012-25828 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 120912441-2441-01]

National Cybersecurity Center of Excellence (NCCoE)

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) Information Technology Laboratory (ITL) invites interested U.S. companies to submit letters of interest in collaborating with NIST/ITL on an ongoing basis in the National Cybersecurity Center of Excellence (NCCoE) through partnerships called "National Cybersecurity Excellence Partnerships" (NCEPs).

DATES: Letters of interest will be accepted on an ongoing basis. However, if NIST determines that letters of interest will no longer be accepted, NIST will publish the last date when letters will be accepted in a **Federal Register** notice.

ADDRESSES: Interested U.S. companies should send letters to Karen Waltermire via email at NCCoE@nist.gov; or via hardcopy to NCCoE, National Institute of Standards and Technology; 100

Bureau Drive; MS 2000; Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT:

Karen Waltermire via email at NCCoE@nist.gov; or telephone 301-975-4500. For additional information on NCCoE governance, business processes, and operational structure, visit the NCCoE Web site, at <http://csrc.nist.gov/nccoe>.

SUPPLEMENTARY INFORMATION: The NCCoE, hosted by NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE's mission is to bring together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE strives to enhance trust in U.S. IT communications, data, and storage systems, lower risk for companies and individuals in the use of IT systems, and encourage development of innovative, job-creating cybersecurity products and services.

As part of the NCCoE initiative, NIST/ITL intends to enter into partnerships, called "National Cybersecurity Excellence Partnerships" (NCEPs), with U.S. companies to collaborate on an ongoing basis in the NCCoE. Collaboration agreements will be based upon the statutory technology transfer authorities available to NIST, including the Federal Technology Transfer Act, 15 U.S.C. 3710a. NIST/ITL intends that NCEP collaborators will co-locate with ITL at the NCCoE at 9600 Gudelsky Drive Rockville, MD 20850 and will contribute to the development of the intellectual and physical infrastructure needed to support collaborative efforts among NIST and many sources of security capabilities, including users and vendors of products and services, on holistic approaches to resolve cybersecurity challenges.

Approaches to resolving cybersecurity challenges will be addressed at the NCCoE through individual "use cases," a standard tool used by software engineers to define specific function requirements of a system from the point of view of a user trying to accomplish a specific task. The "use cases" developed by NCCoE will incorporate the IT security needs of specific communities or sectors. Examples of candidate sectors include health care, finance and utilities. The cybersecurity challenges that will be the subject of the "use cases" will be selected by NIST

through workshops with input from broad groups of stakeholders, as well as public feedback provided via collaborative internet participation. Collaborative participation may be accessed via links from <http://nccoe.nist.gov/>. Opportunities to participate in individual "use cases" will be announced in the **Federal Register** and will be open to the public on a first-come, first-served basis. NIST/ITL envisions that the NCCoE will be capable of supporting multiple simultaneous "use cases" in various stages. NCEP collaborators will neither be obligated to participate in a given "use case," nor will they be guaranteed participation in a given "use case," but they will be given priority for participation in each "use case" only for their resources that are already onsite at the NCCoE and for components that are interoperable with those onsite resources, within the process defined for that "use case" as announced in the **Federal Register**.

NCEP collaborators selected to participate in a given "use case" may contribute, but will not be required to contribute, resources in addition to those contributed through their NCEP agreement. However, priority participation in a "use case" will be granted only for resources relevant to the "use case" that are already onsite in the NCCoE and components that are interoperable with those onsite resources. Through their collaboration agreements with NIST/ITL, NCEP collaborators will agree that resources contributed to the NCCoE initiative will be available to all "use case" participants, as determined by NIST. Through individual "use case" consortium agreements, all "use case" participants, including NIST, NCEP collaborators and others, will agree that successful solutions to a NCCoE "use case" will be thoroughly documented and shared publicly, in order to encourage the rapid adoption of comprehensive cybersecurity templates and approaches that support automated and trustworthy e-government and e-commerce.

Each NCEP will be between NIST and a U.S. company. It is anticipated that NCEP agreements will be established for a three-year period, with renewal subject to the requirements and interests of the collaborator and NIST/ITL.

Interested U.S. companies are invited to submit a letter of interest that contains sufficient information for NIST/ITL to objectively determine whether the proposed collaboration is feasible, relevant to the NCCoE mission to foster the rapid adoption and broad deployment of integrated cybersecurity

tools and techniques that enhance consumer confidence in U.S. information systems, and has potential to advance the state of cybersecurity practice. Companies whose proposed collaborations are determined by NIST/ITL to meet all three criteria will be invited to enter into negotiations for a cooperative research and development agreement (CRADA) with NIST/ITL. Companies whose letters of interest contain insufficient information for NIST/ITL to make a determination as to whether the proposed collaboration meets all three criteria, and companies whose proposed collaboration is determined by NIST/ITL not to meet all three criteria, will be notified in writing by NIST/ITL.

Dated: October 12, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012-25826 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Provisional Patent Application No. 61,623/957 titled "Highly Selective Gallium Nitride Nanowire/Titanium Dioxide-Nanocluster Hybrid Sensors for Detection of Benzene and Related Environmental Pollutants," NIST Docket No. 11-019 to the University of Maryland, having a place of business at 0133 Cole Student Activities Building, College Park MD 20742-1001. The grant of the license would be for all fields of use.

FOR FURTHER INFORMATION CONTACT:

Terry Lynch, National Institute of Standards and Technology, Technology Partnerships Office, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, (301) 975-2691, terry.lynch@nist.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be

royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Provisional Patent Application No. 61,623/957 is co-owned by the U.S. government, as represented by the Secretary of Commerce, George Mason University, and the University of Maryland. This invention is a chemical sensor architecture that combines the sensitive transduction capability of semiconducting nanostructures together with the enhanced catalytic efficiency of metal and metal-oxide nanoclusters. Nanowire-nanocluster hybrid chemical sensors are realized by functionalizing gallium nitride (GaN) nanowires (NWs) with titanium dioxide (TiO₂) nanoclusters for selectively sensing benzene and other related aromatic compounds. The Hybrid sensor devices are made by fabricating two-terminal devices using individual GaN NWs followed by the deposition of TiO₂ nanoclusters using RF magnetron sputtering. The sensor fabrication process employed standard microfabrication techniques.

Dated: October 12, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012-25827 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC279

Endangered and Threatened Species; Recovery Plan South-Central California Coast Steelhead Distinct Population Segment

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability for public review of the Public Review Draft Recovery Plan (Plan) for the South-Central California Coast (SCCCS) (*Oncorhynchus mykiss*) Distinct Population (DPS). NMFS is soliciting review and comment from the public and all interested parties on the

Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval. In addition, public meetings will be held as opportunities for learning more about and providing comments on the Public Review Draft Plan (see Public Meetings paragraph).

DATES: Comments must be received no later than 5 p.m. Pacific daylight time on December 18, 2012.

ADDRESSES: NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only. You may submit comments by any of the following methods:

- *Via email:*

SCCCS.Recovery@noaa.gov (No files larger than 5MB can be accepted)

- *Via U.S. Mail:* Penny Ruvelas, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802. ATTN: Penny Ruvelas/SCCC Steelhead Public Review Draft Recovery Plan Comments.

- *Hand delivered:* National Marine Fisheries Service, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802 ATTN: Protected Resources Division/SCCC Steelhead Public Review Draft Recovery Plan Comments. Business hours are 8 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

- *Via fax:* 562-980-4027. Please include the following on the cover page of the fax: "ATTN: Penny Ruvelas/SCCC Steelhead Public Review Draft Recovery Plan Comments."

FOR FURTHER INFORMATION CONTACT:

Mark H. Capelli, Recovery Coordinator, South-Central/Southern California, (805) 963-6478 or *mark.capelli@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is charged with the recovery of Pacific salmon and steelhead species listed under the Endangered Species Act (ESA). Recovery means that listed species and their ecosystems are restored, and their future secured, so that the protections of the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) A description of management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of time and costs required to achieve the plan's goal and the intermediate steps towards that goal. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an

opportunity for public review and comment be provided during recovery plan development. NMFS is hereby soliciting relevant information on SCCC Steelhead DPS populations and their freshwater/marine habitats. In addition, NMFS is soliciting comment on the contents of the proposed recovery plan.

Persons wishing to review the Public Review Draft Plan can obtain an electronic copy (i.e., CD ROM) from Aimee Fairbanks by calling (562) 980-4013 or by emailing a request to *aimee.fairbanks@noaa.gov* with the subject line "CD ROM Request for SCCC Steelhead Public Review Draft Recovery Plan." Electronic copies of the Public Review Draft Plan are also available on line on the following NMFS Web site: <http://swr.nmfs.noaa.gov/recovery>.

Public Meetings

Public meetings are planned for Monday, October 29th at 2 p.m. at the Ludwick Community Center, 864 Santa Rosa, San Luis Obispo CA 93401 and Tuesday, October 30th at 2 p.m. at the Monterey Public Library, Community Room, 625 Pacific Street, Monterey CA 93940.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 12, 2012.

Larissa Plants,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012-25733 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC251

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide Year 2013 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2013 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota (ITQ) allocation holders that they will be required to purchase their fishing year 2013 (January 1, 2013–December 31, 2013) cage tags from the National Band and Tag Company. The intent of this notice is to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to: Regional Administrator,

National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 282-8483; fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2013 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to ITQ allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: October 12, 2012.

Emily H. Menashes,

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

[FR Doc. 2012-25703 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC296

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, November 5, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn By the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775-2311; fax: (207) 772-4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will meet to continue development of Framework Adjustment 48 to the Northeast Multispecies Fishery Management Plan. The Committee will review all options that have been developed and may select preferred alternatives for this action. Measures in the framework include specifications for Fishing Year 2013-15, additional sub-Annual Catch Limits, measures that address monitoring issues for groundfish sectors, changes to accountability measures, recreational fishing measures, and measures that would allow limited access to existing year-round groundfish closed areas. The Committee will also review suggested Council priorities for 2013, and may develop recommendations for those priorities. The Committee will also consider developing possible mitigation measures for the low catch levels expected in Fishing Year 2013, such as recommending the Council pursue measures to increase landings of skates, dogfish, and monkfish. Committee recommendations will be considered by the Council at the November Council meeting. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: October 15, 2012.

William D. Chappell,

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

[FR Doc. 2012-25722 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC267

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Snapper Grouper Advisory Panel (AP) in North Charleston, SC.

DATES: The meeting will take place November 7-8, 2012. See

SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; telephone: (843) 744-4422; fax: (843) 744-4472.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Members of the Snapper Grouper AP will meet from 9 a.m. on November 7, 2012, until 3 p.m. on November 8, 2012.

The meeting will address updates from the October 2012 Scientific and Statistical Committee (SSC) Meeting, including: Results of the vermilion snapper and red porgy assessments and the yellowtail snapper benchmark assessment; and the probability of rebuilding for black sea bass. Additionally, the AP will receive updates on recently completed amendments and provide input on developing amendments, including: Regulatory Amendment 13, which would adjust Annual Catch Limits (ACLs) for unassessed snapper grouper species to incorporate revised recreational landings estimates based on the Marine Recreational Information Program (MRIP); Regulatory Amendment 15, which contains measures that would allow future harvest of red snapper, adjust the Acceptable Biological Catch (ABC), ACLs, and Annual Catch Target (ACT) for yellowtail snapper based on the most recent stock assessment as well as

modify the Accountability Measure (AM) for gag that prohibits the harvest of shallow water groupers species when the gag ACL is met; and Amendment 27, which would address management measures for blue runner. Amendment 27 would also transfer management responsibility of yellowtail snapper, mutton snapper and Nassau grouper from the Gulf of Mexico Fishery Management Council to the South Atlantic Fishery Management Council and make revisions to the framework process to minimize regulatory delay when adjustments to the ABC, ACLs, and ACTs are needed. The AP will provide recommendations to the Council on visioning and long-term strategic planning for the snapper grouper fishery and address other business as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 16, 2012.

William D. Chappell,

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

[FR Doc. 2012-25822 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC297

New England Fishery Management Council; Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The New England Fishery Management Council's (Council) Herring Advisory Panel and Herring Oversight Committee will hold meetings to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: These meetings will be held November 6-7, 2012. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held at the Holiday Inn, One Newbury Street, Route 1, Peabody, MA 01960; Telephone: (978) 535-4600; Fax: (978) 535-8238. The meeting will also be available via webinar. Details on webinar registration are available at www.nefmc.org. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Council address: New England Fishery Management Council, 50 Water Street, Mill #2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The panel and committee's schedule and agenda for the following two meetings are as follows:

1. *Tuesday, November 6, 2012 beginning at 10 a.m.—Herring Advisory Panel Meeting;* The panel will discuss the development of the 2013-15 Atlantic herring fishery specifications and develop related recommendations for the Herring Committee and Council to consider.

2. *Wednesday, November 7, 2012 beginning at 9:30 a.m.—Herring Oversight Committee Meeting;* The Committee will continue development of alternatives for consideration in the 2013-15 Atlantic herring fishery specifications; 2013-15 herring fishery specifications include alternatives for 2013-15 overfishing limit (OFL), acceptable biological catch (ABC) and ABC control rule, management uncertainty and a total annual catch limit (ACL), domestic annual harvesting (DAH), domestic annual processing (DAP), Border Transfer (BT), options for sub-ACLs (annual quotas) for four herring management areas, and set-asides for research and fixed gear fisheries. They will address other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues

arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**), at least 5 working days prior to the meeting date.

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

Dated: October 15, 2012.

William D. Chappell,

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

[FR Doc. 2012-25724 Filed 10-18-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC292

Atlantic Highly Migratory Species; Advisory Panel

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

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill approximately one-third (10) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations are considered for membership in the HMS AP (note that there are no Environmental/NGO terms expiring, so no nominations for that sector will be considered at this time).

DATES: Nominations must be received on or before November 19, 2012.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of

Organization, Practices, and Procedures by any of the following methods:

- *Email:* HMSAP.Nominations@noaa.gov. Include in the subject line the following identifier: "HMS AP Nominations."
- *Mail:* Jenni Wallace, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301-713-1917.

FOR FURTHER INFORMATION CONTACT: Jenni Wallace at (301) 427-8503.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104-297, provided that the Secretary may establish Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for any highly migratory species fishery that is under the Secretary's authority. NMFS has consulted with the HMS AP on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the Consolidated HMS FMP (October 2006); Amendments 1, 2, 3, 4, 5, 6, 7, and 8 to the Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, and March 2012); among other relevant fishery management issues.

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the nominee and a description of his/her interest in HMS or in particular species of sharks, swordfish, tunas, or billfish;
2. Contact information, including mailing address, phone, and email of the nominee;
3. A statement of background and/or qualifications;
4. A written commitment that the nominee shall actively participate in good faith in the meetings and tasks of the HMS AP; and
5. A list of outreach resources that the nominee has at his/her disposal to communicate HMS issues to various interest groups.

Qualifications for HMS AP Membership

Qualification for membership includes one or more of the following: (1) Experience in HMS recreational fisheries; (2) experience in HMS commercial fisheries; (3) experience in fishery-related industries (*e.g.*, marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries; or environmental, governmental, or academic interests dealing with HMS.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations

are sought for terms beginning January 2013 and expiring December 2015.

B. Participants

Nominations for the HMS AP will be accepted to allow representation from commercial and recreational fishing interests, and the scientific community, who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each HMS AP member serves a 3-year term with approximately one-third of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 2 commercial, 5 recreational, and 3 academic vacancies by December 31, 2012. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors. NMFS also considers species expertise and representation from the fishing regions (Northeast, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean) to ensure the diversity and balance of the AP. Table 1 includes the current representation on the HMS AP by sector, region and species with terms that are expiring identified in bold. It is not meant to indicate that NMFS will only consider persons who have expertise in the species or fishing regions that are listed. Rather, NMFS will aim toward having as diverse and balanced an AP as possible.

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES

[Terms that are expiring are in **bold**. NMFS tries to maintain diversity and balance in representation among fishing regions and species; the AP SOPPs only dictate representation by Sector.]

Sector	Fishing Region	Species	Date appointed	Date term expires
Academic	All	Swordfish/Tuna	1/1/2012	12/31/2014
Academic	All	Tuna	1/1/2010	12/31/2012
Academic	Southeast/Gulf of Mexico	Shark	1/1/2010	12/31/2012
Academic	Southeast	Swordfish/HMS	1/1/2010	12/31/2012
Commercial	Northeast	HMS	1/1/2012	12/31/2014
Commercial	Northeast	Tuna	1/1/2012	12/31/2014
Commercial	Gulf of Mexico	Tuna/Swordfish	1/1/2012	12/31/2014
Commercial	Northeast	Tuna	1/1/2012	12/31/2014
Commercial	Northeast	Tuna	1/1/2012	12/31/2014
Commercial	Southeast	Shark	1/1/2010	12/31/2012
Commercial	Southeast	Swordfish/Tuna	1/1/2010	12/31/2012
Commercial	Northeast	Tuna	1/1/2011	12/31/2013
Commercial	Mid-Atlantic	HMS/Shark	1/1/2011	12/31/2013
Commercial	Southeast	Swordfish	1/1/2011	12/31/2013
Commercial	Gulf of Mexico	Shark	1/1/2011	12/31/2013
Commercial	Gulf of Mexico	Shark	1/1/2011	12/31/2013
Environmental	All	Shark	1/1/2012	12/31/2014
Environmental	Gulf of Mexico	HMS	1/1/2012	12/31/2014
Environmental	All	Tuna	1/1/2011	12/31/2013

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES—Continued

[Terms that are expiring are in **bold**. NMFS tries to maintain diversity and balance in representation among fishing regions and species; the AP SOPPs only dictate representation by Sector.]

Sector	Fishing Region	Species	Date appointed	Date term expires
Environmental	All	Tuna	1/1/2011	12/31/2013
Recreational	Gulf of Mexico/Southeast	Billfish/Tuna	1/1/2012	12/31/2014
Recreational	Mid-Atlantic	HMS	1/1/2012	12/31/2014
Recreational	Mid-Atlantic	Tuna	1/1/2012	12/31/2014
Recreational	Northeast	Tuna/Shark	1/1/2010	12/31/2012
Recreational	Southeast	Swordfish	1/1/2010	12/31/2012
Recreational	Northeast	Tuna	1/1/2010	12/31/2012
Recreational	Southeast	HMS	1/1/2010	12/31/2012
Recreational	Northeast	HMS	1/1/2010	12/31/2012
Recreational	Southeast	HMS	1/1/2011	12/31/2013
Recreational	Mid-Atlantic	HMS	1/1/2011	12/31/2013
Recreational	Southeast	Billfish	1/1/2011	12/31/2013
Recreational	Gulf of Mexico	HMS	1/1/2011	12/31/2013

Our intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year—once in the spring, and once in the fall. The meetings may be held in conjunction with public hearings.

Dated: October 12, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–25708 Filed 10–18–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC283

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California (UC) Santa Cruz for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to rocky intertidal monitoring surveys. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to PISCO to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than November 19, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is ITP.Nachman@noaa.gov. NMFS is not responsible for email

comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS is also preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. This notice provides relevant environmental issues and concerns related to the proposed IHA. NMFS will consider comments submitted in response to this notice as it prepares and finalizes the EA and decides whether or not to issue a Finding of No Significant Impact. The EA will be posted at the foregoing internet site once it is finalized. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On July 18, 2012, NMFS received an application from PISCO for the taking of marine mammals incidental to rocky

intertidal monitoring surveys along the Oregon and California coasts. NMFS determined that the application was adequate and complete on September 11, 2012.

The research group at UC Santa Cruz operates in collaboration with two large-scale marine research programs: PISCO and the Multi-agency Rocky Intertidal Network. The research group at UC Santa Cruz (PISCO) is responsible for many of the ongoing rocky intertidal monitoring programs along the Pacific coast. Monitoring occurs at rocky intertidal sites, often large bedrock benches, from the high intertidal to the water's edge. Long-term monitoring projects include Community Structure Monitoring, Intertidal Biodiversity Surveys, Marine Protected Area Baseline Monitoring, Intertidal Recruitment Monitoring, and Ocean Acidification. Research is conducted throughout the year along the California and Oregon coasts and will continue indefinitely. Most sites are sampled one to three times per year over a 4–6 hour period during a negative low tide series. This IHA, if issued, though, would only be effective for a 12-month period from the date of its issuance. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: presence of survey personnel near pinniped haulout sites and approach of survey personnel towards hauled out pinnipeds. Take, by Level B harassment only, of individuals of three species of marine mammals is anticipated to result from the specified activity.

Description of the Specified Activity and Specified Geographic Region

PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. PISCO integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. A short description of each project is contained here. Additional information can be found in PISCO's application (see ADDRESSES).

Community Structure Monitoring involves the use of permanent photoplot quadrats which target specific algal and invertebrate assemblages (e.g. mussels, rockweeds, barnacles). Each photoplot is photographed and scored for percent cover. The Community Structure Monitoring approach is based largely on surveys that quantify the percent cover and distribution of algae and invertebrates that constitute these communities. This approach allows researchers to quantify both the patterns

of abundance of targeted species, as well as characterize changes in the communities in which they reside. Such information provides managers with insight into the causes and consequences of changes in species abundance. Each Community Structure site is surveyed over a 1-day period during a low tide series one to three times a year. Sites, location, number of times sampled per year, and typical sampling months for each site are presented in Table 1 in PISCO's application (see ADDRESSES).

Biodiversity Surveys, which are part of a long-term monitoring project and are conducted every 3–5 years at established sites, involve point contact identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements. Table 2 in PISCO's application (see ADDRESSES) lists established biodiversity sites in Oregon and California.

In September 2007, the state of California began establishing a network of Marine Protected Areas along the California coast as part of the Marine Life Protection Act (MLPA). Under baseline monitoring programs funded by Sea Grant and the Ocean Protection Council, PISCO established additional intertidal monitoring sites in the Central Coast (Table 3 in PISCO's application), North Central Coast (Table 4 in PISCO's application), and South Coast (Table 5 in PISCO's application) study regions. Baseline characterization of newly established areas involves sampling of these new sites, as well as established sites both within and outside of marine protected areas. These sites were sampled using existing Community Structure and Biodiversity protocols for consistency. Resampling of newly established sites may take place every 5 years as part of future marine protected area evaluation.

Intertidal recruitment monitoring collects data on invertebrate larval recruitment. Mussel and other bivalve recruits are collected in mesh pot-scrubbers bolted into the substrate. Barnacle recruits and cyprids are collected on PVC plates covered in non-slip tape and bolted to the substrate. Both are collected once a month and processed in the lab. Intertidal recruitment monitoring is currently conducted on a monthly basis at two central California sites: Terrace Point and Hopkins.

The Ocean Margin Ecosystems Group for Acidification Studies is a National Science Foundation funded project that involves research at eight sites along the California Current upwelling system

from Southern California into Oregon. PISCO is responsible for research at two of these sites, Hopkins and Terrace Point, located in the Monterey Bay region of mainland California. The intention of this collaboration is to monitor oceanic pH on large spatial and temporal scales and to determine if any relationship exists between changing ocean chemistry and the states of two key intertidal organisms, the purple urchin and the California mussel. The project involves field experiments involving the two focal species from each site, as well as lab studies. Currently both sites are visited two to three times per month for sampling and equipment maintenance.

Specified Geographic Location and Activity Timeframe

PISCO's research is conducted throughout the year along the California and Oregon coasts. Figures 1 through 4 in PISCO's application depict regularly sampled sites. Red stars in the figures indicate sites where pinnipeds are found during monitoring survey activities. Most sites are sampled one to three times per year over a 1-day period (4–6 hours per site) during a negative low tide series. Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Table 1 in PISCO's application (see **ADDRESSES**) outlines the typical sampling season for the various locations. Some sampling is anticipated to occur in all months, except for January, August, and September.

The intertidal zones where PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out on the shore at or adjacent to some research sites. Accessing portions of the intertidal habitat may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys. The species for which Level B harassment is requested are: California sea lions (*Zalophus californianus californianus*); harbor seals (*Phoca vitulina richardii*); and northern elephant seals (*Mirounga angustirostris*).

Description of Marine Mammals in the Area of the Specified Activity

Several pinniped species can be found along the California and Oregon coasts. The three that are most likely to occur at some of the research sites are

California sea lion, harbor seal, and northern elephant seal. On rare occasions, PISCO researchers have seen very small numbers (i.e., five or fewer) Steller sea lions at one of the sampling sites. These sightings are rare. Therefore, encounters are not expected. However, if Steller sea lions are sighted before approaching a sampling site, researchers will abandon approach and return at a later date. For this reason, this species is not considered further in this proposed IHA notice.

We refer the public to Carretta *et al.* (2011) for general information on these species which are presented below this section. The publication is available on the Internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf>. Additional information on the status, distribution, seasonal distribution, and life history can also be found in PISCO's application.

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the Endangered Species Act (ESA), nor are they categorized as depleted under the MMPA. The estimated population of the California breeding stock is approximately 124,000 animals with a minimum estimate of 74,913 (Carretta *et al.*, 2011).

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 330–800 m (1,000–2,500 ft) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.*, 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.*, 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

During PISCO research activities, the maximum number of northern elephant seals observed at a single site was at least 10 adults plus an unknown number of pups. These were observed offshore of Piedras Blancas. A small

group of five adult elephant seals and five pups has been observed in the vicinity of our site at Piedras Blancas, and one elephant seal has been observed at Pigeon Point.

California Sea Lion

California sea lions are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The California sea lion is now a full species, separated from the Galapagos sea lion (*Z. wolfebaeki*) and the extinct Japanese sea lion (*Z. japonicus*) (Brunner, 2003; Wolf *et al.*, 2007; Schramm *et al.*, 2009). The estimated population of the U.S. stock of California sea lion is approximately 296,750 animals, and the current maximum population growth rate is 12 percent (Carretta *et al.*, 2011).

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.*, 2011). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately 4–5 days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between 4 and 10 months of age (NMML, 2010). In central California, a small number of pups are born on Ano Nuevo Island, Southeast Farallon Island, and occasionally at a few other locations; otherwise, the central California population is composed of non-breeders.

A 2005 haul-out count of California sea lions between the Oregon/California border and Point Conception as well as the Channel Islands found 141,842 individuals (Carretta *et al.*, 2010). The number of sea lions found at any one of our study sites is variable, and often no California sea lions are observed during sampling.

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The estimated population of the California stock of Pacific harbor seals is approximately 30,196 animals (Carretta *et al.*, 2011). A 1999 census of the

Oregon/Washington harbor seal stock found 16,165 individuals, of which 5,735 were in Oregon (Carretta *et al.*, 2011).

The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardii* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental U.S., including: the outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). Harbor seals mate at sea, and females give birth during the spring and summer, although the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (NCCOS, 2007).

At several sites, harbor seals are often observed and have the potential to be disturbed by researchers accessing or sampling the site. The largest number of harbor seals occurs at Hopkins where often 20–30 adults and 10–15 pups are hauled out on a small beach adjacent to the sampling site.

Other Marine Mammals in the Proposed Acta Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 2 km (1.2 mi) of shore. This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this notice.

Potential Effects of the Specified Activity on Marine Mammals

The appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out at sampling sites. Although marine mammals are never deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent study plots. Disturbance may

result in reactions ranging from an animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 m (3.3 ft) or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.*, 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; Mortenson *et al.*, 2000). The Hawaiian monk seal (*Monachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon, 1972). And in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season, researchers will visit sites one to three times per year for a total of 4–6 hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus, an occurrence that is not expected at the proposed sampling sites. The three situations are (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and

pups; and (3) crushing of elephant seal pups by large males during a stampede.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (e.g., cliffs). However, while cliffs do exist along the coast, shoreline habitats near the abalone study sites are of steeply sloping rocks with unimpeded and non-obstructive access to the water. If disturbed, hauled-out animals in these situations may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area. In these circumstances, the risk of injury, serious injury, or death to hauled-out animals is very low. Thus, abalone research activity poses no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations.

The risk of marine mammal injury, serious injury, or mortality associated with rocky intertidal monitoring increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. The risk of either of these situations is greater in the event of a stampede.

Very few pups are anticipated to be encountered during the proposed monitoring surveys. No California sea lion pups are anticipated to be encountered, as rookery sites are typically limited to the islands. A very small number of harbor seal and northern elephant seal pups have been observed at a couple of the proposed monitoring sites over the past years. Though elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence than the other two species. Further, pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups. No research would occur where

separation of mother and her nursing pup or crushing of pups can become a concern.

In summary, NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds because pups are only found at a couple of the proposed sampling locations during certain times of the year and that many rookeries occur on the offshore islands and not the mainland areas where the proposed activities would occur. In addition, researchers will exercise appropriate caution approaching sites, especially when pups are present and will redirect activities when pups are present.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the proposed activity is the placement of permanent bolts and other sampling equipment in the intertidal. Bolts are installed during the set-up of a site and, at existing sites, this has already occurred. In some instances, bolts will need to be replaced or installed for new plots. Bolts are 7.6 to 12.7 cm (2 to 5 in) long, stainless steel 1 cm (3/8 in) Hex or Carriage bolts. They are installed by drilling a hole with a battery powered DeWalt 24 volt rotary hammer drill with a 1 cm (3/8 in) bit. The bolts protrude 1.3–7.6 cm (0.5–3 in) above the rock surface and are held in place with marine epoxy. Although the drill does produce noticeable noise, researchers have never observed an instance where near-by or offshore marine mammals were disturbed by it. Any marine mammal at the site would likely be disturbed by the presence of researchers and retreat to a distance where the noise of the drill would not increase the disturbance. In most instances, wind and wave noise also drown out the noise of the drill. The installation of bolts and other sampling equipment is conducted under the appropriate permits (Monterey Bay National Marine Sanctuary, California State Parks). Once a particular study has ended, the respective sampling equipment is removed. No trash or field gear is left at a site. Thus, the proposed activity is not expected to have any habitat-related effects, including to marine mammal prey species, that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the

permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

PISCO proposes to implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include: (1) Conducting slow movements and staying close to the ground to prevent or minimize stampeding; (2) avoiding loud noises (i.e., using hushed voices); (3) avoiding pinnipeds along access ways to sites by locating and taking a different access way and vacating the area as soon as sampling of the site is completed; (4) monitoring the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters; (5) using binoculars to detect pinnipeds before close approach to avoid being seen by animals; (6) only flushing pinnipeds if they are located in the sampling plots and there are no other means to accomplish the survey (however, flushing must be done slowly and quietly so as not to cause a stampede); (7) no intentional flushing if pups are present at the sampling site; and (8) rescheduling sampling if Steller sea lions are present at the site.

The methodologies and actions noted in this section will be utilized and included as mitigation measures in any issued IHA to ensure that impacts to marine mammals are mitigated to the lowest level practicable. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. In no case will marine mammals be deliberately approached by survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. In general, researchers will stay inshore of pinnipeds whenever possible to allow maximum escape to the ocean. Each visit to a given study site will last for approximately 4–6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. By arriving before low tide, worker presence will

tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

PISCO will suspend sampling and monitoring operations immediately if an injured marine mammal is found in the vicinity of the project area and the monitoring activities could aggravate its condition.

NMFS has carefully evaluated PISCO's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

PISCO can add to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and

(3) rare or unusual species of marine mammals for agency follow-up.

Proposed monitoring requirements in relation to PISCO's rocky intertidal monitoring will include observations made by the applicant. Information recorded will include species counts (with numbers of pups/juveniles when possible), numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. In addition, observations regarding the number and species of any marine mammals observed, either in the water or hauled out, at or adjacent to the site, will be recorded as part of field observations during research activities. Observations of unusual behaviors, numbers, or distributions of pinnipeds will be reported to NMFS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to NMFS. Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted will also be noted.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the proposed research, PISCO will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2012–2013 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS Southwest Office Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of

pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. Animals hauled out close to the actual survey sites may be disturbed by the presence of biologists and may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed.

For the purpose of this proposed IHA, only Oregon and California sites that are frequently sampled and have a marine mammal presence during sampling were included in take estimates. Sites where only Biodiversity Surveys are conducted were not included due to the infrequency of sampling and rarity of occurrences of pinnipeds during sampling. In addition, Steller sea lions are not included in take estimates as they will not be disturbed by researchers or research activities since activities will not occur or be suspended if Steller sea lions are present. A small number of harbor seal and northern elephant seal pup takes are anticipated as pups may be present at several sites during spring and summer sampling.

Takes estimates are based on marine mammal observations from each site. Marine mammal observations are done as part of PISCO site observations, which include notes on physical and biological conditions at the site. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day is recorded at the conclusion of sampling. A marine mammal is counted if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site. Marine mammals in the water immediately offshore are also recorded. Any other relevant information,

including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

These observations formed the basis from which researchers with extensive knowledge and experience at each site estimated the actual number of marine mammals that may be subject to take. In most cases the number of takes is based on the maximum number of marine mammals that have been observed at a site throughout the history of the site (2–3 observation per year for 5–10 years or more). Section 6 in PISCO's application outlines the number of visits per year for each sampling site and the potential number of pinnipeds anticipated to be encountered at each site. Table 7 in PISCO's application outlines the number of potential takes per site (see **ADDRESSES**).

Based on this information, NMFS proposes to authorize the take, by Level B harassment only, of 52 California sea lions, 440 harbor seals, and 30 northern elephant seals. These numbers are considered to be maximum take estimates; therefore, actual take may be slightly less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

No injuries or mortalities are anticipated to occur as a result of PISCO's rocky intertidal monitoring, and none are proposed to be authorized. The behavioral harassments that could occur would be of limited duration, as researchers only conduct sampling one to three times per year at each site for a total of 4–6 hours per sampling event. Therefore, disturbance will be limited to a short duration, allowing pinnipeds to reoccupy the sites within a short amount of time.

Some of the pinniped species may use some of the sites during certain times of year to conduct pupping and/or

breeding. However, some of these species prefer to use the offshore islands for these activities. At the sites where pups may be present, PISCO has proposed to implement certain mitigation measures, such as no intentional flushing if dependent pups are present, which will avoid mother/pup separation and trampling of pups.

Of the three marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA. Table 1 in this document presents

the abundance of each species or stock, the proposed take estimates, and the percentage of the affected populations or stocks that may be taken by harassment. Based on these estimates, PISCO would take less than 1.5% of each species or stock. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present.

Based on the analysis contained herein of the likely effects of the

specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the rocky intertidal monitoring program will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the rocky intertidal monitoring program will have a negligible impact on the affected species or stocks.

TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE PROPOSED ROCKY INTERTIDAL MONITORING PROGRAM

Species	Abundance*	Total proposed Level B take	Percentage of stock or population
Harbor Seal	30,196	440	1.5
California Sea Lion	296,750	52	0.02
Northern Elephant Seal	124,000	30	0.02

* Abundance estimates are taken from the 2011 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.*, 2012).

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

None of the marine mammals for which incidental take is proposed are listed as threatened or endangered under the ESA. NMFS' Permits and Conservation Division worked with the NMFS Southwest Regional Office to ensure that Steller sea lions would be avoided and incidental take would not occur. Therefore, NMFS has determined that issuance of the proposed IHA to PISCO under section 101(a)(5)(D) of the MMPA will have no effect on species listed as threatened or endangered under the ESA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment (EA), pursuant to NEPA, to determine whether the issuance of an IHA to PISCO for its 2012–2013 rocky intertidal monitoring activities may have a significant impact on the human environment. This analysis and a determination on whether to issue a Finding of No Significant Impact (FONSI) will be completed prior to the

issuance or denial of this proposed IHA. This notice identifies the environmental issues and provides environmental information relevant to the proposed action, NMFS' issuance of the IHA. Members of the public are invited to provide comments, and NMFS will consider and evaluate responsive comments as it prepares the EA and decides whether to issue a FONSI.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to PISCO's rocky intertidal monitoring research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 11, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–25732 Filed 10–18–12; 8:45 am]

BILLING CODE 3510–22–P

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 11/19/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

Products

NSN: 7920-00-NIB-0542—Scrub Brush, Polypropylene Bristles, Extension Pole-Compatible, 2" x 8".

NSN: 7920-00-NIB-0545—Scrub Brush, Wire, Knuckle Guard, Long Handle, Ergonomic, 6" x 1 1/8", w/built-in scraper.

NSN: 7920-00-NIB-0547—Scrub Brush, Wire, Stainless, Ergonomic, 5".

NSN: 7920-00-NIB-0558—Scrub Brush, Wire, Black Tempered, Ergonomic, 5".

NSN: 7920-00-NIB-0563—Wire Brush, Wire, Knuckle Guard, Long Handle, Ergonomic, 6" x 1 1/8".

NPA: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: General Services Administration, Fort Worth, TX.

Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Administrative Services, Dept. of Housing and Urban Development (HUD), MultiLocations—Nationwide, 77 West Jackson Blvd., Rm. 2517, Mail Code: NFNC, Chicago, IL.

NPA: Nobis Enterprises, Inc., Marietta, GA.

Contracting Activity: Department of Housing and Urban Development, Chicago, IL.

Service Type/Location: Contract Closeout, Architect of the Capitol, Acquisitions & Material Mgmt. Div., Ford House Office Building, H2-263, Washington, DC

NPA: ServiceSource, Inc., Alexandria, VA.

Contracting Activity: Architect of the Capitol, Washington, DC.

Service Type/Location: Mess Attendant Services, 128th Air Refueling Wing, Wisconsin Air National Guard (WI ANG) Dining Facility, Bldg. 611, 1919 E Grange Ave., Milwaukee, WI.

NPA: Easter Seals Southeast Wisconsin, Inc., South Milwaukee, WI.

Contracting Activity: Dept of the Army, W7N8 USPFO Activity WI ARNG, Camp Douglas, WI.

The following information is provided to further describe the Mess Attendant Services being proposed for addition to the Procurement List. For this project, the DOD contracting activity specifically identified its requirement as Food Service Attendants (FSA) Service in its Performance Work Statement (PWS) which is synonymous with Mess Attendant Services. The PWS describes the FSA service tasks as (1) Serving and replenishing food; (2) Cleaning facilities, equipment, and utensils; (3) Cleaning tables in the Dining Area; (4) Handling food, supplies, and equipment; and (5) Maintaining quality control. The PWS also requires a minimum number of housekeeping and grounds maintenance tasks be performed by the FSA.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN: 7520-01-443-4902—VuRyte—VuRyser Ergonomic Computer Workstation.

NSN: 7520-01-453-6246—VuRyte—VuRyser Ergonomic Computer Workstation.

NSN: 7520-01-453-6247—VuRyte—VuRyser Ergonomic Computer Workstation.

NSN: 7520-01-461-1552—VuRyte Document Holder.

NPA: Tarrant County Association for the Blind, Fort Worth, TX.

Contracting Activity: General Services Administration, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012-25778 Filed 10-18-12; 8:45 am]

BILLING CODE 6353-01-P

BUREAU OF CONSUMER FINANCIAL PROTECTION**Privacy Act of 1974; System of Records**

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Revised Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection hereinto referred to as the Consumer Financial Protection Bureau ("CFPB" or the "Bureau") gives notice of the establishment of a modified Privacy Act System of Records.

DATES: Comments must be received no later than November 19, 2012. The system of records will be effective November 28, 2012 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, by any of the following methods:

- *Electronic:* privacy@cfpb.gov.
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Claire Stapleton, Chief Privacy Officer,

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435-7220.

SUPPLEMENTARY INFORMATION: The CFPB revises its Privacy Act System of Records Notice ("SORN") "CFPB.005—Consumer Response System." In revising this SORN, in accordance with its concurrently published amendment to the CFPB's Rule on the Disclosure of Records and Information (the "Rule"), the CFPB exempts certain information in the SORN from public access and certain other provisions of the Privacy Act of 1974, 5 U.S.C. 552a and subpart E of the Rule. The CFPB's rationale for the exemption is set forth in its amendment to the Rule. Additionally, this notice includes a non-substantive change to the text of the Routine Uses found at (8) and (11).

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The revised system of records entitled "CFPB.005—Consumer Response System" is published in its entirety below.

Dated: October 11, 2012.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.005**SYSTEM NAME:**

CFPB Consumer Response System.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who submit complaints or inquiries to the CFPB (on their own or others' behalf); individuals on whose behalf complaints or inquiries are submitted by others (such as attorneys, members of Congress, third party advocates, and/or other governmental organizations); and individuals or employees of entities about whom complaints or inquiries have been received by prudential regulators, the Federal Trade Commission, other federal agencies, state agencies or the CFPB. The term "prudential regulators" refers to any federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act, and the National Credit Union Administration.

Information collected regarding consumer products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain: (1) Correspondence or other information received; (2) information from the entity or individual referring the inquiry or complaint; (3) records created of verbal communications by or with complainants or other individuals; (4) information regarding third party advocates or others who submit complaints or inquiries on another's behalf; (5) information identifying the entity that is subject to the complaint or inquiry or its employees; (6) communication with or by the entity that is subject to the complaint or inquiry or its employees; (7) unique identifiers, codes, and descriptors categorizing each complaint or inquiry file; (8) information about how complaints or inquiries were responded to or referred, including any resolution; (9) records used to respond to or refer complaints or inquiries, including information in the CFPB's other systems of records; and (10) identifiable information regarding both the individual who is making the inquiry or complaint, and the individual on whose behalf such inquiry or complaint is made, and employees of the entity about which the complaint or inquiry was made, including name, social security number, account numbers, address, phone number, email address, date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Sections 1011, 1012, 1013(b)(3), 1021, 1034, codified at 12 U.S.C. 5491, 5492, 5493(b)(3), 5511, 5534.

PURPOSE(S):

The information in the system is being collected to enable the CFPB to receive, respond to, and refer complaints or inquiries regarding consumer financial products or services. The system serves as a record of the complaint or inquiry, and is used for collecting complaint or inquiry data; responding to or referring the complaint or inquiry; aggregating data that will be used to inform other functions of the CFPB and, as appropriate, other agencies and/or the public; and preparing reports as required by law. This system consists of complaints or inquiries received by the CFPB or other

entities and information concerning responses to or referrals of these complaints or inquiries, as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES TO:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules promulgated at 12 CFR part 1070 *et seq.* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice ("DOJ") for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding,

and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;
 (b) Any employee of the CFPB in his or her official capacity;
 (c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or
 (d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) Appropriate agencies, entities, and persons, to the extent necessary to obtain information needed to investigate, resolve, respond, or refer a complaint or inquiry;

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license;

(10) An entity or person that is the subject of the complaint or inquiry and the counsel or non-attorney representative for that entity or person; and

(11) Federal and state agencies for the purpose of facilitating the data sharing requirements described in 12 U.S.C. 5493(b)(3)(D) concerning consumer complaint information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including without limitation the individual's name, social security number, complaint/inquiry case number, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who

have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain computer and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The Consumer Financial Protection Bureau, Assistant Director of Response Center, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, "Disclosure of Records and Information." Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals and entities filing complaints and inquiries, other governmental authorities, and entities that are the subjects of complaints and inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), to the extent that the Consumer Response System contains investigatory materials compiled for law enforcement purposes those materials are exempt from disclosure under 5 U.S.C. 522a.

[FR Doc. 2012-25487 Filed 10-18-12; 8:45 am]

BILLING CODE 4810-AM-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part

of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the President's Volunteer Service Awards (PVSA), parts A, B, C, D, E and F.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 18, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of Public Engagement, Attn: Mr. David Premo, (Public Engagement Specialist) 1201 New York Avenue NW., Washington, DC 20525.

(2) *By hand delivery or by courier to:* the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606-3460, Attention: Mr. David Premo, Public Engagement Specialist.

(4) *Electronically through* www.regulations.gov. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. David Premo, (202) 606-6717, or by email at dpremo@cns.gov.

SUPPLEMENTARY INFORMATION:

CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background: The President's Volunteer Service Awards were created by Executive Order on January 30, 2003. The awards are administered by the Corporation for National and Community Service. Under the Executive Order, the Corporation was directed to (among other things) design and recommend programs to recognize individuals, schools, and organizations that excel in their efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning. The President's Volunteer Service Awards fulfills this direction. In order to recognize individuals, schools and organizations, the program must collect information about the individuals and organizations and their activities to verify that they are eligible to receive the award and have earned the award.

Current Action: CNCS seeks to renew the current information collection. The forms have been edited to include questions that allow us to confirm eligibility and provide a more streamlined online experience.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2013.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: President's Volunteer Service Awards, parts A, B, C, D, E and F.

OMB Number: 3045-0086.

Agency Number: None.

Affected Public: General public.

Total Respondents: 200,000.

Frequency: On occasion.

Average Time per Response: Averages 20 minutes.

Estimated Total Burden Hours: 66,666 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 4, 2012.

Rhonda Taylor,

Senior Advisor, Public Engagement.

[FR Doc. 2012-25760 Filed 10-18-12; 8:45 am]

BILLING CODE 6050--SS-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Department of Defense Historical Advisory Committee

AGENCY: DoD.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), 41 CFR 102-3.55, and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), effective October 5, 2012 the Department of Defense gives notice that it is terminating the Department of Defense Historical Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

Dated: October 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012-25671 Filed 10-18-12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Institute of Education Sciences; 2012/14 Beginning Postsecondary Students Longitudinal Study: (BPS:12/14) Field Test

SUMMARY: The 2012/14 Beginning Postsecondary Students Longitudinal Study (BPS:12/14), conducted by the National Center for Education Statistics (NCES), is designed to follow a cohort of students who enroll in postsecondary education for the first time during the 2011-2012 academic year, irrespective of date of high school completion. The

study collects data on student persistence in, and completion of, postsecondary education programs; their transition to employment; demographic characteristics; and changes over time in their goals, marital status, income, and debt, among other measures.

DATES: Interested persons are invited to submit comments on or before December 18, 2012.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2012-IES-0038 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202-4537.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2012/14 Beginning Postsecondary Students Longitudinal Study: (BPS:12/14) Field Test.

OMB Control Number: 1850-0631.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 13,975.

Total Estimated Number of Annual Burden Hours: 2,294.

Abstract: Data from BPS are used to help researchers and policymakers better understand how financial aid influences persistence and completion, what percentages of students complete various degree programs, what early employment and wage outcomes are for certificate and degree attainees, and why students leave school. This request is to conduct the BPS:12/14 first follow-up field test, including panel maintenance, student interviews and reinterviews, and administrative record matching. Following the field test study in 2013, NCES will submit a request for clearance of the BPS:12/14 full scale data collection to be conducted in spring 2014. Because only minimal changes are expected after the field test, NCES is requesting a waiver of the 60-day **Federal Register** Notice for the full-scale collection clearance submission.

Dated: October 16, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012-25850 Filed 10-18-12; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864-164]

Upper Peninsula Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene, Protests, and Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Amendment to License.
- b. *Project No:* 1864-164.
- c. *Date Filed:* June 14, 2012; supplemented September 26, 2012.
- d. *Applicant:* Upper Peninsula Power Company.
- e. *Name of Project:* Bond Falls Hydroelectric Project.
- f. *Location:* On the Ontonagon River in Ontonagon and Gogebic Counties, Michigan, and Vilas County, Wisconsin, and partially on lands within the Ottawa National Forest.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(t).

h. *Applicant Contact*: Terry Jensky, Vice President, Generation Assets, Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19002, Green Bay, Wisconsin 54307.

i. *FERC Contact*: Kurt Powers at (202) 502-8949; or kurt.powers@ferc.gov.

j. Deadline for filing motions to intervene, protests, and comments is 30 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments.

Please include the project number (P-1864-164) on any motions, protests, or comments filed.

k. *Description of Application*: The licensee proposes to, in part, remove the Cisco Development from the Bond Falls Hydroelectric Project license. The Cisco Dam and its chain of lakes would be removed from the project license and would no longer be under the Commission's jurisdiction. All lands associated with the development, including about 157.56 acres of U.S. Forest Service lands, would be removed from the project boundary and would no longer be subject to the terms and conditions in the license.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Motions to Intervene, Protests, and Comments*: Anyone may submit a motion to intervene, protest, or comments in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any motions to intervene, protests, or comments must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: Any filing must: (1) Bear in all capital letters the title "MOTION TO INTERVENE," "PROTEST," or "COMMENTS" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening, protesting, or commenting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene, protests, or comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 12, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-25685 Filed 10-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13429-001; 14455-000]

City of Burlington, IA; FFP Iowa 5, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 4, 2012, the City of Burlington, Iowa filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the City of Burlington Hydropower Project (Burlington Project) No. 13429-001, to be located on the Mississippi River, in Des Moines County, Iowa and Henderson County, Illinois. On the same date, FFP Iowa 5, LLC filed an application, pursuant to the FPA, proposing to study the feasibility of the Mississippi Lock and Dam No. 18 Water Power Project (L&D 18 Project) No. 14455, which would occupy approximately the same area as the Burlington Project.

The proposed Burlington and L&D 18 projects would be located at the existing U.S. Army Corps of Engineers' (Corps) Lock and Dam No. 18, which consists of: (1) A 1,350-foot-long control dam with 14 tainter gates and 3 roller gates; (2) a 2,200-foot-long submersible earth dyke; and (3) an approximately 12,000-acre reservoir at a normal maximum pool elevation of 529.5 feet mean sea level (msl).

The proposed Burlington Project would consist of: (1) Twenty-four very-low-head turbine-generator units that would have a generating capacity of 500 kilowatts each for a total installed capacity of 12 megawatts; (2) a 675-foot-long reinforced concrete structure enclosing the turbine-generator units and having a top of deck elevation of 528 feet msl, to be constructed on the western half of the existing dam and immediately downstream of the existing submersible dyke; (3) a 1-mile-long, 12.5-kilovolt (kV) transmission line; and (4) appurtenant facilities. The project would have an estimated average annual generation of 66,200 megawatts-hours (MWh).

Applicant Contact: Mr. Jim Ferneau, City Manager, City of Burlington, 400 Washington Street, Burlington, IA 52601; phone: (319) 753-8120.

The proposed L&D 18 Project would consist of: (1) A reinforced concrete powerhouse located on the western half of the existing dam and containing four horizontal Kaplan bulb or pit-Kaplan turbine-generator units, each rated at

6.25 MW for a total installed capacity of 25 MW; (2) a substation constructed adjacent to the powerhouse; (3) a 30,000-foot-long, 12.5-kV overhead transmission line; and (4) appurtenant facilities. The project would have an estimated average annual generation of 100,000 MWh.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; phone: (978) 226-1531.

FERC Contact: Sergiu Serban, (202) 502-6211.

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. 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 under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13429 or 14455) in the docket number field to

access the document. For assistance, call toll-free 1-866-208-3372.

Dated: October 12, 2012.
Kimberly D. Bose,
Secretary.
 [FR Doc. 2012-25683 Filed 10-18-12; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications

Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not

be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are 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.

Docket No.	Communication date	Presenter or requester
<i>Prohibited:</i>		
1. Project No. 2309-019	9-19-2012	Commission Staff. ¹
<i>Exempt:</i>		
1. CP11-515-000	9-27-12	Hon. Tony Avella.
2. CP11-515-000	10-9-12	Hon. Nan Hayworth, M.D.

¹ Email record.

Dated: October 12, 2012.
Nathaniel J. Davis, Sr.,
Deputy Secretary.
 [FR Doc. 2012-25797 Filed 10-18-12; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of ISO New England Inc., New York

Independent System Operator, Inc., and PJM Interconnection, L.L.C.:

Electric System Planning Working Group

- October 24, 2012, 10:00 a.m. to 4:00 p.m., Local Time
- November 1, 2012, 10:00 a.m. to 4:00 p.m., Local Time
- December 14, 2012, 10:00 a.m. to 4:00 p.m., Local Time

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group

November 29, 2012, 10:00 a.m. to 2:00 p.m., Local Time
 December 18, 2012, 11:00 a.m. to 4:00 p.m., Local Time

Management Committee

October 31, 2012, 10:00 a.m. to 4:00 p.m., Local Time
 November 28, 2012, 10:00 a.m. to 4:00 p.m., Local Time
 December 19, 2012, 10:00 a.m. to 4:00 p.m., Local Time
 January 30, 2013, 10:00 a.m. to 4:00 p.m., Local Time
 February 27, 2013, 10:00 a.m. to 4:00 p.m., Local Time
 March 27, 2013, 10:00 a.m. to 4:00 p.m., Local Time

The above-referenced Joint Inter-Regional Planning Task Force/Electric System Planning Working Group and Management Committee meetings will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meetings are open to stakeholders.

Further information may be found at www.nyiso.com.

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER08-1281, New York Independent System Operator, Inc.
 Docket No. ER12-718, New York Independent System Operator, Inc.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502-8622 or James.Eason@ferc.gov.

Dated: October 12, 2012.

Kimberly D. Bose,
 Secretary.

[FR Doc. 2012-25684 Filed 10-18-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Relocation of Transmission Lines for the U.S. 93 Boulder City Bypass Project, Boulder County, NV, Record of Decision (DOE/EIS-0490)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: The Federal Highway Administration (FHWA) prepared an Environmental Impact Statement (EIS) for a proposal to improve the United States Highway 93 (U.S. 93) corridor

through Henderson and Boulder City, Nevada, from the Foothills Road grade separation on U.S. 93/95 in Henderson to the western end of the Hoover Dam Bypass project near the Hacienda Hotel and Casino. Western Area Power Administration (Western), an agency within the Department of Energy (DOE), needs to modify its transmission system and facilities to accommodate the construction of the Boulder City Bypass Project (Project). Western was a cooperating agency for the EIS. Western will ensure that its responsibilities under the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA) are met before the modifications are implemented.

FOR FURTHER INFORMATION CONTACT: For further information regarding Western's role in the project, contact Ms. Linda Hughes, Environmental Division Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 605-2524, email hughes@wapa.gov. Copies of the EIS are available on the following Web site at: <http://www.nevadadot.com/Micro-Sites/BoulderCityBypass/FinalEnvironmentalImpactStatement.aspx>. For general information on DOE's National Environmental Policy Act of 1969 (NEPA) review process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC-54, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: FHWA was the lead agency for the Project EIS (FHWA-NV-EIS-00-02-F; April 2005; 76 FR 34073). Western was a cooperating agency for the Project EIS. After an independent review of the Final Project EIS, Western concluded that its needs are satisfied and, with this notice, is adopting the Project EIS for its participation in the Project. The FHWA signed its Record of Decision (ROD), on the Project on December 8, 2005, and selected Alternative D as its preferred alternative. Subsequent to publication of the ROD, FHWA, in conjunction with the Nevada Department of Transportation (NDOT), broke the Project into two phases. Phase One incorporates the Project's eastern edge, from the Foothills Grade Separation to the intersection with U.S. 95. Phase Two includes the area from U.S. 95 to the connection with U.S. 93.

The Project EIS addresses the effects of the Project, including modification of Western's transmission system. Modifications to Western's transmission system will occur in two phases. The

modifications for Phase One include relocating and rebuilding approximately one mile of the Henderson-Mead 230-kilovolt (kV) transmission lines. Western's action will consist of removing existing structures, conductors, and overhead ground wires, and installing new structures, conductors, overhead ground wire, insulators, and transmission line hardware. The relocated and rebuilt line will be within 500 feet of the existing line. Phase One is expected to be complete by Spring 2013. The modifications for Phase Two include relocation of various structures to accommodate the Project, similar to Phase One. In 2009, FHWA, in conjunction with the Nevada Department of Transportation (NDOT), completed a re-evaluation of the Final Project EIS and determined that there are neither substantial changes to the project nor significant new information to warrant a new EIS or supplemental analysis and that the current environmental document and decision document remain valid.

The EIS impact analysis and the re-evaluation study concluded that, with mitigation measures, most impacts from the Project would not be significant. There would be significant unavoidable visual impacts to several historic properties and Traditional Cultural Properties (TCPs). Other historic sites or features would be affected or potentially affected by the Project, including some elements of the transmission system not owned by Western. The FHWA and NDOT consulted with the Nevada State Historic Preservation Office, the Advisory Council on Historic Preservation and Native American tribes. A Programmatic Agreement (PA) and treatment plan was developed for avoidance, minimization, and mitigation of adverse effects to historical and cultural properties. Western is a signatory to the PA. The FHWA is required to complete historic documentation of facilities affected by the Project as described in the PA. Western will ensure that its responsibilities under the NHPA, as outlined in the Programmatic Agreement, are met before its action is implemented.

FHWA filed a Biological Assessment with the U.S. Fish and Wildlife Service for Phase One of the Project on July 17, 2012. Consultation with the U.S. Fish and Wildlife Service for Phase Two will be completed prior to ground disturbance for that part of the Project. Western will comply with the terms and conditions identified in the FHWA Biological Opinion for reducing impacts to these species as it applies to

Western's action. Western's action does not affect floodplains or wetlands.

Alternatives Considered

FHWA examined several road alignment alternatives, ultimately selecting Alternative D as their preferred alternative. Western had to wait for FHWA to decide on its course of action before determining which transmission structures and lines would be affected and need to be modified. The no action alternative assumed that the Project would not be constructed and no transmission structures or lines would need to be modified. FHWA did not select the no action alternative since it did not meet their purpose and need.

Mitigation Measures

Western will adhere to its Construction Standard 13 "Environmental Quality Protection." Long-term operations of the transmission line will follow Western's standard operating procedures and will not be affected by this action. In addition to Construction Standard 13, the following measures apply to the modifications that will be made to Western's transmission system:

1. Protection of the desert tortoise through compliance with the FHWA Biological Opinion.
2. Protection of cultural and historical resources as signatories to the Programmatic Agreement.

Decision

Western's decision is to modify its transmission system as described above in support of FHWA's decision to construct Alternative D.¹ This ROD was prepared following the requirements of the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508) and DOE's Procedures for Implementing NEPA (10 CFR part 1021).

Dated: September 19, 2012.

Anita J. Decker,

Acting Administrator.

[FR Doc. 2012–25783 Filed 10–18–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9005–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements Filed 10/08/2012 Through 10/12/2012 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

SUPPLEMENTARY INFORMATION: As of October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA. While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—https://cdx.epa.gov/epa_home.asp.

EIS No. 20120326, Draft EIS, USFS, WI, Lakewood Southeast Project, Proposes to Manage Vegetation and Habitat, Lakewood-Laona Ranger District, Chequamegon-Nicolet National Forest, Oconto County, WI, Comment Period Ends: 12/03/2012, Contact: Marilee Houtler 715–276–6333.

EIS No. 20120327, Final EIS, FHWA, CA, Interstate 80/Interstate 680/State Route 12 Interchange Project, Improvements, Solano County, CA, Review Period Ends: 11/19/2012, Contact: Melanie Brent 510–286–5907.

EIS No. 20120328, Draft EIS, FHWA, TN, James White Parkway (State Route 71) Construction, from Chapman Highway to Moody Avenue, Knox County, TN, Comment Period Ends: 12/03/2012, Contact: Theresa Claxton 615–781–5770.

EIS No. 20120329, Draft EIS, FAA, AK, Kodiak Airport Runway Safety Area Improvements, Kodiak, AK, Comment Period Ends: 12/18/2012, Contact: Leslie Grey 907–271–5453.

EIS No. 20120330, Draft EIS, USFS, MT, Flint Foothills Vegetation Management Project, Beaverhead-Deerlodge National Forest, Pintler Ranger District, Granite and Powell Counties, MT, Comment Period Ends: 12/03/2012, Contact: Karen Gallogly 208–756–5103.

EIS No. 20120331, Draft EIS, BLM, OR, West Eugene Wetlands Resource Management Plan, Proposes to Adopt a Resource Management Plan for the BLM-Administered Lands, Lane County, OR, Comment Period Ends: 01/17/2013, Contact: Richard Hardt 541–683–6600.

EIS No. 20120332, Draft EIS, USFS, MT, Jack Rabbit to Big Sky Meadow Village 161 kV Transmission Line Upgrade, Bozeman Ranger District, Gallatin National Forest, Gallatin County, MT, Comment Period Ends: 12/03/2012, Contact: Amy Waring 406–255–1451.

EIS No. 20120333, Final Supplement, USFS, APHIS, 00, Gypsy Moth Management in the United States, A Cooperative Approach—Proposing New Treatment Options, United States, Review Period Ends: 11/19/2012, Contact: Noel Schneeberger 610–557–4121.

The U.S. Department of Agriculture's Forest Service and the Animal Plant Health Inspection Service are joint lead agencies for the above project.

Dated: October 16, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–25829 Filed 10–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9743–3]

Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the CASAC Ozone Review Panel to discuss its draft reviews of four EPA documents: *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Third External Review Draft—June 2012)*, *Health Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August*

¹ On November 16, 2011, DOE's Acting General Counsel delegated to Western's Administrator all the authorities of the General Counsel respecting environmental impact statements.

2012), *Welfare Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August 2012)*, and *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (First External Review Draft—August 2012)*.

DATES: The CASAC Ozone Review Panel teleconference will be held on Monday, November 5, 2012, from 9:00 a.m. to 1:00 p.m. (Eastern Time).

ADDRESSES: The public teleconference will take place by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone at (202) 564–2073 or email at stallworth.holly@epa.gov. General information concerning the CASAC can be found on the EPA Web site at <http://www.epa.gov/casac>.

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The CASAC Ozone Review Panel and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six “criteria” air pollutants, including ozone. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for ozone. The CASAC Ozone Review Panel held a face-to-face meeting on September 11–13, 2012 (as noticed in 77 FR 46755–46756) to review four EPA documents: *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Third External Review Draft—June 2012)*, *Health Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August 2012)*, *Welfare Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August 2012)*, and *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (First External Review*

Draft—August 2012). Information about these review activities may be found on the CASAC Web site at <http://www.epa.gov/casac>. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Ozone Review Panel will hold a follow-up public teleconference to discuss its draft reviews of these four EPA documents.

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at <http://www.epa.gov/casac/>.

Procedures for Providing Public Input: Public comment for consideration by EPA’s federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to EPA’s charge to the panel or meeting materials. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes. Interested parties should contact Dr. Holly Stallworth, DFO, in writing (preferably via email) at the contact information noted above by October 29, 2012, to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements should be supplied to the DFO via email at the contact information noted above by October 29, 2012 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each

document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at (202) 564–2073 or stallworth.holly@epa.gov. To request accommodation of a disability, please contact Dr. Stallworth preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: October 10, 2012.

Thomas H. Brennan,
Deputy Director, EPA Science Advisory Board
Staff Office.

[FR Doc. 2012–25791 Filed 10–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9743–2]

Notification of a Public Teleconference of the Science Advisory Board; Perchlorate Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Perchlorate Advisory Panel to discuss its revised draft report concerning EPA’s draft white paper *Life Stage Considerations and Interpretation of Recent Epidemiological Evidence to Develop a Maximum Contaminant Level Goal (MCLG) for Perchlorate*.

DATES: The public teleconferences will be held on Wednesday December 5, 2012 and Friday December 7, 2012. The teleconferences will be held from 2:00 p.m. to 5:00 p.m. (Eastern Standard Time) on both days.

ADDRESSES: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail

(202) 564-4885; fax (202) 565-2098; or email at carpenter.thomas@epa.gov. General information concerning the SAB can be found on the SAB Web site at <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App., notice is hereby given that the SAB Perchlorate Advisory Panel will hold a public teleconferences to discuss its draft report regarding EPA's draft white paper *Life Stage Considerations and Interpretation of Recent Epidemiological Evidence to Develop a Maximum Contaminant Level Goal (MCLG) for Perchlorate*. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Perchlorate Advisory Panel held a public meeting on July 18-19, 2012 to discuss the EPA white paper and a public teleconference on September 25, 2012 to discuss its initial draft (9/5/21012) report. The purpose of these public teleconferences is for the Panel to discuss its revised draft report on this advisory activity. Additional background on this SAB advisory activity is provided on the SAB Web site at: http://yosemite.epa.gov/sab/sabproduct.nsf/fedgrstr_activites/Perchlorate%20MCLG%20Approaches?OpenDocument.

Availability of Meeting Materials: A meeting agenda, draft report, and other materials for the teleconferences will be posted on the SAB Web site at www.epa.gov/sab.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining to the group conducting this advisory activity, EPA's charge, or meeting materials. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB to

consider. Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker. To be placed on the public speaker list for the December 5, 2012 meeting, interested parties should notify Mr. Thomas Carpenter, DFO, by email no later than November 28, 2012.

Written Statements: Written statements for these teleconferences should be received in the SAB Staff Office by the same deadlines given above for requesting oral comments. Written statements should be supplied to the DFO via email (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Carpenter at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 11, 2012.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012-25793 Filed 10-18-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R04-OW-2012-0273; FRL-9743-5]

Public Water System Supervision Program Revision for the State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Florida is revising its Public

Water System Supervision Program by adopting the Lead and Copper Rule Short Term Revisions. EPA has determined that Florida's rule is no less stringent than the corresponding federal regulations. Therefore, the EPA is tentatively approving this revision to the State of Florida's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by November 19, 2012, to the Regional Administrator at the EPA, Region 4 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by November 19, 2012, a public hearing will be held. If the EPA, Region 4 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this tentative approval shall become final and effective on November 19, 2012. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination; a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Florida Department of Environmental Protection, Drinking Water Program, 2600 Blair Stone Road, Tallahassee, Florida 32399; and the U.S. Environmental Protection Agency, Region 4, Safe Drinking Water Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303.

EPA Analysis

On October 12, 2010, the State of Florida submitted a request that the Region approve revisions to the State's Safe Drinking Water Act PWSS Program to include the authority to implement and enforce the Lead and Copper Rule Short Term Revisions. EPA reviewed the application using the federal statutory provisions (Section 1413 of the Safe Drinking Water Act), federal regulations (at 40 CFR part 142), state

regulations, rule crosswalks and EPA guidance to determine whether the request for revision is approvable.

Florida has chosen to not allow certain options set forth in the federal regulations, to extend time frames for certain activities. There are specific State regulatory provisions indicating the State is not allowing the option to extend those time frames. In addition, Florida has chosen to implement an optional federal requirement regarding submittal of certain information. These choices are consistent with and no less stringent than the federal requirements.

EPA Action: The EPA is tentatively approving this revision. If EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this tentative approval will become final and effective on November 19, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Meyer, EPA, Region 4, Safe Drinking Water Branch, at the address given above, or by telephone at (404) 562-9449, or via email at meyer.larry@epa.gov.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: September 11, 2012.

Gwendolyn Keyes Fleming,
Regional Administrator.

[FR Doc. 2012-25794 Filed 10-18-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Revision of Information Collection; National Survey of Unbanked and Underbanked Households; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden and as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), invites the general public and other Federal agencies to comment on the survey collection instrument for its third National Survey of Unbanked and Underbanked Households (“Household Survey”), currently approved under OMB Control No. 3064-0167, scheduled to be conducted in partnership with the U.S. Census Bureau as a supplement to its June 2013 Current Population Survey (“CPS”). The collection is a key

component of the FDIC’s efforts to comply with a Congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (“Reform Act”) (Pub. L. 109-173), which calls for the FDIC to conduct ongoing surveys “on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the ‘unbanked’) into the conventional finance system.” Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including: (1) “What cultural, language and identification issues as well as transaction costs appear to most prevent ‘unbanked’ individuals from establishing conventional accounts”; and (2) “what is a fair estimate of the size and worth of the ‘unbanked’ market in the United States.” The household survey is designed to address these factors and provide a factual basis on the proportions of unbanked households. Such a factual basis is necessary to adequately assess banks’ efforts to serve these households as required by the statutory mandate.

To satisfy the Congressional mandate, the FDIC designed two complementary surveys: a survey of FDIC-insured depository institutions and a survey of households. The survey of FDIC-insured depository institutions, aimed at collecting data on their efforts to serve underbanked, as well as unbanked, populations (underbanked populations include individuals who have an account with an insured depository but also rely on non-bank alternative financial service providers for transaction services or high cost credit products), was conducted in mid-2007 and again in 2011. The results of the 2007 survey were released in February 2008 and the results of the 2011 survey are expected to be released in December 2012. The first survey of unbanked and underbanked households was conducted in January 2009 as a CPS supplement and the results were released to the public in December 2009. The second survey of unbanked and underbanked households was conducted in June 2011 and the results were released to the public in September 2012. The household survey seeks to estimate the proportions of unbanked and underbanked households in the U.S. and to identify the factors that inhibit the participation of these households in the mainstream banking

system. The results of these ongoing surveys will help policymakers and bankers understand the issues and challenges underserved households perceive when deciding how and where to conduct financial transactions. This notice addresses the next Household Survey.

DATES: Comments must be submitted on or before December 18, 2012.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to “National Survey of Unbanked and Underbanked Households”:

- <http://www.FDIC.gov/regulations/laws/federal/>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Leneta Gregorie (202-898-3719), Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Interested members of the public may obtain a copy of the survey and related instructions by clicking on the link for the *National Unbanked and Underbanked Household Survey* on the following Web page: <http://www.fdic.gov/regulations/laws/federal/notices.html>. Interested members of the public may also obtain additional information about the collection, including a paper copy of the proposed collection and related instructions, without charge, by contacting Leneta Gregorie at the address identified above, or by calling (202) 898-3719.

SUPPLEMENTARY INFORMATION: The FDIC is considering possible revisions to the following collection of information:

Title: National Unbanked and Underbanked Household Survey.
OMB Number: 3064-0167.
Frequency of Response: Once.
Affected Public: U.S. Households.
Estimated Number of Respondents: 50,000.

Average time per response: 10 minutes (0.166 hours) per respondent.
Estimated Total Annual Burden: 0.166 hours × 50,000 respondents = 8,334 hours.

General Description of Collection

A mandate in section 7 of the Reform Act requires the FDIC to conduct ongoing surveys on efforts by banks to bring unbanked individuals and families into the conventional finance

system. Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including the size of the unbanked market in the United States and the cultural, language and identification issues as well as transaction costs that appear to most prevent unbanked individuals from establishing conventional accounts. To obtain this information, the FDIC partnered with the U.S. Census Bureau, which administered the Household Survey supplement ("FDIC Supplement") to households that participated in the January 2009 and June 2011 CPS. The FDIC supplement has yielded significant data on the extent and demographic characteristics of the population that is unbanked or underbanked, the use by this population of alternative financial services, and the reasons why some households do not make greater use of traditional banking services. The Household Survey was the first survey of its kind to be conducted at the national level. An executive summary of the results of the first and second Household Surveys, the full reports, and the survey instruments can be accessed through the following link: <http://www.economicinclusion.gov/surveys/>.

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conduct of its third Household Survey as a supplement to the June 2013 CPS. However, prior to finalizing the next survey instrument, the FDIC seeks to solicit public comment on whether changes to the existing instrument are desirable and, if so, to what extent. It should be noted that, as a supplement of the CPS survey, the Household Survey needs to adhere to specific parameters that include limits in the length and sensitivity of the questions that can be asked of CPS respondents. Specifically, there is a strict limitation on the number of questions permitted and the average time required to complete the survey (10 minutes on average).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The FDIC will consider all comments to determine the extent to which the information collection should be modified prior to submission to OMB for review and approval. After the comment period closes, comments will be summarized and/or included in the FDIC's request to OMB for approval of the collection. All comments will become a matter of public record.

Dated at Washington, DC, this 15th day of October, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012-25702 Filed 10-18-12; 8:45 am]

BILLING CODE 6714-01-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 November 5, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *The Family Trust under the Last Will and Testament of Charles M. Johnson, Sr., dated March 13, 2007, and Charles M. Johnson, Jr., individually and as trustee of the Trust*, Chatfield, Minnesota; to acquire voting shares of Johnson Bancshares, Inc., and thereby indirectly acquire voting shares of Root River State Bank, both in Chatfield, Minnesota.

2. *Brooke L. Distad, Kasson, Minnesota, and Jeffrey C. Palmer, Mantorville, Minnesota*; to acquire and retain voting shares of Palmer Bancshares, Inc., and thereby indirectly retain voting shares of Kasson State Bank, both in Kasson, Minnesota.

Board of Governors of the Federal Reserve System, October 16, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012-25775 Filed 10-18-12; 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 November 15, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *FirstMerit Corporation*, Akron, Ohio; to acquire 100 percent of the voting shares of Citizens Republic Bancorp, and thereby indirectly acquire voting shares of Citizens Bank, both in Flint, Michigan.

Board of Governors of the Federal Reserve System, October 16, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012-25774 Filed 10-18-12; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS-OS-17657-30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, will submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for revision of the approved information collection assigned OMB control number 0955-0002, scheduled to expire on October 31, 2012. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before November 19, 2012.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395-5806. See

SUPPLEMENTARY INFORMATION for other information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.Collection.Clearance@hhs.gov*, (202) 690-6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0955-0002 and document identifier HHS-OS-17657-30D for reference.

Information Collection Request Title: Facts for Consumers about Health IT Service Providers.

OMB No.: 0955-0002.

Abstract: ONC is proposing to revise current OMB approved Facts for Consumers about Health IT Service Providers. The current OMB approval is applicable through October 31, 2012. It includes iterative rounds of in-depth consumer testing to assess and analyze consumer understanding and input about a model privacy notice for personal health records (PHRs). ONC intends to revise the project to use the same focus group and cognitive usability interview testing process for the development of a model notice of privacy practices (NPP).

Need and Proposed Use of the Information: 45 CFR 164.520 requires covered entities to make available a NPP for protected health information to their patients or health plan members. The notice must, among other things, outline the purposes for which the covered entity is permitted to use and disclose health information, the rights of individuals with respect to their health information, the entities' duties to protect that information, and the process for filing a complaint concerning possible violations of the HIPAA Privacy Rule, such as an improper use or disclosure of information. 45 CFR 164.520 requires that the notice be written in plain language, but studies have shown that these notices are often difficult for

patients to understand due to their length and complexity.

The Federal Health IT Strategic Plan identifies the Fair Information Practice Principles (FIPPS) an important guidepost in the development of privacy policies and programs. Openness and Transparency is a key principle of fair information practices. The NPP is an important component of fulfilling this principle. If patients cannot adequately understand the notice because of its length or complexity, then the use and disclosure of their health information is not open and transparent.

In addition, each participant will have been recruited through a 15-minute screening interview. The participants will be recruited according to U.S. census statistics for race/ethnicity, age, marital status, gender, and income.

Likely Respondents: Respondents to this information collection are members of the General Public.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Cognitive Testing Screening	General Public	84	1	15/60	21
Cognitive Testing	General Public	42	1	90/60	63
Total .....	.....	126	.....	.....	84

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2012-25692 Filed 10-18-12; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: HHS-ONC-17577-30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the National Coordinator for Health IT, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the National Coordinator for Health IT (ONC), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before November 19, 2012.

ADDRESSES: Submit your comments to OIRA_submission@omb.eop.gov or via facsimile to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, Information.CollectionClearance@hhs.gov or (202) 690-6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS-ONC-17577-30D for reference.

Information Collection Request Title: National Survey on Health Information Exchange in Clinical Laboratories.

Abstract: ONC seeks approval to collect key data from a relatively small sample of clinical laboratories nationwide for the Evaluation of the State Health Information Exchange Cooperative Agreement Program. The *National Survey on Health Information Exchange in Clinical Laboratories* will assess and evaluate the electronic transfer of health information from clinical laboratories to ordering physicians. It will focus on two key measures: (1) Percentage of laboratory facilities that are able to send structured lab results electronically to ordering physicians and (2) percentage of lab results that are currently being sent electronically in coded format to ordering physicians.

Need and Proposed Use of the Information: A key goal of the State Health Information Exchange Cooperative Agreement Program is to

promote the electronic exchange of structured test results from clinical laboratories to healthcare providers. ONC will use these survey findings to develop a comprehensive understanding of the baseline level of laboratory information exchange in order to inform program activities to promote laboratory information exchange and provide more targeted assistance to states and territories in developing their laboratory information exchange strategies.

Likely Respondents: There will be two similar versions of the questionnaire—one for hospital-based labs and one for independent labs.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Hospital-Based Laboratory Survey on Health Information Exchange.	Hospital-Based Laboratories	2,729	1	20/60	910
	Independent Laboratories	1,963	1	17.70/60	579
Total .....	.....	4,692	1	19.04/60	1,489

Keith A. Tucker,
Information Collection Clearance Officer.
[FR Doc. 2012-25737 Filed 10-18-12; 8:45 am]
BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for Cancer Care Video Challenge

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

SUMMARY: The *Cancer Care Video Challenge* is an opportunity for members of the public to create short, <2 minute videos sharing a personal story of how they use technology to help meet a goal related to an experience with cancer. Cash prizes are available to winning videos.

DATES: Effective on October 17, 2012.

FOR FURTHER INFORMATION CONTACT: Erin Poetter, Policy Analyst, Office of Consumer eHealth, ONC erin.poetter@hhs.gov; 202.205.3310.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: The Office of the National Coordinator for Health Information Technology (ONC), seeks to motivate and inspire patients and their families to get access to their health information and to leverage health IT and other consumer eHealth tools to be empowered to better manage their health and the health of loved ones. Patients and their families today have access to an unprecedented number of tools and resources to enhance their ability manage care. The *Cancer Care Video Challenge* is an

opportunity for members of the public to create brief (<2 minutes long) videos sharing how they use health IT and eHealth tools to achieve a goal related to cancer care. Videos could describe a treatment or transitional care planning (including supportive care or palliative therapy) goal for a cancer patient, survivor or family caregiver. Videos should describe what technology was used and how it was used to support the goal. This is one in a series of Health IT Video Contests that ONC has sponsored throughout 2012. The goal of this video contest series is to generate inspirational stories that will be used to motivate and inspire others to leverage technology to better manage their health and be more engaged partners in their health and health care.

Please refer to the <http://CancerCare.challenge.gov> Web site for the most up to date information about the contest and deadlines since they are subject to change.

Eligibility Rules for Participating in the Competition: To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HHS;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of the Office of the National Coordinator for Health Information Technology

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

(9) May not be:

a. An employee of a commercial business whose name, brand name, product or other trademark is mentioned or featured in the Video, or

b. A contractor or employee of an affiliate, subsidiary, advertising agency, or any other company involved in

marketing a commercial business, brand name, product or other trademark mentioned or featured in the Video.

All individual members of a team must meet the eligibility requirements.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this Challenge, Contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation

in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, Contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

Dates:

Submission Period Begins: 10:00 a.m., EDT, October 17, 2012.

Submission Period Ends: 5:00 p.m., EDT, December 12, 2012.

Registration Process for Participants:

1. To register for the Cancer Care Video Challenge participants should: Access the <http://Challenge.gov> Web site and search for the “Cancer Care Video Challenge”. Interested persons should read the official rules posted on the Challenge site at <http://CancerCare.Challenge.gov>. Contestants must Register or use an existing ChallengePost account.

2. On <http://CancerCare.Challenge.gov>, click “Accept this challenge” to register your interest in participating. This step ensures that you will receive important challenge updates.

Prize:

Winner	Prize	Quantity
First Prize	3,000	1
Second Prize	2,000	1
Third Prize	1,250	1
Honorable Prize	750	2
Popular Choice	600	1

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected:

The judging panel will make selections based upon the following criteria:

1. **Creativity** (Includes elements such as the creativity and coherence of the script/story)

2. **Potential Impact** (Includes whether the video is compelling, inspiring, instructive, and share-able.)

3. **Video and Audio Quality** (All types of videos will be accepted into the Challenge. However, effort to show quality of the video content, narrative and visual appearance will be assessed.)

4. **Video Plays** (Includes the number of plays on either YouTube or Vimeo— whichever service was linked to in the submission. The more plays the video has the better it will score in this category.)

There will be one Popular Choice award for the video that receives the most number of verified votes during the voting period.

Additional Information

Submission Rights

By participating in this Challenge, each Contestant grants to the ONC, the Administrator and others acting on behalf of ONC, an irrevocable, paid-up, royalty-free nonexclusive worldwide license to post, link to, share, and display publicly on the Web. This license includes posting or linking to the Submission on the official ONC Web sites and Web sites of others who have agreed to promote the Challenge, making it available for use by the public. By entering the challenge, contestants agree to make the original digital file of their Video available to ONC and/or the Administrator or others acting on behalf of ONC upon request.

Compliance With Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email, telephone, or mail after the date of the judging.

Awards may be subject to Federal income taxes, and the Department of Health and Human Services will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

General Conditions

Participation in this Contest constitutes a contestant’s full and unconditional agreement to abide by the Contest’s Official Rules found at www.Challenge.gov.

Sponsor of Administrator reserves the right to cancel, suspend and/or modify

the Challenge, or any part of it, for any reason, at ONC's sole discretion.

Authority: 15 U.S.C. 3719.

Dated: October 11, 2012.

Farzad Mostashari,
National Coordinator for Health Information Technology.

[FR Doc. 2012-25695 Filed 10-18-12; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for Caregivers Video Challenge

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

SUMMARY: The *Caregivers Video Challenge* is an opportunity for members of the public to create short, <2 min videos sharing how they use health IT and eHealth tools to help manage care for a loved one. Cash prizes are available to winning videos.

DATES: Effective on October 22, 2012.

FOR FURTHER INFORMATION CONTACT: Erin Poetter, Policy Analyst, Office of Consumer eHealth, ONC, *erin.poetter@hhs.gov*, 202-205-3310.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: The Office of the National Coordinator for Health Information Technology (ONC), seeks to motivate and inspire patients and their family caregivers to get access to their health information and to leverage health IT and other consumer eHealth tools to be empowered to better manage their health and the health of loved ones. Patients and their family caregivers today have access to an unprecedented number of tools and resources to enhance their ability to manage care. The *Caregivers Video Challenge* is an opportunity for members of the public to create short (<2 min long) videos sharing how they use health IT and eHealth tools to learn about or better manage the care for a loved one. This is the sixth in a series of Health IT Video Contests that ONC has sponsored throughout 2012. The goal of this video contest series is to generate inspirational stories that may be used to motivate and inspire others to leverage technology to better manage their health and be more engaged partners in their health and health care. Family caregivers can include: prenatal or child care, care for a spouse or partner, and care for an elderly parent, relative or friend. Videos

will demonstrate how health IT can be used to help caregivers learn about or better manage care. Video topics could include:

- Leveraging health IT to monitor remotely a loved one's care
 - Helping make sure the care they receive reflects personal preferences
 - Coordinating care transitions
 - Improving patient or caregiver collaboration with a healthcare provider
 - Accessing or establishing electronic health records
 - Caregiver-to-caregiver/parent-to-parent support
 - Medication management
 - Caregiver-provider collaboration
- Please refer to the *http://Caregivers.challenge.gov* Web site for the most up to date information about the contest and deadlines since they are subject to change.

Eligibility Rules for Participating in the Competition:

To be eligible to win a prize under this challenge, an individual or entity—

- (1) Shall have registered to participate in the competition under the rules promulgated by HHS;
- (2) Shall have complied with all the requirements under this section;
- (3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and
- (4) May not be a Federal entity or Federal employee acting within the scope of their employment.
- (5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.
- (6) Shall not be an employee of the Office of the National Coordinator for Health Information Technology
- (7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.
- (8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.
- (9) May not be:
 - a. An employee of a commercial business whose name, brand name, product or other trademark is mentioned or featured in the Video, or
 - b. A contractor or employee of an affiliate, subsidiary, advertising agency, or any other company involved in marketing a commercial business, brand name, product or other trademark mentioned or featured in the Video.

All individual members of a team must meet the eligibility requirements.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this Challenge, Contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, Contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

DATES:

Submission Period Begins: 10:00 a.m., EDT, October 22, 2012.

Submission Period Ends: 5:00 p.m., EDT, December 10, 2012.

Registration Process for Participants:

1. To register for the Caregivers Video Challenge participants should: Access the *http://Challenge.gov* Web site and search for the "Caregivers Video Challenge." Interested persons should read the official rules posted on the Challenge site at *http://Caregivers.Challenge.gov*. Contestants must Register or use an existing ChallengePost account.

2. On *http://Caregivers.Challenge.gov*, click "Accept this challenge" to register your interest in participating. This step ensures that you will receive important challenge updates.

Prize:

Winner	Prize	Quantity
First Prize	\$3,000	1
Second Prize	2,000	1
Third Prize	1,250	1
Honorable Prize	750	2
Popular Choice	600	1

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected:

The judging panel will make selections based upon the following criteria:

1. Creativity (Includes elements such as the creativity and coherence of the script/story)

2. Potential Impact (Includes whether the video is compelling, inspiring, instructive, and share-able.)

3. Video and Audio Quality (All types of videos will be accepted into the Challenge. However, effort to show quality of the video content, narrative and visual appearance will be assessed.)

4. Video Plays (Includes the number of plays on either YouTube or Vimeo—whichever service was linked to in the submission. The more plays the video has the better it will score in this category.)

There will be one Popular Choice award for the video that receives the most number of verified votes during the voting period.

Additional information

Submission Rights

By participating in this Challenge, each Contestant grants to the ONC, the Administrator and others acting on behalf of ONC, an irrevocable, paid-up, royalty-free nonexclusive worldwide license to post, link to, share, and display publicly on the Web. This license includes posting or linking to the Submission on the official ONC Web sites and Web sites of other who have agreed to promote the Challenge, making it available for use by the public. By entering the challenge, contestants agree to make the original digital file of their Video available to ONC and/or the Administrator or others acting on behalf of ONC upon request.

Compliance With Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email, telephone, or mail after the date of the judging.

Awards may be subject to Federal income taxes, and the Department of Health and Human Services will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

General Conditions

Participation in this Contest constitutes a contestant's full and unconditional agreement to abide by the Contest's Official Rules found at www.Challenge.gov.

Sponsor of Administrator reserves the right to cancel, suspend and/or modify the Challenge, or any part of it, for any reason, at ONC's sole discretion.

Authority: 15 U.S.C. 3719.

Dated: October 11, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012-25699 Filed 10-18-12; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability: Test Tools and Test Procedures Approved for the Office of the National Coordinator for Health Information Technology (ONC) HIT Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology, Office of the Secretary, Department of Health and Human Services.

Authority: 42 U.S.C. 300jj-11.

ACTION: Notice.

SUMMARY: This notice announces the availability of test tools and test procedures approved by the National Coordinator for Health Information Technology (the National Coordinator) for the testing of EHR technology under the ONC HIT Certification Program to the 2011 Edition EHR certification criteria. The approved test tools and test procedures are identified on the ONC Web site at: <http://www.healthit.gov/policy-researchers-implementers/2011-edition-approved-test-methods>.

FOR FURTHER INFORMATION CONTACT:

Carol Bean, Director, Office of Certification, Office of the National Coordinator for Health Information Technology, 202-690-7151.

SUPPLEMENTARY INFORMATION: On January 7, 2011, the Department of Health and Human Services issued a final rule establishing a permanent certification program for the purposes of testing and certifying health information technology ("Establishment of the Permanent Certification Program for Health Information Technology," 76 FR 1262) (Permanent Certification Program final rule).¹ The permanent certification program was renamed the "ONC HIT Certification Program" in a final rule published on September 4, 2012 (77 FR 54163). The preamble of the Permanent Certification Program final rule stated that when the National Coordinator had

¹ The Department issued a proposed rule entitled "Proposed Establishment of Certification Programs for Health Information Technology" (75 FR 11328, March 10, 2010) that proposed the establishment of a temporary certification program and a permanent certification program and stated the Department's intentions to issue separate final rules for each program.

approved test tools and/or test procedures ONC would publish a notice of availability in the **Federal Register** and identify the approved test tools and test procedures on the ONC Web site. As discussed in the Permanent Certification Program final rule, we anticipated that many of the test tools and test procedures that were developed by the National Institute of Standards and Technology (NIST) and approved for use in the temporary certification program would be approved for use in performing the testing of EHR technology under the ONC HIT Certification Program, particularly when the adopted certification criteria to which the test tools and test procedures applied had not been revised.

The National Coordinator has approved for use under the ONC HIT Certification Program the test tools and test procedures developed by NIST for testing EHR technology to the 2011 Edition EHR certification criteria. These approved test tools and test procedures are identified on the ONC Web site at: <http://www.healthit.gov/policy-researchers-implementers/2011-edition-approved-test-methods>.

Dated: October 11, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012-25830 Filed 10-18-12; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10444 and CMS-R-284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Minimum Data Set for Medicaid Incentives for Prevention of Chronic Diseases Program Grantees; *Use:* The Medicaid Incentives for Prevention of Chronic Diseases (MIPCD) demonstration program provides grants to states to implement programs that provide incentives to Medicaid beneficiaries of all ages who participate in prevention programs and demonstrate changes in health risk and outcomes, including the adoption of healthy behaviors. The prevention programs address at least one of the following prevention goals: tobacco cessation, controlling or reducing weight, lowering cholesterol, lowering blood pressure, and avoiding the onset of diabetes or in the case of a diabetic, improving the management of the condition. The programs are also comprehensive, widely available, easily accessible, and based on relevant evidence-based research and resources, including: the Guide to Community Preventive Services; the Guide to Clinical Preventive Services; and the National Registry of Evidence-Based Programs.

The proposed information collection, the MIPCD Minimum Data Set (MDS), is intended to collect data for program performance monitoring and evaluation. The MDS is a secondary data collection that assembles information already collected by grantees in the course of tracking beneficiary participation and outcomes and performing their own evaluation activities. Data collected through the MDS will be used to report on program implementation and evaluation to CMS and the Congress. *Form Number:* CMS-10444 (OCN: 0938-New); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 10; *Total Annual Responses:* 40; *Total Annual Hours:* 3,467. (For policy questions regarding this collection contact Sherrie Fried at 410-786-6619. For all other issues call 410-786-1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection. *Title of Information Collection:* Medicaid Statistical Information System (MSIS). *Use:* The Balanced Budget Act of 1997 mandated that states report their Medicaid data via MSIS. MSIS is used

by states and other jurisdictions to report fundamental statistical data on the operation of their Medicaid program. Data provided on eligibles, beneficiaries, payments and services are vital to those studying and assessing Medicaid policies and costs. Medicaid statistical data are routinely requested by CMS, Department agencies, the Congress and their research offices, state Medicaid agencies, research organizations, social service interest groups, universities and colleges, and the health care industry. The data provides the only national level information available on enrollees, beneficiaries, and expenditures. It also provides the only national level information available on Medicaid utilization. This information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to the Congress. The data is also crucial to CMS and HHS actuarial forecasts. *Form Number:* CMS-R-284 (OCN 0938-0345). *Frequency:* Quarterly. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 51. *Total Annual Responses:* 204. *Total Annual Hours:* 2,040. (For policy questions regarding this collection contact Kay Spence at 410-786-1617. For all other issues call 410-786-1326.)

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on November 19, 2012.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-6974, Email: OIRA_submission@omb.eop.gov.

Dated: October 16, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012-25772 Filed 10-18-12; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3266-FN]

Medicare and Medicaid Programs; Approval of the Community Health Accreditation Program for Continued Deeming Authority for Hospices

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Community Health Accreditation Program (CHAP) for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs. A hospice that participates in Medicaid must also meet the Medicare conditions of participation (CoPs) as referenced in our regulations.

DATES: *Effective Date:* This final notice is effective November 20, 2012 through November 20, 2018.

FOR FURTHER INFORMATION CONTACT:

Lillian Williams, (410) 786-8636.

Cindy Melanson, (410) 786-0310.

Patricia Chmielewski, (410) 786-6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice, provided certain requirements are met. Section 1861(dd)(1) of the Social Security Act (the Act) establishes distinct criteria for entities seeking designation as a hospice program. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418 specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care.

Generally, to enter into an agreement, a hospice must first be certified by a State survey agency as complying with conditions or requirements set forth in part 418. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the

Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued approval of deeming authority every 6 years, or sooner as determined by CMS. CHAP's current term of approval for their hospice accreditation program expires November 20, 2012.

II. Deeming Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and decision-making process. Within 60 days of receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** of approving or denying the application.

III. Provisions of the Proposed Notice

On May 25, 2012, we published a proposed notice (77 FR 31362) announcing CHAP's request for approval of its hospice accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 (Application and reapplication procedures for accrediting organizations), we conducted a review of CHAP's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of CHAP's—(1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.

- The comparison of CHAP's hospice accreditation standards to our current Medicare conditions of participation.

- A documentation review of CHAP's survey processes to—

- ++ Determine the composition of the survey team, surveyor qualifications, and the ability of CHAP to provide continuing surveyor training.

- ++ Compare CHAP's processes to that of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

- ++ Evaluate CHAP's procedures for monitoring providers or suppliers found to be out of compliance with CHAP program requirements. The monitoring procedures are used only when the CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

- ++ Assess CHAP's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- ++ Establish CHAP's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of CHAP's survey process.

- ++ Determine the adequacy of staff and other resources.

- ++ Review CHAP's ability to provide adequate funding for performing required surveys.

- ++ Confirm CHAP's policies with respect to whether surveys are announced or unannounced.

- ++ Obtain CHAP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the May 25, 2012 proposed notice (77 FR 31362) also solicited public comments regarding whether CHAP's requirements meet or exceed the Medicare CoPs for hospices. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between CHAP's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards contained in CHAP's accreditation requirements and survey process with the Medicare hospice CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of CHAP's deeming application, which

were conducted as described in section III of this final notice, yielded the following:

- To meet the requirements at § 488.4(a)(4), CHAP implemented a monitoring plan to ensure all personnel files include a current license.

- To meet the requirements at § 488.4(a)(5), CHAP modified its policies and procedures related to the establishment of an accreditation effective date for participation in Medicare.

- To meet the requirements in Appendix M of the SOM, CHAP developed a monitoring plan to ensure the minimum number of medical record reviews with home visits is completed during a survey.

- To meet the requirements at section 2728B of the SOM, CHAP revised its policies to ensure accepted plans of correction include a monitoring plan to ensure deficiencies stay corrected.

- To meet the requirements at section 5075.9 of the SOM, CHAP revised its policies to ensure complaint investigations triaged as non-immediate jeopardy medium are conducted within 45 calendar days following receipt of a complaint.

- To meet the requirements at § 418.54(c)(7), CHAP revised its standards to address the needs of "other individuals" in the bereavement assessment. In addition, CHAP included language to ensure "information gathered from the initial bereavement assessment must be incorporated into the plan of care and considered in the bereavement plan of care."

- To meet the requirements at § 418.64(b)(3), CHAP revised its standards to include language that addresses the provision of highly specialized nursing services provided so infrequently by direct hospice employees would be impracticable and prohibitively expensive.

- To meet the requirements at § 418.100, CHAP revised its standards to address the hospice's responsibility to "organize, manage, and administer its resources to provide hospice care and services."

- To meet the requirements at § 418.100(c), CHAP revised its standards to specify that a hospice must be primarily engaged in providing care and services consistent with accepted standards of practice.

- To meet the requirements at § 418.110(d), CHAP revised its standards to include language that addresses the waiver of space and occupancy and alcohol-based hand rub requirements.

- CHAP revised its crosswalk to ensure that all current CHAP standards

clearly address the following sections of the CFRs: § 418.52, § 418.54(e)(2), § 418.56(a), § 418.56(d), § 418.56(e), § 418.58, § 418.58(a)(2), § 418.58(c)(2), § 418.58(d)(1), § 418.60(b)(2)(ii), § 418.62(b), § 418.62(c), § 418.64(a)(1–3), § 418.64(b)(1), § 418.64(d)(3)(iv), § 418.72, § 418.76(a)(1), § 418.76(b)(3)(i), § 418.76(c), § 418.76(e), § 418.76(h)(1), § 418.76(j)(2), § 418.76(k), § 418.76(k)(2), § 418.100(b), § 418.100(c)(2), § 418.100(f)(1)(i), § 418.100(g)(3), § 418.104(d), § 418.104(f), § 418.106(b)(1), § 418.106(c)(1), § 418.106(e)(1), § 418.108(c)(3), § 418.110(a), § 418.110(c)(1)(i), § 418.110(c)(1)(ii), § 418.110(e), § 418.110(e)(2), § 418.110(f)(1), § 418.110(f)(3)(iv), § 418.110(f)(3)(vi), § 418.112(f), and § 418.116(b)(2).

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that CHAP's accreditation program for hospices meet or exceed our requirements. Therefore, we approve CHAP as a national accreditation organization for hospices that request participation in the Medicare program, effective November 20, 2012 through November 20, 2018.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this proposed notice was not reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 10, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–25467 Filed 10–18–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Endocrinologic and Metabolic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 10, 2012 (77 FR 61609). The amendment is being made to reflect a change in the *Location* and *Procedure* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Paul Tran, 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: EMDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 2012, FDA announced that a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on November 8, 2012. On page 61609, in the second column, the *Location* portion of the document is changed to read as follows:

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.

On page 61609, in the third column, the *Procedure* portion of the document is changed to read as follows:

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 November 2, 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 25, 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 26, 2012.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: October 15, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–25741 Filed 10–18–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Nonprescription Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Nonprescription Drugs Advisory Committee. This meeting was announced in the **Federal Register** of August 30, 2012 (77 FR 52743). The amendment is being made to reflect a change in the *Location* and *Contact Person* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Building 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001,

FAX: 301-847-8533, email: NDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 2012, FDA announced that a meeting of the Nonprescription Drugs Advisory Committee would be held on November 9, 2012. On page 52743, in the third column, the *Location* portion of the document is changed to read as follows:

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.

On page 52743, in the third column, the *Contact Person* portion of the document is changed to read as follows:

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Building 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: NDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). 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.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: October 16, 2012.

Jill Hartzler Warner,
Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012-25788 Filed 10-18-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on November 15, 2012, from 9:00 to 11:30 a.m. at the Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817. The meeting is open to the public.

DATES: The meeting will be held on November 15, 2012, from 9:00 to 11:30 a.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held at Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, see the DMICC Web site, www.diabetescommittee.gov, or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892-2560, telephone: 301-496-6623; FAX: 301-480-6741; email: dmicc@mail.nih.gov.

SUPPLEMENTARY INFORMATION: The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The November 15, 2012, DMICC meeting will focus on "Federal Initiatives To Address Gestational Diabetes Mellitus."

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief

description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their 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. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, www.diabetescommittee.gov.

Dated: October 9, 2012.

B. Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2012-25731 Filed 10-18-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5601-N-41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD

publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 11, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

[FR Doc. 2012-25404 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions: Mississippi Band of Choctaw Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of transfer of federally owned lands.

SUMMARY: The Secretary of the Interior (Secretary) accepted the transfer of approximately 163.48 acres from the Director, Real Property Division, Atlanta Regional Office, U.S. General Services Administration (GSA), without reimbursement, to be held in trust for the benefit and use of the Mississippi Band of Choctaw Indians, Choctaw Reservation, Mississippi (Tribe). This notice announces that the Secretary took the approximately 162.48 acres into trust for the Tribe on the dates set forth in this notice.

FOR FURTHER INFORMATION CONTACT:

Randall Trickey, Regional Realty Officer, Eastern Region, Bureau of Indian Affairs, 545 Marriott Dr., Suite 700, Nashville, TN 37214; Telephone: (615) 564-6770, Email: Randall.Trickey@bia.gov.

SUPPLEMENTARY INFORMATION:

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 Departmental Manual 2. Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93-599 dated January 2, 1975 (88 Stat. 1954), the below described property was on the dates set out below transferred by the Director, Real Property Division, Atlanta Regional Office of GSA to the Secretary, without reimbursement, to be held in trust for the benefit and use of the Tribe, and were taken into trust for the Tribe on the dates set forth as follows:

Mississippi Choctaw Reservation Community	County records book and page of recorded deed originally conveying the title to the U.S.	Date of original deed to U.S. for Choctaw school lands and acreage	Date of GSA transfer to U.S. to be held in trust for the tribe	Township	Range	Section
Boque Chitto	NESHOBA LLL/241	2/22/30 (15.00 ac)	10/27/97	11N	13E	2
Conehatta	NEWTON 52/206	6/29/27 (5.40 ac)	10/27/97	07N	10E	15
Conehatta	NEWTON 70/101	6/12/39 (0.88 ac)	10/27/97	07N	10E	10
Conehatta	NEWTON 114/377	5/3/57 (2.65 ac)	10/27/97	07N	10E	10
Conehatta	NEWTON 114/377	5/3/57 (1.85 ac)	10/27/97	07N	10E	15
Pearl River	NESHOBA YY/254	8/13/20 (65.00 ac)	4/3/95	11N	10E	25
Pearl River	NESHOBA A61/107	6/11/64 (15.00 ac)	4/3/95	11N	10E	25
Red Water	LEAKE 21/143	5/25/23 (20.00 ac)	10/27/97	11N	07E	36
Standing Pine	LEAKE 15/149	9/2/19 (30.00 ac)	4/3/95	10N	08E	35
Tucker	NESHOBA YY/231	1/30/20 (7.70 ac)	10/27/97	10N	12E	22

Dated: October 11, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012-25811 Filed 10-18-12; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO-921000-L51100000-GA0000-LVEMC11CC140; COC-74813]

Notice of Availability of the Environmental Assessment and Notice of Public Hearing for the Blue Mountain Energy, Inc., Federal Coal Lease Application, COC-74813

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and notice of public hearing.

SUMMARY: In accordance with the Federal coal management regulations,

the Blue Mountain Energy, Inc., Federal Coal Lease-By-Application (LBA) Environmental Assessment (EA) is available for public review and comment. The United States Department of the Interior, Bureau of Land Management (BLM) Colorado State Office will hold a public hearing to receive comments on the EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources for Blue Mountain Energy, Inc., COC-74813.

DATES: The public hearing will be held at 6 p.m., November 28, 2012. Written comments should be received no later than November 20, 2012.

ADDRESSES: The public hearing will be held at the BLM White River Field Office (BLM/WRFO) 220 East Market Street, Meeker, Colorado 81641. Written comments should be sent to Paul Daggett at the same address or sent via email to pdaggett@blm.gov. You may also send Paul Daggett a fax at 970-878-

3805. Copies of the EA, unsigned Finding of No Significant Impact (FONSI) and MER report are available at the field office address above.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at 303-239-3714, kbarton@blm.gov, or Paul Daggett at 970-878-3819, pdaggett@blm.gov.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: An LBA was filed by Blue Mountain Energy, Inc. The coal resource to be offered is limited to coal recoverable by underground mining methods. The Federal coal is in the lands outside established coal production regions and

may supplement the reserves at the Deserado Mine. The Federal coal resources are located in Moffatt County and Rio Blanco County, Colorado.

Sixth Principal Meridian

T. 3 N., R. 101 W.,

Sec. 17, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 18, lots 3 and 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,

SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,

S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 19, lot 1, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,

N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 20, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and

N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 21, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, and

N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 22, S $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$,

and SE $\frac{1}{4}$;

Sec. 23, S $\frac{1}{2}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 26, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and

SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 27, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and

SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 34, N $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;

Sec. 35, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$.

These lands contain 3,154.76 acres, more or less.

The EA addresses the cultural, socioeconomic, environmental, and cumulative impacts that would likely result from leasing these coal lands. Two alternatives are addressed in the EA:

Alternative 1: (Proposed Action) The tracts would be leased as requested in the application; and

Alternative 2: (No Action) The application would be rejected or denied. The Federal coal reserves would be bypassed.

Proprietary data marked as confidential may be submitted to the BLM in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on the EA, unsigned FONSI, FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday, excluding Federal holidays.

Comments on the EA, FMV, and MER should address, but not necessarily be limited to, the following:

1. The quality and quantity of the coal resources;
2. The method of mining to be employed to obtain MER of the coal, including specifications of the seams to be mined, timing and rate of production, restriction to mining, and the inclusion

of the tracts in an existing mining operation;

3. The FMV appraisal including, but not limited to, the evaluation of the tract as an incremental unit of an existing mine, quality and quantity of the coal resource, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, the mining method or methods, and any comparable sales data on similar coal lands. The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Written comments on the EA, MER, and FMV should be sent to Paul Daggett at the above address or sent via email to pdaggett@blm.gov prior to close of business November 20, 2012. Please note "Coal Lease By Application" in the subject line for all emails. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The foregoing is published in the **Federal Register** pursuant to 43 CFR parts 3422 and 3425.

Dated: August 21, 2012.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2012-25781 Filed 10-18-12; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[12X LLORE00000 L63500000.DP0000
LXSS021H0000.HAG12-0291]

Notice of Availability of the Draft West Eugene Wetlands Resource Management Plan/Environmental Impact Statement, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land

Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the West Eugene Wetlands and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes this notice of the Draft RMP/Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the West Eugene Wetlands Draft RMP/Draft EIS by any of the following methods:

- *Web site:* <http://www.blm.gov/or/districts/eugene/index.php>.
- *Email:* BLM_OR_EU_Mail@blm.gov.
- *Fax:* 541-683-6981.
- *Mail:* P.O. Box 10226, Eugene, Oregon 97440-2226.

Copies of the West Eugene Wetlands Draft RMP/Draft EIS are available at the Eugene District Office, 3106 Pierce Parkway, Springfield, Oregon 97477.

FOR FURTHER INFORMATION CONTACT:

Richard Hardt, Planning and Environmental Coordinator, telephone 541-683-6690; address P.O. Box 10226, Eugene, Oregon 97440-2226; email BLM_OR_EU_Mail@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In the West Eugene Wetlands Draft RMP/Draft EIS, the BLM analyzes the environmental consequences of seven alternatives for managing approximately 1,340 acres of BLM-administered lands in and near the city of Eugene, in Lane County, Oregon. The planning area does not currently have an RMP. The planning area is made up of acquired lands and survey hiatuses. This RMP is being developed separately from the Eugene District RMP because the planning area is geographically and ecologically distinct from the rest of the BLM-administered lands in the Eugene District and many of the resources and issues in the planning area are unrelated

to those addressed in the Eugene District RMP. The approved West Eugene Wetlands RMP will apply only to the BLM-administered lands in the West Eugene Wetlands.

The purpose of the action is to manage the planning area to contribute to the recovery of species listed under the Endangered Species Act, while providing other benefits. There are specific considerations in the planning area that lead the BLM to focus management on threatened and endangered species, including the Fender's blue butterfly and the plants Bradshaw's lomatium, Willamette daisy, Kincaid's lupine, and golden paintbrush: The scarcity of the listed species and their habitat, the importance of the planning area to the recovery of the listed species, and the purposes for which the BLM acquired the lands in the planning area. Therefore, the purpose and need for this RMP is more focused than the broad mandate of multiple use.

The West Eugene Wetlands Draft RMP/Draft EIS analyzes in detail six action alternatives and the No Action alternative. The No Action alternative would continue the current management approach into the future with no change in the management actions and level of management intensity in the planning area. Because the current management approach was not developed in an RMP, there are no land use allocations, management objectives, or management direction established for the planning area.

The design of the action alternatives varies primarily in the amount and location of lands within the planning area that would be allocated to the restoration of threatened and endangered species habitat. The action alternatives also vary in the management emphasis for lands which are not managed for habitat restoration. Additionally, the action alternatives vary in whether herbicides would be included as a management tool. Under the action alternatives, most or all of the planning area would be allocated to two land use allocations:

Prairie Restoration Area, which would have a management objective to restore and maintain habitat for prairie-related species; and Natural Maintenance Area, which would have a management objective to maintain existing resources and provide opportunities for a variety of goods and services.

Alternative 1 would allocate most of the planning area to the Prairie Restoration Area. Alternatives 2A and 2B would allocate to the Prairie Restoration Area all designated critical habitat. Alternative 2B would emphasize providing commodities and

services to the extent compatible with threatened and endangered species management, and would make approximately two-thirds of the planning area open to saleable mineral development.

Alternatives 3A, 3B, and 3C would allocate to the Prairie Restoration Area all good quality habitat that is currently occupied by threatened or endangered species. Alternative 3C would enhance recreation opportunities to the extent compatible with threatened and endangered species management.

Alternatives 1, 2A, 2B, and 3A would include herbicides among the management tools. The only nomination for an Area of Critical Environmental Concern (ACEC) received in this planning effort was continued designation of the currently designated Long Tom ACEC. Under Alternatives 1, 3A, 3B, and 3C, the site of the currently designated Long Tom ACEC would be included within the Prairie Restoration Area and would not need special management to protect the relevant and important values of the ACEC. Therefore, under these alternatives, the ACEC designation for this site would be removed. Under the No Action alternative and Alternatives 2A and 2B, the Long Tom site would continue to be designated as an ACEC.

Under all action alternatives, motorized vehicle use would be limited to designated roads throughout the planning area. This planning effort will include implementation decisions related to travel management networks, including a travel management plan identifying the specific roads and trails that will be available for public use and the limitations on use of roads and trails.

Alternative 2A is the BLM preferred alternative.

The land-use planning process was initiated on June 8, 2011, through a Notice of Intent published in the **Federal Register** (76 FR 33341), notifying the public of a formal scoping period and soliciting public participation. Cooperating agencies in the preparation of this land use plan are the United States Army Corps of Engineers, the City of Eugene Parks and Open Space Division, and the Confederated Tribes of Grand Ronde. Following the close of the public review and comment period, any substantive public comments will be used to revise the Draft RMP/Draft EIS in preparation for its release to the public as the Proposed RMP and Final EIS. The BLM will respond to each substantive comment received during the public review and comment period by making appropriate revisions to the document,

or explaining why the comment did not warrant a change. A notice of the availability of the Proposed RMP and Final EIS will be published in the **Federal Register**.

Please note that public comments and information submitted—including names, street addresses, and email addresses of persons who submit comments—will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Virginia Grilley,
Eugene District Manager.

[FR Doc. 2012-25624 Filed 10-18-12; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000LXSS150A00006100.241A]

State of Arizona Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The RAC will meet on November 28 for Standards for Rangeland Health and Guidelines for Grazing Administration training from 8 a.m. to 4 p.m.; November 29 for new Member Orientation and the Recreation and Communities and Energy and Minerals Working Group meetings from 8:30 a.m. to 5 p.m.; and November 30 for the Business meeting from 8 a.m. to 3 p.m.

ADDRESSES: Training will be held at the Phoenix District Office, and the

meetings will be held at the BLM National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

FOR FURTHER INFORMATION CONTACT:

Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004-4427, 602-417-9504. 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 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: a welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; update on the ASARCO Ray Land Exchange; updates on the United States Department of Agriculture Forest Service Recreation Fee Program for the National Forests in Arizona and 9th Circuit Court Decision for Mount Lemmon; reports by the RAC Recreation and Communities and Energy and Minerals Working Groups; RAC questions on BLM District Managers' Reports; and other items of interest to the RAC. Members of the public are welcome to attend the Working Group and Business meetings. A public comment period is scheduled on the day of the Business meeting from 11:30 a.m. to noon for any interested members of the public who wish to address the Council on BLM or Forest Service recreation fee programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. Final meeting agendas will be available two weeks prior to the meetings and posted on the BLM Web site at: <http://www.blm.gov/az/st/en/res/rac.html>. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting. Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation

Resource Advisory Council (RRAC) and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The RRAC will not review any recreation fee proposals at this meeting.

Raymond Suazo,
State Director.

[FR Doc. 2012-25779 Filed 10-18-12; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL1420000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709-1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat constituting the entire survey record of the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of sections 18 and 19, T. 13 N., R. 40 E., of the Boise Meridian, Idaho, Group Number 1327, was accepted December 9, 2011.

The plat representing the corrective resurvey of a portion of the Fifth Standard Parallel North (south boundary), the dependent resurvey of a portion of the subdivisional lines and the original 1891 right bank meanders of the Salmon River in section 20, the subdivision of section 20, the survey of a portion of the 2011 right bank meanders of the Salmon River in section 20, and a metes-and-bounds survey in section 20, T. 22 N., R. 22 E., of the Boise Meridian, Idaho, Group Number 1349, was accepted July 19, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 17, T. 2 N., R. 4 W., of the Boise Meridian, Idaho, Group Number 1342, was accepted July 20, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the original 1904 right bank meanders of the Salmon River in section 23, and the subdivision of section 23, T. 25 N., R. 1 E., Boise Meridian, Idaho, Group Number 1344, was accepted August 17, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and subdivision of section 8, T. 4 S., R. 39 E., of the Boise Meridian, Idaho, Group Number 1350, was accepted August 30, 2012.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat constituting the dependent resurvey of a portion of the Old East Boundary of the Fort Hall Indian Reservation, a portion of the First Standard Parallel South (south boundary), a portion of the New South Boundary of the Fort Hall Indian Reservation, a portion of the subdivisional lines, and the subdivision of certain sections, and the further subdivision of certain sections, the metes-and-bounds survey of portions of the Portneuf Reservoir 1910 Taking Line in sections 13, 14, and 24, and a survey of the 2009-2010 meanders of the full-pool line of the Portneuf Reservoir, in sections 13, 14, and 24, T. 6 S., R. 38 E., of the Boise Meridian, Idaho, Group Number 1305, was accepted July 12, 2012.

The plat representing the dependent resurvey of portions of the north and west boundaries and subdivisional lines, and the subdivision of section 6, T. 34 N., R. 2 W., Boise Meridian, Idaho, Group Number 1328, was accepted July 12, 2012.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 1, T. 34 N., R. 3 W., Boise Meridian, Idaho, Group Number 1328, was accepted July 12, 2012.

The plat constituting the dependent resurvey of a portion of the New South Boundary of the Fort Hall Indian Reservation, a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of sections 10 and 11, and the further subdivision of sections 10 and 11, a metes-and-bounds survey of portions of the Portneuf Reservoir 1908 Taking Line in sections 10 and 11, and a survey of the 2011 meanders of the Full-pool line of the Portneuf Reservoir in sections 10 and 11, T. 6 S., R. 38 E., of the Boise Meridian, Idaho, Group Number 1348, was accepted August 10, 2012.

The plat representing the corrective dependent resurvey of a portion of the south boundary, and the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 6, and the metes-and-bounds survey of certain tracts that identify Indian Allotments established by the U.S. Indian Service during 1910–1915, in sections 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, and 33, T. 4 S., R. 36 E., and Indian Allotments in sections 1, 12, 13, 24, 25, and 36, T. 4 S., R. 35 E. and Indian Allotments in sections 4, 5, and 6, T. 5 S., R. 36 E., of the Boise Meridian, Idaho, Group Number 1369, was accepted September 28, 2012.

This survey was executed at the request of the Bureau of Reclamation to meet their administrative needs. The lands surveyed are:

The plat, in 11 sheets, representing the metes-and-bounds survey of a portion of the as-built centerline of the New York Canal in sections 20, 21, 26, 27, and 28, T. 3 N., R. 2 E., of the Boise Meridian, Idaho, Group Number 1369, was accepted September 25, 2012.

Dated: October 11, 2012.

Jeff A. Lee,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 2012–25776 Filed 10–18–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI9310000. 1060JJ0000 LXSSD0640000]

Notice of Temporary Closure of Public Lands in Custer County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Notice is hereby given that a temporary closure to motorized travel and human entry is in effect on public lands administered by the Challis Field Office, Idaho Falls District, Bureau of Land Management.

DATES: The gather operation is expected to begin on or about October 24, 2012, and end November 2, 2012. The gather could be shorter depending on weather, location of herds, success of capture operations, and other variable conditions. The closure will last only as long as the gather.

FOR FURTHER INFORMATION CONTACT: Todd Kuck, Field Manager, 1151 Blue Mountain Road, Challis, Idaho 83226, 208–879–6200. 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 individuals during normal business hours.

The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This temporary area closure affects public lands in the Challis Herd Management Area (HMA) south on U.S. Hwy 93 from the junction of U.S. Hwy 93 and Idaho State Hwy 75 to Custer County. The majority of the temporary closures will be located around Spar Canyon Road and Road Creek Road. The location and duration of the closure will depend on the location of the wild horses and the time needed to move the horses to the gather corrals. The legal description of the closures, with their potential capture sites, is in Custer County, Idaho and more particularly described as:

Boise Meridian, Idaho

Potential Capture Site #1

T. 11 N., R. 19 E.

Secs. 22, 23, 26, 27, 28, 29, 32, 33 and 34

Potential Capture Site #2

T. 10 N., R. 19 E.

Secs. 21, 22, 23, 25, 26, 27 and 35

T. 10 N., R. 20 E.

Secs. 29, 30, 31, 32

Potential Capture Site #3

T. 11 N., R. 20 E.

Secs. 4, 5, 8, 9, 10, and 17

Potential Capture Site #4

T. 11 N., R. 20 E.

Secs. 14, 15, 22, 23 and 24

Potential Capture Site #5

T. 11 N., R. 20 E.

Secs. 25, 26, 34 and 35

T. 11 N., R. 21 E.

Secs. 30

Potential Capture Site #6

T. 12 N., R. 19 E.

Secs. 11, 12, 13 and 14

T. 12 N., R. 20 E.

Secs. 7, 18

Potential Capture Site #7

T. 10 N., R. 20 E.

Secs. 25, 26, 27, 28, 29, 32, 33, 34 and 35

T. 10 N., R. 21 E.

Secs. 30 and 31

Potential Capture Site #11

T. 11 N., R. 19 E.

Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14 and 15

The area closure is necessary to ensure the safety of the contractors, employees, public and the horses while gather operations are under way. Capture sites will be closed one at a time when being used for capture operations, rather than simultaneously. Closures will be limited to the smallest

area needed to conduct the daily gather operations and will move from capture site to capture site to ensure the public has access to their public lands when operations are not occurring near the capture site or holding facility. Where possible, closed areas would be open to traffic when directed by a pilot car. The area affected will be posted the evening before, by 8:00 p.m. MST, at the Challis Field Office and also on the BLM Idaho Web site at: http://www.blm.gov/id/st/en/prog/wild_horses/_gathers.html. Information will also be available by calling the Challis Field Office at 208–879–6200.

This closure order will be posted in the Challis Field Office on the date this notice is published in the **Federal Register**. Maps of the affected area and other documents associated with this closure will be available at the Challis Field Office and on the BLM Idaho Web page. The closure is established and administered by the BLM under the authority of 43 CFR 8364.1(a).

Exemptions: Persons who are exempt from this restriction include contractors hired by the BLM to work in the area; Federal, State or local officials working within the scope of their duties; members of any organized rescue or firefighting force in the performance of an official duty; any person holding written authorization from the BLM Authorized officer and persons escorted by BLM personnel to a designated public observation area as long as they stay in that observation area.

Penalties: In accordance with 43 CFR 8360.0–7, violation of this order is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months. Violators may also be subject to the enhanced fines provided for in 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Joe Kraayenbrink,

Idaho Falls District Manager.

[FR Doc. 2012–25854 Filed 10–18–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CAJO–11395; 4251 SZM]

Notice of Meeting for Captain John Smith Chesapeake National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving

notice that the Advisory Committee on the Captain John Smith Chesapeake National Historic Trail will hold a meeting. Designated through an amendment to the National Trails System Act (16 U.S.C. 1241), the trail consists of “a series of water routes extending approximately 3,000 miles along the Chesapeake Bay and its tributaries in the States of Virginia, Maryland, Delaware, and in the District of Columbia,” tracing the 1607–1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should register via email at Christine_Lucero@nps.gov or telephone: (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Advisory Council is John Maounis, Superintendent, Captain John Smith National Historic Trail, telephone: (410) 260–2471.

DATES: The Captain John Smith Chesapeake National Historic Trail Advisory Council will meet from 10:00 a.m. to 4:00 p.m. on Wednesday, October 24, 2012, (Eastern).

ADDRESSES: The meeting will be held at Murphy Hall at Westmoreland State Park, 145 Cliff Road, Montross, VA 22520. For more information, please contact the NPS Chesapeake Bay Office, 410 Severn Avenue, Suite 314, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Christine Lucero, Partnership Coordinator for the Captain John Smith Chesapeake National Historic Trail, telephone: (757) 258–8914 or email: Christine_Lucero@nps.gov.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Captain John Smith Chesapeake National Historic Trail Advisory Council for the purpose of discussing a land protection strategy and to update the Council on implementation projects. The Committee meeting is open to the public. Members of the public who would like to make comments to the Committee should preregister via email at Christine_Lucero@nps.gov or telephone: (757) 258–8914; a written summary of comments should be provided prior to the meeting. Comments will be taken for 30 minutes at the end of the meeting (from 3:30

p.m. to 4:00 p.m.). Before including your address, telephone 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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: October 1, 2012.

John Maounis,
Superintendent, Captain John Smith National Historic Trail.

[FR Doc. 2012–25729 Filed 10–18–12; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–11378; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 22, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 5, 2012. 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: September 26, 2012.

J. Paul Loether,
Chief, National Register of Historic Places/
National Historic Landmarks Program.

IOWA

Linn County

Cedar Rapids Pump Company Factory and Warehouse, (Cedar Rapids, Iowa MPS) 605 G Ave. NW., Cedar Rapids, 12000907

Plymouth County

Le Mars Downtown Commercial Historic District, Bounded by 2nd St. N, 2nd Ave. W., 1st St. S., & 1st Ave. E., Le Mars, 12000908

MISSOURI

Butler County

Williams—Gierth House, (Poplar Bluff MPS) 848 Vine St., Poplar Bluff, 12000909

St. Louis County

Pond School, (One-Teacher Public Schools of Missouri MPS) 17123 Manchester Rd., Wildwood, 12000910

NEVADA

Clark County

Cave Rock, Address Restricted, Lincoln Park, 12000911

NEW MEXICO

Santa Fe County

Santa Fe Trail—Apache Canyon Bridge Site, (Santa Fe Trail MPS) Across Galisteo Cr., Glorieta, 12000912

NORTH CAROLINA

Wake County

Morrisville Christian Church, (Wake County MPS) 222 Church St., Morrisville, 12000913

WISCONSIN

Milwaukee County

Milwaukee River Parkway, (Milwaukee County Parkway System MPS) Between Good Hope Rd. & W. Capitol Dr., Milwaukee, 12000914

[FR Doc. 2012–25730 Filed 10–18–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On October 10, 2012, the Department of Justice lodged a proposed consent decree with the United States District Court for the Central District of California in the lawsuit entitled *City of Colton v. American Promotional Events, Inc., et al.*, Civil Action No. CV 09–01864 PSG [Consolidated with Case Nos. CV 09–6630 PSG (SSx), CV 09–

06632 PSG (SSx), CV 09-07501 PSG (SSx), CV 09-07508 PSG (SSx), CV 10-824 PSG (SSx) and CV 05-01479 PSG (SSx)].

In this action, the United States filed a complaint under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, (“CERCLA”), to recover past response costs incurred and other relief in connection with the B.F. Goodrich Superfund Site located approximately 60 miles east of Los Angeles in San Bernardino County, California. The consent decree requires Pyro Spectaculars, Inc., Astro Pyrotechnics, Inc., Trojan Fireworks Company, Peters Parties, Stonehurst Site, LLC, and related entities, to pay a combined \$5,663,000 to the United States, San Bernardino County, the City of Colton, and the City of Rialto. Of this amount, the United States shall receive \$4,330,000; Colton shall receive \$500,000; Rialto shall receive \$500,000; and San Bernardino County shall receive \$333,000. In return, the United States provides covenants not to sue pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of the Resource Conservation and Recovery Act.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *City of Colton v. American Promotional Events, Inc., et al.*, D.J. Ref. No. 90-11-2-09952. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov</i> .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$[15.50] (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012-25771 Filed 10-18-12; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Self-Employment Training Demonstration Evaluation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, “Self-Employment Training Demonstration Evaluation,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 19, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Self-Employment Training (SET)

Demonstration Evaluation examines a reemployment program targeted towards dislocated workers, as defined by the Workforce Investment Act, who wish to start or grow a business in their fields of expertise. The demonstration will seek to connect such workers to self-employment training, intensive business development assistance, and other services (including seed capital microgrants) to help them become more successful in self-employment. The main objective of the evaluation of the SET Demonstration is to understand whether providing dislocated workers with access to intensive business development services and self-employment training increases their likelihood of reemployment, their earnings, and their propensity to start a business.

This evaluation contains a number of information collections subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on June 20, 2012 (77 FR 37070).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention ICR Reference Number 201209-1205-001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-ETA.

Title of Collection: Self-Employment Training Demonstration Evaluation.

OMB Control Number: 201209-1205-001.

Affected Public: Individuals or Households; State, Local, and Tribal Governments; and Private Sector—businesses or other for profits and not-for-profit institutions.

Total Estimated Number of

Responses: 10,002.

Total Estimated Annual Burden

Hours: 5,344.

Total Estimated Annual Other Costs Burden: \$0.

Dated: October 15, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012-25735 Filed 10-18-12; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Trust Fund Activity

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) extension titled, “Unemployment Insurance Trust Fund Activity,” to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 19, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email:

OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This information collection comprises the Unemployment Trust Fund (UTF) management reports. These reports assure that UTF contributions collected are immediately paid over to the Secretary of the Treasury, in conformity with Social Security Act (SSA) section 303(a)(4) and Federal Unemployment Tax Act (FUTA) section 3304(a)(3). The reports also assure that expenditure of all money withdrawn from the unemployment fund of a state is used exclusively for the payment of benefits, exclusive of refund.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0154. The current approval is scheduled to expire on October 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 22, 2012 (77 FR 37714).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-

0154. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-ETA.

Title of Collection: Unemployment Insurance Trust Fund Activity.

OMB Control Number: 1205-0154.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 3,604.

Total Estimated Annual Burden

Hours: 1,802.

Total Estimated Annual Other Costs Burden: \$0.

Dated: October 15, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012-25766 Filed 10-18-12; 8:45 a.m.]

BILLING CODE 4510-FW-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Annual Funding Notice for Defined Benefit Pension Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, “Annual Funding Notice for Defined Benefit Pension Plans,” to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 19, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Pension Protection Act of 2006, Public Law 109-280, section 501(a) amended Employee Retirement Income Security Act (ERISA) section 101(f), 29 U.S.C. 1021(f), to require administrators of all defined benefit plans subject to ERISA title IV to provide an annual funding notice to the Pension Benefit Guaranty Corporation (PBGC), to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. An annual funding notice must include, among other things, the plan's funding percentage, a statement of the value of the plan's assets and liabilities and a description of how the plan's assets are invested as of specific dates, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC. The EBSA issued Field Assistance Bulletin 2009-1 to provide interim guidance on the requirements.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject

to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0126. The current approval is scheduled to expire on October 31, 2010; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 25, 2012 (77 FR 37920).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0126. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-EBSA.

Title of Collection: Annual Funding Notice for Defined Benefit Pension Plans.

OMB Control Number: 1210-0126.

Affected Public: Private Sector—business or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 27,534.

Total Estimated Number of Responses: 44,500,000.

Total Estimated Annual Burden Hours: 977,000.

Total Estimated Annual Other Costs Burden: \$20,000,000.

Dated: October 15, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012-25765 Filed 10-18-12; 8:45 a.m.]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA-W) number issued during the period of October 1, 2012 through October 5, 2012.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of

separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
81,737	Alorica Inc. (CA), Verizon Business Networks Services, Inc.	Palatka, FL	June 20, 2011.
81,835	Auto Warehousing Company, Labor Ready, Express and Supplemental Staffing.	Woodhaven, MI	July 30, 2011.
81,880	RG Steel Wheeling, LLC, RG Steel, LLC, PRO Unlimited and Green Energy Initiatives LLC.	Wheeling, WV	August 7, 2011.
81,880A	Mountain State Carbon, LLC, RG Steel Wheeling, LLC	Follansbee, WV	August 7, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
81,919	Prometric, Inc., Educational Testing Service	St. Paul, MN	August 23, 2011.
81,924	Intermec Technologies, Pace Staffing Network	Everett, WA	August 24, 2011.
81,938	InterDent Inc., Northwest Division, Central Business Office, Billing & Collections Dept..	Vancouver, WA	November 6, 2011.
81,940	Omnova Solutions, Inc., Decorative Products Division, Express Services, Malone Electric, etc..	Columbus, MS	September 4, 2011.

TA-W No.	Subject firm	Location	Impact date
81,979	Goodridge USA	Torrance, CA	September 18, 2011.
81,984	Leviton Manufacturing Company, Inc., RM Personnel, Inc.	El Paso, TX	September 19, 2011.
82,016	Trostel, LTD.	Whitewater, WI	September 27, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or

(b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA-W No.	Subject firm	Location	Impact date
81,845	Herman Miller, Inc., Adecco, Aerotek and Account Temps	Zeeland, MI	
81,856	Torus US Services, Casualty—Renewable Energy Division	Jersey City, NJ	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i)

(decline in sales or production, or both) and (a)(2)(B) (shift in production or

services to a foreign country) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
81,834	Aperia Solutions, Inc	Dallas, TX	
81,908	Rotek Incorporated, Thyssenkrupp USA, Inc	Aurora, OH	
81,942	Ochoco Lumber Company, Malheur Lumber Company Division	John Day, OR	

The investigation revealed that the criteria under paragraphs (a)(2)(A)

(increased imports) and (a)(2)(B) (shift in production or services to a foreign

country) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
81,761	Exopack LLC, Elwood Staffing	Seymour, IN	
81,848	Mohawk Industries, Inc., Rocky River Plant	Calhoun Falls, SC	
81,868	CCC Information Services, Inc., Distribution and Logistics Group, P. Murphy Associates.	Cerritos, CA	
81,896	SolarMarkt US Corp D/B/A Session Solar	Scotts Valley, CA	
81,906	Pratt & Whitney Rocketdyne, Inc., (PWR)	Canoga Park, CA	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department’s Web site, as

required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of

workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA-W No.	Subject firm	Location	Impact date
81,976	Custom Foods Group, South East Division, Career Adventures, General Motors Vehicle Mfg.	Shreveport, LA	

I hereby certify that the aforementioned determinations were issued during the period of October 1, 2012 through October 5, 2012. These determinations are available on the Department’s Web site *tradeact/taa/taa search form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Dated: October 10, 2012.
Elliott S. Kushner,
Certifying Officer, Office of Trade Adjustment Assistance.
 [FR Doc. 2012-25768 Filed 10-18-12; 8:45 am]
BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR
Employment and Training Administration
Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (“the Act”) and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 29, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of October 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[44 TAA petitions instituted between 10/1/12 and 10/5/12]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82017	PotashCorp-Aurora (Workers)	Aurora, NC	10/01/12	09/25/12
82018	American Airlines (Union)	Fort Worth, TX	10/01/12	09/26/12
82019	Delphi Electronics & Safety (Company)	Auburn Hills, MI	10/01/12	09/28/12
82020	Hyosung USA Inc. (Company)	Asheboro, NC	10/01/12	09/28/12
82021	Cyberdefender (Workers)	Los Angeles, CA	10/01/12	09/27/12
82022	R.G. Steel (Union)	Allenport, PA	10/01/12	09/28/12
82023	US Mouldings, LLC (State/One-Stop)	Manning, SC	10/02/12	10/01/12
82024	Thermo King-Ingersoll Rand (State/One-Stop)	Thomson, GA	10/02/12	10/01/12
82025	Comcast Cable (Workers)	Sacramento, CA	10/02/12	10/01/12
82026	Key Manufacturing (Company)	Allentown, PA	10/02/12	10/01/12
82027	GreenVolts, Inc. (Company)	Fremont, CA	10/02/12	10/01/12
82028	PerkinElmer Inc. (State/One-Stop)	Downers Grove, IL	10/02/12	10/01/12
82029	Oregon Catholic Press (Workers)	Portland, OR	10/02/12	10/01/12
82030	KT Grant, Inc. (State/One-Stop)	Sparrows Point, MD	10/02/12	09/28/12
82031	Kinder Morgan Bulk Terminals, Inc. (State/One-Stop)	Sparrows Point, MD	10/02/12	09/28/12
82032	UCM Magnesia, Inc. (Company)	Cherokee, AL	10/02/12	10/02/12
82033	Avaya Virtual Employees (State/One-Stop)	Highlands Ranch, CO	10/02/12	10/01/12
82034	Deutsche Bank AG/DB Hedgeworks (State/One-Stop)	Santa Ana, CA	10/03/12	10/02/12
82035	Georgia Pacific, a Subsidiary of Koch Industries (State/One-Stop).	Duluth, MN	10/03/12	10/02/12
82036	Interface Sealing Solutions (State/One-Stop)	Croghan, NY	10/03/12	10/02/12
82037	Bank NY Mellon (State/One-Stop)	New York, NY	10/03/12	10/02/12
82038	Verso Paper (State/One-Stop)	Sartell, MN	10/03/12	10/02/12
82039	Wellpoint (Workers)	Denver, CO	10/03/12	10/02/12
82040	3V Corporation (State/One-Stop)	Georgetown, SC	10/03/12	10/02/12
82041	Treasure Coast Fasteners, Inc. (State/One-Stop)	Fort Pierce, FL	10/03/12	10/02/12
82042	Covidien (Company)	Seneca, SC	10/04/12	09/25/12
82043	Advantage Transcription Service (Workers)	Valencia, CA	10/04/12	09/27/12
82044	International Paper (Workers)	Albany, OR	10/04/12	09/27/12
82045	Open Text, Inc. (Workers)	Melbourne, FL	10/04/12	10/03/12
82046	New York Wire (Company)	York, PA	10/04/12	10/02/12
82047	Ormet Primary Aluminum Corporation (Company)	Hannibal, OH	10/04/12	09/28/12
82048	Hartford Financial Services Group, Inc. (Company)	Windsor, CT	10/04/12	10/03/12
82049	Hartford Financial Services Group, Inc. (Company)	Simsbury, CT	10/04/12	10/03/12
82050	Hartford Financial Services Group, Inc. (Company)	Simsbury, CT	10/04/12	10/03/12
82051	Hartford Financial Services Group, Inc. (Company)	Clinton, NY	10/04/12	10/03/12
82052	Cenveo, Inc. (Union)	Kenosha, WI	10/04/12	10/02/12
82053	Queen Cutlery Company (Workers)	Titusville, PA	10/05/12	10/03/12
82054	Hartford Financial Services Group, Inc. (Company)	Windsor, CT	10/05/12	10/04/12
82055	Hartford Financial Services Group, Inc. (Company)	Windsor, CT	10/05/12	10/04/12
82056	Hartford Financial Services Group, Inc. (Company)	Overland Park, KS	10/05/12	10/04/12
82057	Hartford Financial Services Group, Inc. (Company)	Tampa, FL	10/05/12	10/04/12
82058	Hartford Financial Services Group, Inc. (Company)	Indianapolis, IN	10/05/12	10/04/12
82059	The Hartford Financial Services Group, Inc (Company)	Hartford, CT	10/05/12	10/04/12
82060	Rolls-Royce Energy (Union)	Mount Vernon, OH	10/05/12	09/26/12

DEPARTMENT OF LABOR**Mine Safety and Health Administration**

[OMB Control No. 1219-0078]

Proposed Extension of Existing Information Collection; Mine Rescue Teams for Underground Metal and Nonmetal Mines; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons**AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 49.2-49.9. OMB last approved this information collection request (ICR) on February 1, 2010.

DATES: All comments must be postmarked or received by midnight Eastern Standard Time on December 18, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with "OMB 1219-0078" and sent to the Mine Safety and Health Administration (MSHA). Comments may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Facsimile:* 202-693-9441, include "OMB 1219-0078" in the subject line of the message.

- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at moxness.greg@dol.gov (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:**I. Background**

Section 115(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires the Secretary of Labor (Secretary) to publish regulations which provide that mine rescue teams be available for rescue and recovery work to each underground mine in the event of an emergency. In addition, the costs of making advance arrangements for such teams are to be borne by the operator of each such mine.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed extension of the information collection related to Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses), to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. OMB clearance requests are available on MSHA's Web site at <http://www.msha.gov> under "Rules & Regs" on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be

available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

MSHA does not intend to publish the results from this information collection and is not seeking approval to either display or not display the expiration date for the OMB approval of this information collection.

There are no certification exceptions identified with this information collection and the collection of this information does not employ statistical methods.

Summary

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219-0078.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 49.2-49.9/MSHA Form 5000-3.

Total Number of Respondents: 254.

Frequency: Various.

Total Number of Responses: 20,043.

Total Burden Hours: 10,111 hours.

Total Other Annual Cost Burden: \$309,067.00.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: October 15th, 2012.

George F. Triebsch,
Certifying Officer.

[FR Doc. 2012-25740 Filed 10-18-12; 8:45 am]

BILLING CODE 4510-43-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 31, 2012, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 31, 2012—12:00 p.m. until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301-415-6805 or Email: Antonio.Dias@nrc.gov) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126-64127).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240-888-9835) to be escorted to the meeting room.

Dated: October 10, 2012.

Hipolito Gonzalez,

Acting Chief, Technical Support Branch,
Advisory Committee on Reactor Safeguards.

[FR Doc. 2012-25851 Filed 10-18-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC-2012-0002].

DATE: Week of October 22, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of October 22, 2012

Tuesday, October 23, 2012

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative).

b. Final Rule: Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions (RIN 3150-AH15) (Tentative).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292.

Contact person for more information: Rochelle Baval, (301) 415-1651.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with

disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301-415-6200, TDD: 301-415-2100, or by email at william.dosch@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an email to darlene.wright@nrc.gov.

Dated: October 16, 2012.

Rochelle C. Baval,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012-25908 Filed 10-17-12; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2010-0362]

Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG-1307, revision 15; extension of comment period.

SUMMARY: On September 21, 2012 (77 FR 58591), the U.S. Nuclear Regulatory Commission (NRC or the Commission) issued Draft NUREG-1307, Revision 15, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities," in the **Federal Register** for a 30 day public comment period. The NRC is extending the public comment period for Draft NUREG-1307, Revision 15 from October 22, 2012, to November 15, 2012. Draft NUREG-1307, Revision 15, Draft Report for Comment incorporates updated information and expands on the NUREG-1307, Revision 14 report published in November 2010. NUREG-1307, Revision 15, also incorporates changes resulting from a reassessment of the assumptions used for the vendor waste disposal option for low-level waste.

DATES: Submit comments by November 15, 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-2010-0362. 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-2010-0362. 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: Jo Ann Simpson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8388; email: JoAnn.Simpson@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2010-0362 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-2010-0362.

- *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 ML12257A191.

- *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-2010-0362 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

On September 21, 2012 (77 FR 58591), the NRC published a notice of issuance and availability of Draft NUREG-1307, Revision 15. The draft NUREG proposed a reduction in the estimate of the potential savings from using waste vendors to process radioactive waste generated during power reactor decommissioning. The change resulted in an increase in the minimum permissible amount of decommissioning financial assurance required by the licensee. By letter dated September 26, 2012, (ADAMS Accession No. ML12271A275), the Nuclear Energy Institute requested an extension of the stated comment period for the purpose of providing sufficient time for the industry to thoroughly understand and assess the proposed changes, interact with the agency staff to obtain necessary

clarifications at one or more focused public meetings, and provide fully supported written comments to inform development of the final NUREG-1307, Revision 15. It is the desire of the NRC to receive comments of a high quality from all stakeholders. Several factors have been considered in granting an extension. The comment period extension is reasonable and does not affect NRC deadlines. The additional time will allow adequate time for the NRC to review comments, organize a public workshop on NUREG-1307, Revision 15, and finalize NUREG-1307, Revision 15, for use by licensees before the required submission of power reactor Decommissioning Funding Status reports by the March 31, 2013, due date. The NRC continues to evaluate factors affecting waste burial costs. Guidance developed by the NRC staff would benefit from industry information reflecting real world burial cost data and other such information that could assist in evaluating changes to the waste burial factor. Such information would include: (1) Actual disposal costs, under proprietary cover, if necessary; (2) Disposal costs specific to disposal operations for Rancho Saco and Zion Solutions, under proprietary cover, if necessary; (3) Identification of misinterpreted or misapplied data, if any, found in Table A-4 of NUREG-1307, Revision 15; and (4) Licensees' site-specific cost estimates and time assumptions. The NRC also seeks comments from other stakeholders on the costs and benefits of reducing the estimate of potential savings in decommissioning costs available from using a waste vendor to process power reactor decommissioning wastes. Therefore the comment submittal period is extended from the original date of October 22, 2012 to November 15, 2012.

Dated at Rockville, Maryland, this 10th day of October, 2012.

For the Nuclear Regulatory Commission.

Jo Ann Simpson,

Acting Chief, Financial Analysis and International Projects Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2012-25848 Filed 10-18-12; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. R2013-1; Order No. 1501]

Postal Rate and Classification Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice of annual price adjustments for all market dominant classes of mail. The adjustments include a one-cent increase in the price of First-Class Stamp (from 45 cents to 46 cents). The Postal Service is also planning to make mail classification changes. This notice addresses procedural steps associated with this filing and invites public comment.

DATES: *Comments are due:* October 31, 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 the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6824.

Table of Contents

- I. Overview
- II. Promotions
- III. Summary of Price Changes by Class of Mail
- IV. Preferred Mail and Worksharing Discounts
- V. MCS Changes
- VI. Administrative Actions
- VII. Ordering Paragraphs

SUPPLEMENTARY INFORMATION:

I. Overview

A. Index-based Price Changes for Market Dominant Classes of Mail

On October 11, 2012, the Postal Service filed notice, pursuant to 39 U.S.C. 3622 and 39 CFR part 3010, of plans to adjust prices for market dominant products by amounts which, on average, are, with one exception, at or below the statutory price cap of 2.570 percent for each class of mail.¹ The planned adjustments affect both domestic and international market dominant products and are scheduled to take effect January 27, 2013.

The Postal Service states that it has inflation-based price adjustment authority of 2.570 percent based on the Consumer Price Index for All Urban Consumers, U.S. All Items (the "CUUR0000SA0") series (CPI-U). *Id.* The Postal Service also states that it has unused rate authority (as indicated in the following table) and will use some of this authority for Special Services. *Id.*

¹ United States Postal Service Notice of Market-Dominant Price Adjustment at 3, October 11, 2012 (Adjustment Notice). The overall increase for Special Services is 2.850 percent.

TABLE 1—AVAILABLE UNUSED PRICE ADJUSTMENT AUTHORITY

Market dominant class	Unused authority (%)
First-Class Mail	-0.530
Standard Mail	-0.380
Periodicals	-0.562
Package Services	-0.533
Special Services	2.394

Id.

The Postal Service asserts that it is authorized to raise prices for each class by the percentages in the following table.

TABLE 2—PRICE ADJUSTMENT AUTHORITY BY CLASS

Market dominant class	Price adjustment authority (%)
First-Class Mail	2.570
Standard Mail	2.570
Periodicals	2.570
Package Services	2.570
Special Services	4.964

Id. at 4.

The following table presents the Postal Service's planned percentage price changes by class.

TABLE 3—2013 PRICE CHANGE PERCENTAGE BY CLASS

Market dominant class	Price change (%)
First-Class Mail	2.570
Standard Mail	2.570
Periodicals	2.560
Package Services	2.569
Special Services	2.850

Id. at 6.

In some instances, price adjustments for products within classes vary from the average, sometimes substantially. Interested persons are encouraged to review the Adjustment Notice and workpapers for specific details.

Unused authority after the 2013 price change. The following table identifies the unused price adjustment authority the Postal Service calculates as available following the 2013 price change.

TABLE 4—UNUSED PRICING AUTHORITY AVAILABLE FOLLOWING DOCKET NO. R2013-1 PRICE CHANGES

Class	Percentage points
First-Class Mail:	
R2012-3	-0.530
R2013-1	0.000

TABLE 4—UNUSED PRICING AUTHORITY AVAILABLE FOLLOWING DOCKET NO. R2013-1 PRICE CHANGES—Continued

Class	Percentage points
Total	-0.530
Standard Mail:	
R2012-3	-0.380
R2013-1	0.000
Total	-0.380
Periodicals:	
R2012-3	-0.562
R2013-1	0.010
Total	-0.552
Package Services:	
R2012-3	-0.533
R2013-1	0.001
Total	-0.532
Special Services:	
R2012-3	2.394
R2013-1	-0.280
Total	2.114

Id. at 6-7.

Classification changes. The Adjustment Notice identifies numerous substantive classification changes in a bulleted list. *Id.* at 54-55. Attachment A presents these changes as well as formatting and wording changes. *Id.* at 53-54.

B. Format and Content of Adjustment Notice

The Adjustment Notice includes a brief introductory section, four parts, and four attachments.

The introductory section of the Adjustment Notice includes a certification, in accordance with rule 3010.14(a)(3), that the Postal Service will provide widespread notice of the planned adjustments prior to the planned implementation date. *Id.* at 1. It identifies Greg Hall as the Postal Service official who will respond to queries from the Commission. *Id.* at 2.

Part I discusses compliance with the price cap. *Id.* at 2-7. Part II describes several temporary promotions. It also discusses how a portion of the related revenue loss will be integrated into the price cap calculations for First-Class Mail and Standard Mail. *Id.* at 7-9. Part III discusses prices in more detail, including workshare discounts. It also addresses the consistency of prices with the objectives and factors of 39 U.S.C. 3622 and the preferential pricing requirements of 39 U.S.C. 3626. *Id.* at 9-53. Part IV describes related Mail

Classification Schedule (MCS) changes.² *Id.* at 53–55.

Attachments. Attachment A presents MCS changes in legislative format and new price schedules. Attachment B presents workshare discounts and related information. Attachment C presents the Postal Service’s price cap calculation. The price cap calculation includes, in conformance with rule 3010.22(b), an adjustment to the moving average because less than 12 months have passed since the most recent price change (filed on January 13, 2011). Attachment D presents the 2013 Mailing Services Promotions Calendar Overview. *Id.* at 5.

Workpapers. The Postal Service filed nine sets of workpapers: First Class Mail Cap Compliance: USPS–LR–R2013–1/1

First Class Mail International Cap Compliance: USPS–LR–R2013–1/NP1
 Standard Mail Cap Compliance: USPS–LR–R2013–1/2
 Periodicals Cap Compliance: USPS–LR–R2013–1/3
 Package Services Cap Compliance: USPS–LR–R2013–1/4
 Special Services Cap Compliance: USPS–LR–R2013–1/5
 Derivation of Volumes for Earned Value Reply Mail Promotion: USPS–LR–R2013–1/6
 Standard Mail Contribution Model: USPS–R2013–1/7
 FY 2011 Delivery Costs by Shape: USPS–R2013–1/8
Id. at 4–5.

Each set of workpapers includes a preface with an explanation of its contents. *Id.* at 5. In addition, the

preface for the first five workpapers provides an overview, a discussion of adjustments to the billing determinants for the four quarters ending FY 2012, quarter 3, and an explanation of revenue calculations. *Id.* The First-Class Mail and Standard Mail workpapers also incorporate data on promotion volumes, based on the volumes from the 2011 Mobile Barcode Promotion and USPS–LR–R2012–1/6.

II. Promotions

As part of this filing, the Postal Service seeks approval of six promotions during calendar year 2013.³ The following table identifies the promotion and timeframe.

TABLE 5—CALENDAR YEAR 2013 PROMOTION TIMEFRAME

Promotion	Timeframe
Mobile Coupon/Click-to-Call	March–April 2013.
Earned Value Reply Mail Promotion	April–June 2013.
Emerging Technology	August–September 2013.
Picture Permit	August–September 2013.
Product Samples	August–September 2013.
Mobile Buy-it-Now	November–December 2013.

Id. at 7–8.

The Postal Service states that it will seek to recover some of the revenue forgone from these promotions by factoring the lost revenue into the price cap calculation. *Id.* at 9. The Postal Service asserts that a conservative estimate of the value of four of the promotions (Mobile Coupon, Click-to-Call, Emerging Technologies, Mobile Buy-it-Now, and Earned Value Reply Mail), based on historical data on qualifying volume, is approximately \$33.4 million.⁴ *Id.*

III. Summary of Price Changes by Class of Mail

A. First-Class Mail

The following table identifies the Postal Service’s planned percentage price changes for its First-Class Mail products.

TABLE 6—FIRST-CLASS MAIL PRICE CHANGES

First-class mail product	Percent change
Single-Piece Letters and Cards ...	2.283
Presort Letters and Cards	2.555

TABLE 6—FIRST-CLASS MAIL PRICE CHANGES—Continued

First-class mail product	Percent change
Flats	2.675
Parcels	4.971
International	7.923
Overall	2.570

Id. at 14.

The first ounce First-Class Mail price. The price of a stamp for the first ounce of single-piece letter mail (including the Forever stamp), increases by one cent under the Postal Service’s plan, from 45 cents to 46 cents. *Id.*

Single-piece letters and cards. The overall increase of 2.283 percent for single-piece letters and cards includes a one cent increase in the price for single-piece cards (to 33 cents). *Id.* at 14–15. The price for single-piece residual letters (mainly permit imprint letters), which the Postal Service is introducing for calendar year 2013, will be 48 cents for up to 2 ounces. *Id.* at 15.

Presort letters and cards. The Postal Service states that the overall increase for this product is slightly below the

overall average for First-Class Mail. The Postal Service continues to price Automated Area Distribution Center (AADC) and 3-Digit letters at the same level and extends this structure to Presort Automation Postcards. *Id.* at 16. The Postal Service continues to offer the free second ounce for all Presort First-Class Mail letters. *Id.* at 16.

Flats. The overall increase for Flats is 2.675 percent, slightly above the CPI–U cap of 2.57 percent. *Id.* Price changes within this product vary. *Id.*

Parcels. Single-Piece (Retail) Parcels (which are the only parcel-shaped First-Class Mail pieces that remain as market dominant) receive a 4.971 percent increase, higher than the overall increase for First-Class Mail. *Id.* The Postal Service states that this above-average increase is expected to improve cost coverage for this product, which it considers low by First-Class Mail standards. *Id.* at 17–18.

Promotions—revenue forgone implications. The Adjustment Notice includes a summary of the methodology the Postal Service plans to use to recover some of the revenue forgone resulting from its 2013 First-Class Mail promotions. *Id.* at 18–19. The

²Part IV is identified as an additional Part III in the Adjustment Notice.

³In the past, the Postal Service has not included promotional filings in its annual market dominant

price adjustment filing. The Postal Service states that it does so this year in response to customers’ concern about insufficient time to fully participate in the promotions. *Id.* at 7.

⁴ See USPS–LR–R2013–1/1 and USPS–LR–R2013–1/2 for the basis of this calculation.

discussion includes identification of the four promotional categories that will be included in recovery of revenue forgone and related data and information. *Id.* at 18–19.

International. Prices for Outbound Single-Piece First-Class Mail International (FCMI) increase by 14.3 percent, significantly above the First-Class Mail average of 2.570 percent. *Id.* at 19. The Postal Service asserts that the increase is necessary to increase contribution and improve cost coverage for FCMI letters at the one-ounce weight step and to accommodate introduction of the International Forever stamp. *Id.* The International Forever stamp will be sold at the price of a single-piece FCMI first ounce machinable letter and have a postage value equivalent to the price of a single-piece FCMI first ounce machinable letter in effect at time of use. *Id.*

B. Standard Mail

The following table presents the Postal Service’s planned percentage price changes for Standard Mail products.

TABLE 7—STANDARD MAIL PRICE CHANGES

Standard mail product	Percent change
Letters	2.722
Flats	2.570
Parcels	3.081
High Density/Saturation Letters	2.207
High Density/Saturation Flats and Parcels	2.275
Carrier Route	3.133
Overall	2.570

Id. at 19.

Letters receive an above-average increase; Flats receive an average (at

cap) increase. *Id.* at 20. The Adjustment Notice includes a discussion of the Postal Service’s rationale for this approach, including reference to the Commission’s finding of noncompliance for Standard Mail Flats in the 2010 Annual Compliance Report. *Id.* at 20–25. The Adjustment Notice also addresses other Standard Mail pricing. *Id.* at 25. This includes a new Simple Samples Initiative and a new High Density Plus price tier. *Id.* at 26. Detached Address Labels prices increase from 3.0 cents to 3.1 cents. *Id.* The Postal Service is not proposing any price changes for Every Door Direct Mail (which will remain at 16 cents) or for optional picture permit indicia (which will remain at 2 cents). *Id.* at 27. However, the Postal Service is extending the availability of picture permits to flats. *Id.*

The Postal Service states that the methodology for recovering promotion-related revenue forgone in Standard Mail follows the approach for First-Class Mail. *Id.* at 26–27.

C. Periodicals

The following table presents the Postal Service’s planned percentage price changes for the Periodicals class.

TABLE 8—PERIODICALS PRICE CHANGES

Periodicals product	Percent change
Outside County	2.546
Within County	2.911
Overall	2.560

Id. at 27.

The Postal Service states that the Periodicals price change reflects recognition of this product’s value,

despite cost coverage shortfall. *Id.* at 27–28. It states that it cannot use its pricing authority to fully cover costs, as both Periodicals are failing to cover costs by substantially more than the cap. *Id.* at 28.

D. Package Services

The following table presents the Postal Service’s planned percentage price changes for the Package Services class.

TABLE 9—PACKAGE SERVICES PRICE CHANGES

Package services product	Percent change
Alaska Bypass Service	3.000
Bound Printed Matter Flats	0.002
Bound Printed Matter Parcels ..	3.424
Media Mail and Library Mail	3.472
Inbound Surface Parcel Post* ..	0.000
Overall	2.569

*Prices for Inbound Surface Parcel Post (at UPU rates) are determined by the Universal Postal Union and are not under the Postal Service’s control. These prices are adjusted by the Postal Operations Council.

Id.

E. Special Services

The overall increase for Special Services is 2.850 percent. *Id.* at 29. The Postal Service states that for most of the products, fee increases were designed to be close to 4.5 percent, while maintaining consistency with historical rounding constraints (to simplify transactions for customers). *Id.* at 30. The following table, based on price changes identified in the body of the Adjustment Notice, indicates the differing effects of the Postal Service’s Special Services pricing decisions.

TABLE 10—SPECIAL SERVICES PRICE CHANGES

Special services product	Percent change
Collect on Delivery	9.2
Express Mail Insurance	7.9
Return Receipt	7.5
Special Handling Prices	16.8
Stamp Fulfillment Services	0.0
Delivery Confirmation Service	–27.1*
Confirm	Prices remain at zero.
Periodicals Additional Entry Fee Application	Eliminated.
Periodicals Original Entry Fee Application	Increases.
Caller Service	5.9
Post Office Boxes	5 percent overall; no increase for Size 1 boxes; increases for larger boxes.
Stamped Envelopes	6.2
Stamped Cards	33.3

TABLE 10—SPECIAL SERVICES PRICE CHANGES—Continued

Special services product	Percent change
International Certificates of Mailing	Set equal to equivalent domestic service.

* Based in part on setting the fee for retail Delivery Confirmation service (for Package Services and Priority) and the fee for electronic Delivery Confirmation service (for Parcel Post) at zero.

Id. at 30–32.

IV. Preferred Mail and Worksharing Discounts

Preferred mail. The Adjustment Notice includes the Postal Service’s explanation that it implemented section 3626 pricing requirements in the same manner as in the Docket No. R2012–3 price change, and notes the Commission concluded the Postal Service’s interpretation of section 3626 is appropriate. *Id.* at 32. The Postal Service identifies each of the preferred products or components (Within County Periodicals, Nonprofit and Classroom Periodicals, Science of Agriculture Periodicals advertising pounds, Nonprofit Standard Mail, and Library Mail) and describes how the planned adjustments comport with applicable statutory factors. *Id.* at 32–33.

Consistency with 39 U.S.C. 3627 and 3629. The Adjustment Notice observes that neither of these sections is implicated by the price change, as the Postal Service does not seek to alter free rates (section 3627) or change the eligibility requirements for nonprofit rates. *Id.* at 34.

Workshare discounts. The Adjustment Notice includes the Postal Service’s justification and explanation, in accordance with rules 3010.14(b)(5) and (6), for workshare discounts that exceed 100 percent of avoided costs or that are substantially below 100 percent for each affected class or individual product. *Id.* at 34–53.

V. MCS Changes

The Adjustment Notice, in conformance with rule 3010.14(b)(9), identifies numerous changes to the MCS. Certain substantive changes are identified by the Postal Service. *Id.* at 54–55. Attachment A to the Adjustment Notice presents price and classification changes. *Id.* at 53.

VI. Administrative Actions

The Commission hereby establishes a formal docket, captioned Docket No. R2013–1, Notice of Market-Dominant Price Adjustment, to conduct the review of the Postal Service’s planned price adjustments mandated in 39 U.S.C. 3622. The Commission has posted the

Adjustment Notice on the Commission’s Web site (<http://www.prc.gov>), and has made the Adjustment Notice available for copying and inspection during the agency’s regular business hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal holidays.

Public comment period. The Commission’s rules provide a period of 20 days from the date of the Postal Service’s filing for public comment. 39 CFR 3010.13(a)(5). Comments by interested persons are due no later than October 31, 2012. Interested persons are encouraged to review the Postal Service’s Adjustment Notice and workpapers in their entirety.

Commission rule 3010.13(b) further provides that public comments are to focus primarily on whether the planned price adjustments comply with the following mandatory requirements under the Postal Accountability and Enhancement Act (PAEA):

(1) Whether the planned rate adjustments measured using the formula established in section 3010.23(b) are at or below the annual limitation established in section 3010.11; and

(2) Whether the planned rate adjustments measured using the formula established in section 3010.23(b) are at or below the limitations established in section 3010.28.

Participation and designated filing method. Interested persons are not required to file a notice of intervention prior to submitting comments. Instead, they are to submit comments electronically via the Commission’s Filing Online system, unless a waiver is obtained. Instructions for obtaining an account to file documents online may be found on the Commission’s Web site (<http://www.prc.gov>), or by contacting the Commission’s Docket Section staff at 202–789–6846.

Persons without access to the Internet or otherwise unable to file documents electronically may request a waiver of the electronic filing requirement by filing a motion for waiver with the Commission. The motion may be filed along with any comments the person may wish to submit in this docket. Persons requesting a waiver may file hardcopy documents with the Commission either by mailing or by

hand delivery to the Office of the Secretary, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001 during regular business hours by the date specified for such filing. Any person needing assistance in requesting a waiver may contact the Docket Section at 202–789–6846. Hardcopy documents will be scanned and posted on the Commission’s Web site.

Appointment of Public Representative. In conformance with 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to represent the interests of the general public in this proceeding.

VII. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2013–1 to consider planned price adjustments in rates, fees and classifications for market dominant postal products and services identified in the Postal Service’s October 11, 2012 Adjustment Notice.

2. Comments by interested persons on the planned price adjustments are due no later than October 31, 2012.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–25761 Filed 10–18–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Market Test of Experimental Product—Metro Post

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

DATES: *Effective date:* October 19, 2012.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3641(c)(1), it will begin a market test of its Metro Post experimental product on or after November 12, 2012. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at www.prc.gov, Docket No. MT2013-1.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012-25727 Filed 10-18-12; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE**Removal of International Restricted Delivery From the Competitive Product List**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it has filed a request with the Postal Regulatory Commission to remove International Restricted Delivery from the competitive product list.

DATES: *Effective date:* October 19, 2012.

FOR FURTHER INFORMATION CONTACT:

Caroline Brownlie, 202-268-3010.

SUPPLEMENTARY INFORMATION:

On October 11, 2012, the United States Postal Service® filed with the Postal Regulatory Commission the *Request of the United States Postal Service to Remove International Restricted Delivery from the Competitive Product List*, pursuant to 39 U.S.C. 3642.

Documents pertinent to this request are available at <http://www.prc.gov>, Docket No. MC2013-3.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012-25728 Filed 10-18-12; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION**Submission for OMB Review; Comment Request**

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 38a-1, OMB Control No. 3235-0586, SEC File No. 270-522.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 38a-1 (17 CFR 270.38a-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act") is intended to protect investors by fostering better fund compliance with securities laws. The rule requires every registered investment company and business development company ("fund") to: (i) Adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, including procedures for oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (ii) obtain the fund board of directors' approval of those policies and procedures; (iii) annually review the adequacy of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation; (iv) designate a chief compliance officer to administer the fund's policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures; and (v) maintain for five years the compliance policies and procedures and the chief compliance officer's annual report to the board.

The rule contains certain information collection requirements that are designed to ensure that funds establish and maintain comprehensive, written internal compliance programs. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

While Rule 38a-1 requires each fund to maintain written policies and procedures, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's "master" compliance program to assemble appropriate compliance policies and procedures. Many fund complexes

already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop or revise policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations.

There are approximately 4,237 funds subject to Rule 38a-1. Among these funds, 146 were newly registered in the past year. These 146 funds, therefore, were required to adopt and document the policies and procedures that make up their compliance programs. Commission staff estimates that the average annual hour burden for a fund to adopt and document these policies and procedures is 105 hours. Thus, we estimate that the aggregate annual burden hours associated with the adoption and documentation requirement is 15,330 hours.

In 2010, Commission staff began to estimate the hour burden associated with money market funds' adoption of certain policies and procedures aimed at ensuring that these funds meet reasonably foreseeable shareholder redemptions (the "general liquidity requirement"). Commission staff estimates that each newly-registered money market fund will incur a one-time additional average burden of 9 hours to document and adopt policies and procedures that will assist in complying with the general liquidity requirement. Approximately 10 money market funds were newly registered in the past year. Thus, we estimate that the additional aggregate annual burden hours associated with general liquidity requirement policies and procedures is 90 hours.

All funds are required to conduct an annual review of the adequacy of their existing policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation. In addition, each fund chief compliance officer is required to prepare an annual report that addresses the operation of the policies and procedures of the fund and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, any material changes to the policies and procedures recommended as a result of the annual review, and certain compliance matters that occurred since

the date of the last report. The staff estimates that each fund spends 49 hours per year, on average, conducting the annual review and preparing the annual report to the board of directors. Thus, we estimate that the annual aggregate burden hours associated with the annual review and annual report requirement is 207,613 hours.

Finally, the staff estimates that each fund spends 6 hours annually, on average, maintaining the records required by proposed Rule 38a-1. Thus, the aggregate annual burden hours associated with the recordkeeping requirement is 25,422 hours.

In total, the staff estimates that the aggregate annual information collection burden of Rule 38a-1 is 248,455 hours. The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. 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 control number.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: PRA_Mailbox@sec.gov.

Dated: October 15, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-25738 Filed 10-18-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form N-MFP, OMB Control No. 3235-0657, SEC File No. 270-604.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 30(b) of the Investment Company Act of 1940 [15 U.S.C. 80a-30(b)] ("Act") provides that "[e]very registered investment company shall file with the Commission * * * such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company * * *." Rule 30b1-7 under the Act [17 CFR 270.30b1-7], entitled "Monthly Report for Money Market Funds," provides that every registered investment company, or series thereof, that is regulated as a money market fund under rule 2a-7 [17 CFR 270.2a-7] must file with the Commission a monthly report of portfolio holdings on Form N-MFP [17 CFR 274.201] no later than the fifth business day of each month. Form N-MFP sets forth the specific disclosure items that money market funds must provide. The report must be filed electronically using the Commission's electronic filing system ("EDGAR") in eXtensible Markup Language ("XML") format.

Certain provisions of the rule and form contain "collection of information" requirements. We estimate that 684 money market funds are required by rule 30b1-7 to file, on a monthly basis, a complete report on Form N-MFP disclosing certain information regarding the fund and its portfolio holdings. We further estimate that an additional ten new money market funds will file reports on Form N-MFP each year. For purposes of this Paperwork Reduction Act analysis, the burden associated with the requirements of rule 30b1-7 is included

in the collection of information requirements of Form N-MFP, rather than the rule. Based on conversations with industry participants, we estimate that money market funds prepare and file their reports on Form N-MFP by either (1) licensing a software solution and preparing and filing the report in house, or (2) retaining a service provider to provide data aggregation and validation services as part of the preparation and filing of reports on Form N-MFP on behalf of the fund.

We estimate that 35% of money market funds (239 funds) license a software solution and file reports on Form N-MFP in house; we further estimate that each fund that files reports on Form N-MFP in house requires an average of approximately 42 burden hours to compile (including review of the information), tag, and electronically file the Form N-MFP for the first time and an average of approximately 8 burden hours for subsequent filings. Therefore, we estimate the per fund average annual hour burden is 96 hours for existing funds and 130 hours for new money market funds. Based on an estimate of 239 existing fund filers and 4 new fund filers each year, we estimate that filing reports on Form N-MFP in house takes 23,464 hours per year.

We estimate that 65% of money market funds (445 funds) retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N-MFP on the fund's behalf; we further estimate that each fund requires an average of approximately 21 burden hours to compile and review the information with the service provider prior to electronically filing the report for the first time and an average of approximately 4 burden hours for subsequent filings. Therefore, we estimate the per fund average annual hour burden is 48 hours for existing funds and 65 hours for new money market funds. Based on an estimate of 445 existing fund filers and 6 new fund filers each year, we estimate that filing reports on Form N-MFP using a service provider takes 21,750 hours per year. In sum, we estimate that filing reports on Form N-MFP imposes a total annual hour burden of 45,214 on all money market funds.

In addition to the costs associated with the hours burdens discussed above, money market funds incur other external costs. Based on discussions with industry participants, we estimate that money market funds that file reports on Form N-MFP in house license a third-party software solution to assist in filing their reports at an average

cost of \$3,360 per fund per year. In addition, we estimate that money market funds that use a service provider to prepare and file reports on Form N-MFP pay an average fee of \$8,000 per fund per year. In sum, we estimate that all money market funds incur on average, in the aggregate, external annual costs of \$4,424,480.¹

The estimate of burden hours and costs is made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information under Form N-MFP is mandatory. The information provided by the form is not kept confidential. 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 control number.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: PRA_Mailbox@sec.gov.

Dated: October 15, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-25739 Filed 10-18-12; 8:45 am]

BILLING CODE 8011-01-P

¹ This estimate is based on the following calculation: (243 money market funds (239 existing funds + 4 new funds) that file reports on Form N-MFP in house × \$3,360 per fund, per year) + (451 money market funds (445 existing funds + 6 new funds) that file reports on Form N-MFP using a service provider × \$8,000 per fund, per year) = \$4,424,480.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, October 23, 2012 at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, October 23, 2012 will be: a litigation matter. At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: October 17, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-25937 Filed 10-17-12; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68053; File No. SR-NASDAQ-2012-118]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Certain Disclosure Requirements To Require Listed Companies To Publicly Describe the Specific Basis and Concern Identified by Nasdaq When a Company Does Not Meet a Listing Standard and Give Nasdaq the Authority To Make Such Public Announcement When a Listed Company Fails To Do so

October 15, 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 October 3, 2012, The NASDAQ Stock Market LLC ("Nasdaq") 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify certain disclosure requirements surrounding a company's non-compliance with the listing rules. Nasdaq will implement the proposed rule upon approval.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.³

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) No change.

(b) Obligation To Make Public Disclosure

(1) No change.

(2) Disclosure of Notification of Deficiency

As set forth in Rule 5810(b) and *IM-5810-1*, a Company that receives a notification of deficiency from Nasdaq is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

of the notification and the Rule(s) upon which the deficiency is based, *and describing each specific basis and concern identified by Nasdaq in reaching its determination that the Company does not meet the listing standard.* However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify Nasdaq's MarketWatch Department about the announcement through the electronic disclosure submission system available at *www.nasdaq.net*, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of Nasdaq market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.

(c)-(f) No change.

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;

(2) Notifications of deficiencies for which a Company may submit a plan of compliance for staff review;

(3) Notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and

(4) Public Reprimand Letters. Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) No change.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand

Letter is required to make a public announcement disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, *and describing each specific basis and concern identified by Nasdaq in reaching its determination that the Company does not meet the listing standard.* [A Company that receives a notification of] *If the deficiency or Staff Delisting Determination [related] relates to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release [disclosing receipt of the notification and the Rule(s) upon which the deficiency is based], in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. Additional information about this disclosure obligation is provided in IM-5810-1.*

As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify Nasdaq's MarketWatch Department about the announcement through the electronic disclosure submission system available at *www.nasdaq.net*, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during Nasdaq market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of Nasdaq market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

IM-5810-1. Disclosure of Written Notice of Staff Determination

Rule 5810(b) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided, however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press

release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. *In addition to containing all disclosure required by Form 8-K, if applicable, the public announcement must describe each specific basis and concern identified by Nasdaq in its determination that the Company does not meet the listing standard and identify the Rules upon which the deficiency is based. For example, if the Listing Qualifications Department determines to delist a Company based on its discretionary authority under Rule 5101, the Company must include in its public announcement the specific concerns cited in the Staff Delisting Determination. In addition, a Company may provide its own analysis of the issues raised in the Staff Delisting Determination.*

If the public announcement is not made by the Company within the time allotted *or does not include all of the required information*, trading of its securities shall be halted (*if not already halted*), even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815, *and Nasdaq may make a public announcement with the required information. If the company's failure to make this public announcement is the only basis for a trading halt, Nasdaq would ordinarily resume trading if Nasdaq makes the public announcement.* If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(c) No change.

IM-5810-2. No change.

(d) No change.

* * * * *

5840. Adjudicatory Process: General Information

(a)-(k) No change.

(l) *Disclosure by Nasdaq*

In order to maintain the quality of and public confidence in its market and

to protect investors and the public interest, Nasdaq may, at any level of a proceeding under this Rule 5800 Series, make a public announcement, including by press release, describing a notification, Public Reprimand Letter, Staff Delisting Determination, Adjudicatory Body Decision, or other event involving a Company's listing or trading on Nasdaq.

* * * * *

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq rules require that a company that receives a Staff Delisting Determination, Public Reprimand Letter or a notice that the company does not meet a listing standard (collectively, a "Staff Determination") make a public announcement, either by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing its receipt of the notification.⁴ These rules also require that this disclosure identify "the Rule(s) upon which the deficiency is based."

Nasdaq's intent in adopting this requirement was to ensure that the public is provided with adequate information whenever a company is deficient under Nasdaq's rules. However, Nasdaq has observed that some companies merely disclose the rule number and a description of the rule, without providing additional disclosure to enable the public to understand the deficiency or the underlying basis for it. While this may be sufficient in most cases where the deficiency is related to a quantitative requirement, such as a bid price deficiency, it is insufficient when qualitative issues are raised. For example, a company may disclose that Nasdaq has determined to delist it for

"public interest concerns under Rule 5101" without describing the nature of Nasdaq's concerns. Nasdaq believes that disclosure made without a description of the specific underlying concerns that gave rise to the delisting proceeding will prevent investors from making fully informed investment decisions. Furthermore, since the remedy for failing to make this disclosure is for Staff to halt trading in the company's securities, Nasdaq is concerned that a company that has already been halted by Staff due to regulatory concerns may decline altogether to make the required disclosure.

Accordingly, Nasdaq proposes to modify IM-5810-1 to specifically require that the company's public announcement of receipt of a Staff Determination describe each of the bases and specific concerns underlying Nasdaq's determination. The IM would also provide that the company may include its own analysis of the issues raised.⁵ The IM would also be modified to specify that Nasdaq may itself make a public announcement, such as by issuing a press release, in the circumstance that the company makes insufficient disclosure or refuses to make the required disclosure altogether. If the company's failure to make this required disclosure is the only basis for a trading halt, Nasdaq would ordinarily resume trading after issuing its disclosure. If, on the other hand, the company's securities were already subject to a trading halt for another reason, such as the failure to respond to a request for information to Nasdaq, the halt would remain in effect notwithstanding the disclosure made by Nasdaq.

Similarly, Nasdaq also proposes to provide that it may make a public announcement, including by press release, describing an action involving a company's listing or trading on Nasdaq. This authority could be used, for example, where a company that is late in filing its periodic reports is not granted an extended stay of delisting by the Hearings Panel pursuant to Rule 5815(a)(1)(B), and is therefore trading in the over-the-counter market pending a

⁵ For example, the company could choose to describe its plan to regain compliance, or describe why it believes the concerns identified by Nasdaq should not result in delisting. However, if the company's analysis or description is inaccurate or misleading, Nasdaq could use the authority in proposed Rule 5840(l) to issue a clarifying public announcement. In this event, the Hearings Panel would also consider the inaccurate or misleading disclosure when determining whether it is appropriate to continue the company's listing. Nasdaq could also halt trading under Rule 4120(a)(5) based on the inaccurate or misleading disclosure.

final decision by a Hearings Panel. If the Panel ultimately determines to delist this company, its securities would continue to trade in the over-the-counter market and, unless the company chose to issue its own public announcement, investors would not know that the Panel had determined to delist the Company until Nasdaq filed a Form 25 with the Commission to formally delist the Company some months later.⁶ If the company does not make this disclosure, proposed Rule 5840(l) would allow Nasdaq to make a public announcement to provide transparency to the Panel's decision and the change in the status of the company's Nasdaq listing.⁷

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Sections 6(b)(5) of the Act,⁹ 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. The proposed rule change will require disclosure to the public of the specific bases for Staff's determination to delist or reprimand the company, thereby helping assure adequate information for investors and potential investors. In addition, it will allow Nasdaq to provide information to the public about a company's listing status. As such, it is designed to protect investors and the public interest.

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

⁶ Rule 5815(d)(2) provides that when a Hearings Panel issues a decision to delist a company's securities, Nasdaq will File a Form 25 after the Nasdaq Listing and Hearing Council has determined not to call the decision [sic] review. The Listing Council has 45 days to call the decision for review pursuant to Rule 5820(b). In addition, if the Company appeals the Panel's decision to the Listing Council, the Form 25 would not be filed until after the Listing Council issues its decision and the Nasdaq Board of Directors has had an opportunity to call that decision for review. Rule 5820(e)(6).

⁷ See, also, footnote 5, *supra*, for another example where Nasdaq may use the authority in proposed Rule 5840(l).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

⁴ See Nasdaq Listing Rules 5250(b)(2) and 5810(b).

necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-118. 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-NASDAQ-2012-118 and should be submitted on or before November 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-25736 Filed 10-18-12; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13271 and #13272]

Louisiana Disaster Number LA-00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 9.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-4080-DR), dated 08/31/2012.

Incident: Hurricane Isaac.
Incident Period: 08/26/2012 through 09/10/2012.

Effective Date: 10/09/2012.
Physical Loan Application Deadline Date: 10/30/2012.

EIDL Loan Application Deadline Date: 05/29/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration

for the State of Louisiana, dated 08/31/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans):

West Baton Rouge.

All Contiguous Parishes/Counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012-25723 Filed 10-18-12; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13341 and #13342]

New York Disaster #NY-00126

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 10/10/2012.

Incident: Heavy Rain and Flooding.

Incident Period: 09/18/2012.

Effective Date: 10/10/2012.

Physical Loan Application Deadline Date: 12/10/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 07/10/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Sullivan.

Contiguous Counties:

New York: Delaware, Orange, Ulster.

Pennsylvania: Pike, Wayne.

The Interest Rates are:

¹⁰ 17 CFR 200.30-3(a)(12).

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	3.375
Homeowners without Credit Available Elsewhere	1.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-profit Organizations with Credit Available Elsewhere ...	3.125
Non-profit Organizations without Credit Available Elsewhere ...	3.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-profit Organizations without Credit Available Elsewhere ...	3.000

The number assigned to this disaster for physical damage is 13341 6 and for economic injury is 13342 0.

The States which received an EIDL Declaration # are New York, Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 10, 2012.

Karen G. Mills,
Administrator.

[FR Doc. 2012-25725 Filed 10-18-12; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Audit and Financial Management Advisory (AFMAC). The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 30, 2012 from 1:00 p.m. to approximately 4:00 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the

financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations. The purpose of the meeting is to discuss the SBA's Financial Reporting, Audit Findings Remediation, Ongoing OIG Audits including the Information Technology Audit, Recovery Act, FMFIA Assurance/A-123 Internal Control Program, Credit Modeling, LMAS Project Status, Performance Management, Acquisition Division Update, Improper Payments and current initiatives.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public, however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the AFMAC must contact Jonathan Carver, by fax or email, in order to be placed on the agenda. Jonathan Carver, Chief Financial Officer, 409 3rd Street SW., 6th Floor, Washington, DC 20416, phone: (202) 205-6449, fax: (202) 205-6969, email: Jonathan.Carver@sba.gov. Additionally, if you need accommodations because of a disability or require additional information, please contact Donna Wood at (202) 619-1608, email: Donna.Wood@sba.gov; SBA, Office of Chief Financial Officer, 409 3rd Street SW., Washington, DC 20416.

For more information, please visit our Web site at <http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html>.

Dated: October 11, 2012.

Dan S. Jones,
White House Liaison.

[FR Doc. 2012-25687 Filed 10-18-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8064]

Culturally Significant Object Imported for Exhibition Determinations: "Erotic Gold: The Art and Life of Bartholomäus Spranger 1546-1611"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Erotic Gold: The Art and Life of Bartholomäus Spranger

1546-1611," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the conservation and examination of the object at The Metropolitan Museum of Art, New York, NY, from on or about November 10, 2012, until on or about November 3, 2014, and the exhibition or display of the exhibit object at The Metropolitan Museum of Art, from on or about November 4, 2014, until on or about February 1, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6467). The mailing address is U.S. Department of State, SA-5, L/DP, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: October 15, 2012.

J. Adam Erel,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012-25832 Filed 10-18-12; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 8063]

Culturally Significant Objects Imported for Exhibition Determinations: "The Dead Sea Scrolls: Life and Faith in Ancient Times," Formerly Titled "The Dead Sea Scrolls: Life and Faith in Biblical Times."

ACTION: Notice, correction.

SUMMARY: On October 12, 2011, notice was published on page 63341 of the **Federal Register** (volume 76, number 197) of determinations made by the Department of State pertaining to the exhibition "The Dead Sea Scrolls: Life and Faith in Biblical Times." The referenced notice is corrected here to change the exhibition name to "The Dead Sea Scrolls: Life and Faith in Ancient Times" and to include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and

Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the additional objects to be included in the exhibition "The Dead Sea Scrolls: Life and Faith in Ancient Times," imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the additional exhibit objects at the Cincinnati Museum Center, Cincinnati, OH, from on or about November 16, 2012, until on or about April 13, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6467). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: October 15, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012-25839 Filed 10-18-12; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2012-0075]

Notification of Petition for Approval; Port Authority Trans-Hudson Product Safety Plan

In accordance with Part 236 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated September 5, 2012, Port Authority Trans-Hudson (PATH) has petitioned the Federal Railroad Administration (FRA) seeking approval for a Product Safety Plan (PSP). FRA assigned the petition Docket Number FRA-2012-0075.

PATH is upgrading some of its track circuits with Digicode microprocessor-based track circuits. The Digicode track circuit is part of Alstom's Smartway

Digital Track Circuit product line and will be used by PATH for train detection and broken rail detection. While this product has been successfully implemented elsewhere in the world, it has only been used on transit systems in the United States, and never on a U.S. general system railroad. The Digicode track circuits are functional replacements for the existing track circuits and the product has been chosen by PATH to replace existing, older technology track circuits. The existing product is experiencing end-of-life obsolescence issues and parts are becoming difficult to procure. The implementation of the Digicode track circuits will provide for higher reliability and lower overall operating and maintenance costs. PATH asserts that the PSP demonstrates that Digicode has been designed in a highly safe manner and meets the requirements of 49 CFR part 236, subpart H—*Standards for Processor-Based Signal and Train Control Systems*. The PSP itself provides the detailed description of the Digicode track circuit product design.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov/>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 3, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on October 15, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012-25785 Filed 10-18-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2007-0030]

Petition for Waiver of Compliance

In accordance with Parts 240 and 242 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 23, 2012, the New Jersey Transit Corporation (NJTC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240—Qualification and Certification of Locomotive Engineers and 49 CFR part 242—Qualification and Certification of Conductors.

NJTC owns the Southern New Jersey Light Rail Transit (SNJLRT), a commuter light rail transit system operating for a distance of approximately 34 miles between the cities of Trenton and Camden, NJ. On December 3, 1999, FRA granted NJTC's petition for approval of Shared Use and waiver of certain FRA regulations subject to certain exceptions and conditions set forth in the letter granting the petition waiver.

FRA also granted additional relief to NJTC in a decision letter dated January 28, 2004. Collectively, these decision letters are referred to as the "SNJLRT waiver." The SNJLRT system has been in continuous revenue service since March 14, 2004, operating in accordance with the strictures, relief requests, and FRA conditions issued to date. Since the

effective date of the SNJLRT waiver, and the implementation of revenue service, NJT has identified additional FRA regulations from which it hereby seeks waivers.

In the petition, NJT stated that it believes granting this waiver is in the public interest and consistent with railroad safety for two reasons. First, SNJLRT and the Consolidated Rail Corporation, the freight carrier operating on certain portions of the same rail line as SNJLRT, will continue to maintain a temporal separation plan between light rail transit operations and freight rail operations. Second, NJT and SNJLRT will be subject to comparable safety regulation through equivalent State safety oversight required by the Federal Transit Administration (FTA).

NJT states that the SNJLRT System Safety Program Plan (SSPP) and the System Security Plan have been implemented and administered in accordance with the FTA's requirements found at 49 CFR part 659—Rail Fixed Guideway Systems; State Safety Oversight and the New Jersey State Safety Oversight Program. The State Oversight Program has been found to be in compliance with FTA requirements at 49 CFR part 659.

SSPP also requires NJT to conduct annual internal safety audits to evaluate compliance with SSPP and measure its effectiveness. An annual report identifying the audits performed and any corrective action must be submitted to the New Jersey Department of Transportation (NJDOT) and actions must be taken, as appropriate, to remedy any deficiencies demonstrated by the audit. In addition, NJDOT conducts a safety review a minimum of once every 3 years to evaluate the effectiveness of NJT's implementation of its SSPP and outlines actions that must be taken, as appropriate, to remedy and deficiencies demonstrated by the review.

Pursuant to the SSPP, NJDOT is responsible for promulgating standards and procedures requiring the reporting of accidents, incidents, and hazardous conditions. SSPP outlines the circumstances under which NJT and/or NJDOT conducts accident investigations; articulates that the National Transportation Safety Board, FRA and FTA can conduct accident investigations; and describes how SNJLRT coordinates with these external agencies during an investigation. SSPP requires SNJLRT to submit to the a corrective action plan to the NJDOT State Safety Oversight Office that sets forth in detail the actions SNJLRT will take to eliminate, minimize, or control the occurrence of the accident, incident, or hazardous condition, including an

implementation schedule, where appropriate (SSPP, Section 10 and Appendix J).

For the reasons stated above, NJT explained their request is consistent with the waiver process for Shared Use. See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,

65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov/>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 3, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on October 15, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012-25784 Filed 10-18-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research and Innovative Technology Administration (RITA), U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72-363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Wednesday, December 12 from 9 a.m. to 4:30 p.m. E.S.T. in the DOT Conference Center at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC. Section 52011 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department. The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of the FY 2013 budget; (4) Update on BTS data programs and future plans; (5) Council Members review and discussion of BTS programs and plans; (6) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to

participate must notify Courtney Freiberg at Courtney.Freiberg@dot.gov, not later than November 30, 2012. Members of the public may present oral statements at the meeting with the approval of Patricia Hu, Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via email no later than November 23, 2012.

Questions about the agenda or written comments may be emailed (Courtney.Freiberg@dot.gov) or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, Attention: Courtney Freiberg, 1200 New Jersey Avenue SE., Room #E34-429, Washington, DC 20590, or faxed to (202) 366-3640. BTS requests that written comments be received by November 23, 2012. Access to the DOT Headquarters building is controlled therefore all persons who plan to attend the meeting must notify Mrs. Courtney Freiberg at 202-366-1270 prior to November 30, 2012. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue SE. for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Freiberg at 202-366-1270 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102-3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 15th of October, 2012.

Rolf Schmitt,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2012-25777 Filed 10-18-12; 8:45 am]

BILLING CODE 4910-HY-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-

3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) approval of the information collections required under 49 U.S.C. 11301 and 49 CFR part 117 (rail or water carrier equipment liens (recordations)); under 49 U.S.C. 10747 and 49 CFR part 1313 (rail agricultural contract summaries); and under 49 U.S.C. 13702(b) and 49 CFR part 1312 (water carrier tariffs). The relevant information collections are described in more detail below.

For each collection, comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

DATES: Comments on this information collection should be submitted by December 18, 2012.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001, or to levittm@stb.dot.gov. When submitting comments, please refer to the title of the pertinent collection.

FOR FURTHER INFORMATION CONTACT: Marilyn Levitt at levittm@stb.dot.gov or (202) 245-0269. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Relevant STB regulations may be viewed on the STB's Web site under E-Library > Reference: STB Rules, http://www.stb.dot.gov/stb/elibrary/ref_stbrules.html.

Subjects: In this notice the Board is requesting comments on the following information collections:

Collection Number 1

Title: Recordations (Rail and Water Carrier Liens).

OMB Control Number: 2140-00XX.

STB Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents: parties holding liens on rail equipment or water carrier vessels, carriers filing proof that a lien has been removed.

Number of Respondents: An annual average of 2125 recordations were filed during the last three years by 50 respondents.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): 1,240 hours (estimated 35 minutes per response × 2125 responses).

Total "Non-hour Burden" Cost (such as start-up and mailing costs): There are no non-hourly burden costs for this collection. The collection may be filed electronically.

Needs and Uses: Under the Interstate Commerce Act, Public Law 104-88, 109 Stat. 803 (1995), liens on rail equipment must be filed with the STB in order to perfect a security interest in the equipment. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the agency. This information is maintained by the Board for public inspection. Recordation at the STB obviates the need for recording such a lien in individual States.

Retention Period: Recordations of liens are destroyed 60 years after the last filing.

Collection Number 2

Title: Water Carrier Tariffs

OMB Control Number: 2140-00XX.

STB Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents: water carriers that provide freight transportation in noncontiguous domestic trade.

Number of Respondents: approximately 25.

Frequency: On occasion, for an annual total of 1917 tariffs filed.

Total Burden Hours (annually including all respondents): 1,438 (1,437.75) hours (1917 filings × .75 hour (estimated time per filing))

Total "Non-hour Burden" Cost (such as start-up costs and mailing costs): There are no non-hourly burden costs for this collection. The collection may be filed electronically.

Needs and Uses: While rail carriers are no longer required to file rate tariffs at the STB, a statutory requirement exists for water carriers that provide freight transportation in noncontiguous domestic trade (i.e., domestic (as opposed to international) shipments moving to or from Alaska, Hawaii, or the U.S. territories or possessions (Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands)). A tariff provides a list of prices and fees that the carrier charges to the shipping public.

Retention Period: After cancellation, tariffs are placed in a "Cancelled

Tariffs" file. They are destroyed five years after the end of the year in which they were cancelled.

Collection Number 3

Title: Agricultural Contract Summaries.

OMB Control Number: 2140-00XX.

STB Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Number of Respondents: Approximately 10.

Frequency: On occasion, for a total from all respondents of 141 submissions per year. (Must be submitted as soon as possible, but not longer than seven days after effective date of contract or amendment.)

Total Burden Hours (annually including all respondents): 106 hours (141 submissions × .75 hours (45 minutes) estimated per submission).

Total Annual "Non-hour Burden" Cost (such as start-up and mailing costs): There are no non-hourly burden costs for this collection. The collection is filed electronically.

Needs and Uses: While the terms of a rail transportation contract are treated as confidential, railroads are required by statute to file a summary of the nonconfidential terms of any contract for the transportation of agricultural products.

Retention Period: Paper copies of this collection are destroyed six months after the expiration of the referenced contract.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 16, 2012.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-25767 Filed 10-18-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006-46

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006-25, Announcement of Rules to be Included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-6665, or through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Announcement of Rules to be Included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

Notice Number: 2006-46.

OMB Number: 1545-2017.

Abstract: This notice announces that the IRS and Treasury Department will issue final regulations under section 897(d) and (e) of the Internal Revenue Code that will revise the rules under Temp. Treas. Reg. § 1.897-5T, Notice 89-85, and Temp. Treas. Reg. § 1.897-6T to take into account statutory mergers and consolidations under foreign or possessions law which may now qualify for nonrecognition treatment under section 368(a)(1)(A). The specific collections of information are contained in Temp. Treas. Reg. §§ 1.897-5T(c)(4)(ii)(C) and 1.897-6T(b)(1). These reporting requirements notify the IRS of the transfer and enable it to verify that the transferor qualifies

for nonrecognition and that the transferee will be subject to U.S. tax on a subsequent disposition of the U.S. real property interest.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Reporting Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,
Tax Analyst.

[FR Doc. 2012-25693 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 3520-A**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Annual Information Return of Foreign Trust With A U.S. owner.

OMB Number: 1545-0160.

Form Number: 3520-A.

Abstract: Internal Revenue Code section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return. Form 3520-A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520-A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 43 hrs., 24 min.

Estimated Total Annual Burden Hours: 21,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,
Tax Analyst.

[FR Doc. 2012-25706 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041-QT, U.S. Income Tax Return for Qualified Funeral Trusts.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at (202) 622-6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:
Title: U.S. Income Tax Return for Qualified Funeral Trusts.

OMB Number: 1545-1593.

Form Number: 1041-QFT.

Abstract: Internal Revenue Code section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Form 1041-QFT is used for this purpose. The IRS uses the information on the form to determine that the trustee filed the proper return and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time per Respondent: 18 hr., 1 min.

Estimated Total Annual Burden Hours: 270,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012-25707 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1000

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1000, Ownership Certificate.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or a through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Ownership Certificate.
OMB Number: 1545-0054.

Form Number: 1000.

Abstract: Form 1000 is used by citizens, resident individuals, fiduciaries, and partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 1,500.

Estimated Time per Response: 3 hours., 23 minutes.

Estimated Total Annual Burden Hours: 5,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012-25704 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009-58

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2009-58, Manufacturers' Certification of Specified Plug-in Electric Vehicles.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Manufacturers' Certification of Specified Plug-in Electric Vehicles.

OMB Number: 1545-2150.

Notice Number: Notice 2009-58.

Abstract: The American Recovery and Reinvestment Act of 2009 provides, under § 30 of the Internal Revenue Code, a credit for certain new specified plug-in electric drive vehicles. This notice provides procedures for a vehicle manufacturer to certify that a vehicle meets the statutory requirements for the credit, and to certify the amount of the credit available with respect to the vehicle. The notice also provides guidance to taxpayers who purchase vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This notice is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business and for-profit.

Estimated Number of Respondents: 25.

Estimated Average Time per Respondent: 10 hrs.

Estimated Total Annual Burden Hours: 250 hrs.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,
Tax Analyst.

[FR Doc. 2012-25696 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13441 and 13441-EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13441, Health Coverage Tax Credit Registration Form, and Form 13441-EZ.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of these forms and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-6665, or through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit Registration Form.

OMB Number: 1545-1842.

Form Number: 13441 and 13441-EZ.

Abstract: Coverage Tax Credit Registration Form will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid, return envelope. We will accept faxed forms, if necessary. Additionally, recipients may call the HCTC call center for help in completing this form.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,400.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,
Tax Analyst.

[FR Doc. 2012-25697 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning application of separate limitations to dividends from noncontrolled section 902 corporations.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue

Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

OMB Number: 1545-2014.

Form Number: TD 9452.

Abstract: The final regulations require a collection of information in order for a taxpayer to make certain tax elections. The American Jobs Creation Act of 2004 amended the foreign tax credit treatment of dividends from noncontrolled section 902 corporations effective for post-2002 tax years, and the Gulf Opportunity Zone Act of 2005 permitted taxpayers to elect to defer the effective date of these amendments until post-2004 tax years (GOZA election). Treas. Reg. § 1.904-7(f)(9)(ii)(C) requires a taxpayer making the GOZA election to attach a statement to such effect to its next tax return for which the due date (with extensions) is more than 90 days after April 25, 2006. Treas. Reg. § 1.964-1(c)(3) requires certain shareholders making tax elections (section 964 elections) on behalf of a controlled foreign corporation or noncontrolled section 902 corporation to sign a jointly executed consent (that is retained by one designated shareholder) and to attach a statement to their tax returns for the election year.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: 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.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012-25698 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8752

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8752, Required Payment or Refund Under Section 7519.

DATES: Written comments should be received on or before December 18, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue

Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions this regulation should be directed to Allan Hopkins at (202) 622-6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Required Payment or Refund Under Section 7519.

OMB Number: 1545-1181.

Form Number: 8752.

Abstract: Partnerships and S corporations use Form 8752 to compute and report the payment required under Internal Revenue Code section 7519 or to obtain a refund of net prior year payments. Such payments are required of any partnership or S corporation that has elected under Code section 444 to have a tax year other than a required tax year.

Current Actions: There is no change being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 72,000.

Estimated Time per Respondent: 7 hr., 52 min.

Estimated Total Annual Burden Hours: 565,920.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2012.

Allan Hopkins,
Tax Analyst.

[FR Doc. 2012-25701 Filed 10-18-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0567]

Proposed Information Collection (PMC) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request additional certificates, replacements or corrections to a PMC.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at www.Regulations.gov; or to Mechelle Powell, National Cemetery Administration (41D1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: mecelle.powell@va.gov. Please refer to "OMB Control No. 2900-0567" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461-4114 or Fax (202) 501-2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: President Memorial Certificate (PMC), VA Form 40-0247.

OMB Control Number: 2900-0567.

Type of Review: Extension of a currently approved collection.

Abstract: The President Memorial Certificate is automatically issued without a request from the next of kin as part of processing a death benefits claim. The PMC allows eligible recipients (next of kin, other relatives or friends) to request additional certificates and/or replacement or corrected certificates upon the receipt of the original PMC.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,545.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 316,346.

Dated: October 15, 2012.

By direction of the Acting Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25744 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0712]

Agency Information Collection (Nation-Wide Customer Satisfaction Surveys) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0712" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0712."

SUPPLEMENTARY INFORMATION:

Title: Nation-wide Customer Satisfaction Surveys, VA Forms 10-1465-2 through 10-1465-6.

OMB Control Number: 2900-0712.

Type of Review: Revision of a previously approved collection.

Abstract: The Survey of Health Experience of Patients (SHEP) Survey is used to obtain information from VA patients that will be used to identify problems or compliant and to improve the quality of health care services delivered to veterans. Data will be used to measure improvement toward the goal of matching or exceeding non-VA external benchmark performance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Notice with a 60-day comment period soliciting comments on this collection of information was published on January 17, 2012, at page 2349.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Inpatient Short Form, VA Form 10-1465-2—18,750 hours.

b. Ambulatory Care Long Form, VA Form 10-1465-3—9,802 hours.

c. Ambulatory Care Short Form, VA Form 10-1465-4—42,233 hours.

d. Clinician and Group Survey Patient Centered Medical Home, Short Form, VA Form 10-1465-5—20,000 hours.

e. Clinician and Group Survey Patient Centered Medical Home, Long Form, VA Form 10-1465-6—3,333 hours.

Estimated Average Burden per Respondent:

a. Inpatient Short Form, VA Form 10-1465-2—15 minutes.

b. Ambulatory Care Long Form, VA Form 10-1465-3—25 minutes.

c. Ambulatory Care Short Form, VA Form 10-1465-4—20 minutes.

d. Clinician and Group Survey Patient Centered Medical Home, Short Form, VA Form 10-1465-5—15 minutes.

e. Clinician and Group Survey Patient Centered Medical Home, Long Form, VA Form 10-1465-6—25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Inpatient Short Form, VA Form 10-1465-2—75,000.

b. Ambulatory Care Long Form, VA Form 10-1465-3—23,524.

c. Ambulatory Care Short Form, VA Form 10-1465-4—126,700.

d. Clinician and Group Survey Patient Centered Medical Home, Short Form, VA Form 10-1465-5—20,000.

e. Clinician and Group Survey Patient Centered Medical Home, Long Form, VA Form 10-1465-6—3,333.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25748 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0406]

Proposed Information Collection (Verification of VA Benefits) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed by lenders to determine whether any benefits related debts exist in the veteran-borrower's name prior to the closing of any VA-guaranteed loans on an automatic basis.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0406" in any correspondence. During the comment period, comments may be viewed online through at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632-8924 or Fax (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

the use of other forms of information technology.

Title: Verification of VA Benefits, VA Form 26-8937.

OMB Control Number: 2900-0406.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders authorized to make VA-guaranteed home or manufactured loans on an automatic basis are required to determine through VA whether any benefits related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. Lenders cannot close any proposed automatic loan until evidence is received from VA stating that there is no debt, or if a debt exists, or the veteran has agreed on an acceptable repayment plan, or payments under a plan already in effect are current. VA Form 26-8937 is used to assist lenders and VA in the completion of debt checks in a uniform manner. The form restricts information requested to only that is needed for the debt check and to eliminate unlimited versions of lender-designed forms. The form also informs the lender whether or not the veteran is exempt from paying the funding fee, which must be collected on all VA home loans unless the veteran is receiving service-connected disability compensation.

Affected Public: Individuals of households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 120,000.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25750 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0090]

Agency Information Collection (Application for Voluntary Service) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice

announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0090" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0090."

SUPPLEMENTARY INFORMATION:

Title: Application for Voluntary Service, VA Form 10-7055.

OMB Control Number: 2900-0090.

Type of Review: Extension of a currently approved collection.

Abstract: Individuals expressing interest in volunteering at a VA medical center complete VA Form 10-7055 to request placement in the nationwide VA Voluntary Service Program. VA will use the data collected to place applicants in assignments most suitable to their special skills and abilities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 1, 2012 at page 45718.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 8,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 32,000.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25755 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0648]

Agency Information Collection Activities (Foreign Medical Program) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0648" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0648."

SUPPLEMENTARY INFORMATION:

Titles:

- a. Foreign Medical Program (FMP) Registration Form, VA Form 10-7959f-1
- b. Claim Cover Sheet—Foreign Medical Program (FMP), VA Form 10-7959f-2.

OMB Control Number: 2900-0648.

Type of Review: Extension of a currently approve collection.

Abstracts:

- a. Veterans with service connected disabilities living or traveling overseas

complete VA Form 10-7959f-1 to enroll in the Foreign Medical Program.

b. Healthcare providers complete VA Form 10-7959f-2 to submit claims for payments or reimbursement of expenses relating to veterans living or traveling overseas (except for the Philippines) with service-connected disability. VA will accept provider's generated billing statement, Uniform Billing—Forms (UB) 04, and Medicare Health Insurance Claims Form, CMS 1500 for payments or reimbursements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 1, 2012 at pages 45716-45717.

Affected Public: Individuals or households.

Estimated Total Annual Burden:

a. Foreign Medical Program, VA Form 10-7959f-1—111 hours.

b. Claim Cover Sheet, VA Form 10-7959f-2—3,652 hours.

Estimated Average Burden per Respondent:

a. Foreign Medical Program, VA Form 10-7959f-1—4 minutes.

b. Claim Cover Sheet, VA Form 10-7959f-2—11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Foreign Medical Program, VA Form 10-7959f-1—1,660.

b. Claim Cover Sheet, VA Form 10-7959f-2—19,920.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25754 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0358]

Proposed Information Collection (Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for additional educational benefits for a change of program or reenrollment after unsatisfactory attendance, conduct or progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0358" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632-8924 or Fax (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Information for Change of Program or Reenrollment after Unsatisfactory Attendance, Conduct or Progress, VA Form 22-8873.

OMB Control Number: 2900-0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C. 3691. A claimant can normally make one change of program without VA approval. VA approval is required if the claimant makes any additional change of program. Before VA can approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities, or that the cause of any unsatisfactory progress or conduct has been resolved before entering into a different program. VA Form 22-8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA education records or the results of academic or vocational counseling are not available to VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,706 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 35,411.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25753 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0523]

Proposed Information Collection (Loan Analysis) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine the veteran-borrower's ability to qualify for guaranteed loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0523" in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632-8924 or Fax (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C., 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Analysis, VA Form 26-6393.

OMB Control Number: 2900-0523.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-6393 is used to determine a veteran-borrower qualification for a VA-guaranteed loan. Lenders complete and submit the form

to provide evidence that their decision to submit a prior approval loan application or close a loan on the automatic basis is based upon appropriate application of VA credit standards.

Affected Public: Federal Government.

Estimated Annual Burden: 62,500 hours.

Estimated Average Burden per

Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250,000.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25752 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0745]

Proposed Information Collection (Request for Certificate of Veteran Status) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for a reduced down payment when obtaining a loan insured by the Federal Housing Administration (FHA). **DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue

NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0745" in any correspondence. During the comment period, comments may be viewed online through at FDMS.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 632-8924 or Fax (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Certificate of Veteran Status, VA Form 26-8261a.

OMB Control Number: 2900-0745.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 26-8261a will be used to determine Veteran applicants' eligibility to receive a reduced down payment on a Federal Housing Administration (FHA) backed loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 4 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25751 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0160]

Agency Information Collection Activities (Per Diem for Nursing Home Care of Veterans in State Homes; Per Diem for Adult Day Care of Veterans in State Homes) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0160" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0160."

SUPPLEMENTARY INFORMATION:

Titles

a. Title 38, CFR Parts 51 and 52, State Home Programs.

b. State Home Inspection—Staffing Profile, VA Form 10-3567.

c. State Home Report and Statement of Federal Aid Claimed, VA Form 10-5588.

d. State Home Program Application for Veteran Care—Medical Certification, VA Form 10-10SH.

e. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10-0143.

f. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10-0143a.

g. Certification Regarding Lobbying, VA Form 10-0144.

h. Statement of Assurance of Compliance with Equal Opportunity Laws, VA Form 10-0144a.

i. Request for Prescription Drugs from an Eligible Veteran in a State Home, VA Form 10-0460.

OMB Control Number: 2900-0160.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays per diem to State homes providing nursing home and adult day health services care to Veterans. VA requires facilities providing nursing home and adult day health care to furnish an application for recognition based on certification; appeal information, application and justification for payment; records and reports which facility management must maintain regarding activities of residents or participants; information relating to whether the facility meets standards concerning residents' rights and responsibilities prior to admission or enrollment, during admission or enrollment, and upon discharge; the records and reports which facilities management and health care professionals must maintain regarding residents or participants and employees; documents pertain to the management of the facilities; food menu planning; pharmaceutical records; and life safety documentation. Without access to such information, VA would not be able to determine whether high quality care is being provided to Veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 1, 2012, at pages 45719-45720.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden:

a. Title 38, CFR Parts 51 and 52, State Home Programs—3,738 hours.

b. State Home Inspection Staffing Profile, VA Form 10-3567—90 hours.

c. State Home Report and Statement of Federal Aid Claimed, VA Form 10-5588—1,080 hours.

d. State Home Program Application for Veteran Care—Medical Certification, VA Form 10-10SH—10,566 hours.

e. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10-0143—15 hours.

f. Statement of Assurance of Compliance with Section 504 of the

Rehabilitation Act of 1973, VA Form 10-1043a—15 hours.

g. Certification Regarding Lobbying, VA Form 10-0144—15 hours.

h. Statement of Assurance of Compliance with Equal Opportunity Laws, VA Form 10-0144a—15 hours.

i. Request for Prescription Drugs from an Eligible Veteran in a State Home, VA Form 10-0460—15 hours.

Estimated Average Burden per Respondent:

a. Title 38, CFR Parts 51 and 52, State Home Programs—7 minutes.

b. State Home Inspection Staffing Profile, VA Form 10-3567—30 minutes.

c. State Home Report and Statement of Federal Aid Claimed, VA Form 10-5588—30 minutes.

d. State Home Program Application for Veteran Care—Medical Certification, VA Form 10-10SH—30 minutes.

e. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10-0143—5 minutes.

f. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10-1043a—5 minutes.

g. Certification Regarding Lobbying, VA Form 10-0144—5 minutes.

h. Statement of Assurance of Compliance with Equal Opportunity Laws, VA Form 10-0144a—5 minutes.

i. Request for Prescription Drugs from an Eligible Veteran in a State Home, VA Form 10-0460—5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents:

a. Title 38, CFR Parts 51 and 52, State Home Programs—22,926.

b. State Home Inspection Staffing Profile, VA Form 10-3567—180.

c. State Home Report and Statement of Federal Aid Claimed, VA Form 10-5588—180.

d. State Home Program Application for Veteran Care—Medical Certification, VA Form 10-10SH—21,132.

e. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10-0143—180.

f. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10-1043a—180.

g. Certification Regarding Lobbying, VA Form 10-0144—180.

h. Statement of Assurance of Compliance with Equal Opportunity Laws, VA Form 10-0144a—180.

i. Request for Prescription Drugs from an Eligible Veteran in a State Home, VA Form 10-0460—180.

Estimated Total Annual Responses:

a. Title 38, CFR Parts 51 and 52, State Home Programs—23,466

b. State Home Inspection Staffing Profile, VA Form 10-3567—180.

c. State Home Report and Statement of Federal Aid Claimed, VA Form 10-5588—2,160.

d. State Home Program Application for Veteran Care—Medical Certification, VA Form 10-10SH—21,132.

e. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10-0143—180.

f. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10-1043a—180.

g. Certification Regarding Lobbying, VA Form 10-0144—180.

h. Statement of Assurance of Compliance with Equal Opportunity Laws, VA Form 10-0144a—180.

i. Request for Prescription Drugs from an Eligible Veteran in a State Home, VA Form 10-0460—180.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25749 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0260]

Agency Information Collection (Request for and Authorization To Release Medical Records or Health Information) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0260" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0260."

SUPPLEMENTARY INFORMATION:

Titles:

- a. Request for and Authorization to Release Medical Records or Health Information, VA Form 10-5345.
- b. Individual's Request for a Copy of their Own Health Information, VA Form 10-5345a.
- c. My HealtheVet (MHV)—Individuals' Request for a Copy of Their Own Health Information, VA Form 10-5345a-MHV.
- d. Restriction of the Release of Individually-Identifiable Health Information through Nationwide Health Information Network (NwHIN), VA Form 10-0525a.
- e. Request for and Authorization to Release Protected Health Information to Nationwide Health Information Network, VA Form 10-0485.

OMB Control Number: 2900-0260.

Type of Review: Revision of a currently approved collection.

Abstracts:

- a. VA Form 10-5345 is used to obtain a written consent from patients before information concerning his or her treatment for alcoholism or alcohol abuse, drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus (HIV) can be disclosed to private insurance companies, physicians and other third parties.
- b. Patients complete VA Form 10-5345a to request a copy of their health information maintained at Department of Veterans Affairs.
- c. VA Form 10-5345a-MHV is completed by individuals requesting their health information electronically through My HealtheVet.
- d. VA Form 10-0525a is completed by individuals to restrict the sharing their electronic health information through the NwHIN.
- e. VA Form 10-0485 is used to electronically exchange protected health information between VA and approved Nationwide Health Information Network participants.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 19, 2012 at pages 42555-42556.

Affected Public: Individuals or households.

Estimated Total Annual Burden

- a. VA Form 10-5345—10,000 hours.
- b. VA Form 10-5345a—15,000 hours.
- c. VA Form 10-5345a-MVH—35,000 hours.
- d. VA Form 10-0525a—50 hours.
- e. VA Form 10-0485—500 hours.

Estimated Average Burden per Respondent—2 minutes for VA Form 10-5345 and 3 minutes for VA Forms 10-5345a, 10-5345a-MVH, 10-0525a, 10-0485.

Frequency of Response: On occasion.

Estimated Number of Respondents:

- a. VA Form 10-5345—300,000.
- b. VA Form 10-5345a—300,000.
- c. 10-5345a-MVH—700,000.
- d. VA Form 10-0525a—1,000.
- e. VA Form 10-0485—10,000.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25747 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0427]

Agency Information Collection (Former POW Medical History), VA Form 10-0048 Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0427" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0427."

SUPPLEMENTARY INFORMATION:

Title: Former POW Medical History, VA Form 10-0048.

OMB Control Number: 2900-0427.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10-0048 is completed by a VA physician during a medical examination of a Former Prisoner of War veteran. VA will use the data collected as a guide and reference for treatment planning for the FPOW veteran.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 1, 2012, at page 45717.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 113 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 75.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25757 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0722]

Proposed Information Collection (Health Surveillance for a New Generation of U.S. Veterans); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to plan and provide better health care for Operation Iraqi Freedom and Operation Enduring Freedom veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at www.Regulations.gov; or to Cynthia Harvey Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: cynthia.harvey-pryor@va.gov. Please refer to “2900–0722” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or Fax (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary

for the proper performance of VHA’s functions, including whether the information will have practical utility; (2) the accuracy of VHA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Health Surveillance for a New Generation of U.S. Veterans Survey.

OMB Control Number: 2900–0722

Type of Review: Extension of a currently approved collection.

Abstract: The Health Surveillance for a New Generation of U.S. Veterans survey will be used to collect data from Operation Iraqi Freedom and Operation Enduring Freedom veterans regarding their current health status and concerns, exposures of concern in the theater, health care preferences, and health behaviors and attitudes, and to gain knowledge on veterans who have not used VA health care since returning from the current conflict. The data collected will help VA to plan and provide better health care to Operation Iraqi Freedom and Operation Enduring Freedom veterans, as well as understanding the long-term consequences of military deployment.

Affected Public: Individuals or households.

Estimated Annual Burden: 24,858 hours.

Estimated Average Burden per Respondent: 39 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 38,300.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–25743 Filed 10–18–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0747]

Proposed Information Collection (Fully Developed Claims) (Applications for Compensation; Applications for Pension; Applications for DIC, Death Pension, and/or Accrued Benefits) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process compensation and pension claims within 90 days after receipt of the claim.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at www.Regulations.gov; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0747” in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary

for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Fully Developed Claims (Applications for Compensation, 21-526EZ; Applications for Pension, VA Form 21-527EZ; and Applications for DIC, Death Pension, and/or Accrued Benefits, VA Form 21-534EZ.

OMB Control Number: 2900-0747.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 21-526EZ, 21-527EZ and 21-534EZ will be used to process a claim within 90 days after receipt from a claimant. Claimants are required to sign and date the certification, certifying as of the signed date, no additional information or evidence is available or needs to be submitted in order to adjudicate the claim.

Affected Public: Individuals and Households.

Estimated Annual Burden: 43,516 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 104,440.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25746 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0681]

Agency Information Collection (IL Assessment) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice

announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0681" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, Fax (202) 632-7583 or email denise.mclamb@va.gov. Please refer to "OMB Control No. 2900-0681."

SUPPLEMENTARY INFORMATION:

Title: Preliminary Independent Living (IL) Assessment, VA Form 28-0791.

OMB Control Number: 2900-0681.

Type of Review: Extension of a currently approved collection.

Abstract: VA case managers use VA Form 28-0791 while evaluating the independent living needs of veterans with severe disabilities. The data is used to determine the scope of the veteran's independent living needs under the Vocational Rehabilitation and Employment program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 1, 2012, at pages 45718-45719.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,500.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,500.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-25745 Filed 10-18-12; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0227]

Agency Information Collection (Food Service and Nutritional Care Analysis) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0227" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492, fax (202) 632-7583 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0227."

SUPPLEMENTARY INFORMATION:

Title: Food Service and Nutritional Care Analysis, VA Form 10-5387.

OMB Control Number: 2900-0227.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected to determine the level of patient satisfaction and quality of service resulting from advanced food preparation and advanced food delivery systems. All meals served are an integral part of a patient's therapy. VA Form 10-5387 will be used to collect and evaluate information needed to determine whether improvements are needed to enhance patient's nutritional therapy.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 1, 2012, at pages 45717–45718.

Affected Public: Individuals or households.

Estimated Total Annual Burden:
4,187.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:
200.

Dated: October 15, 2012.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–25756 Filed 10–18–12; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 77

Friday,

No. 203

October 19, 2012

Part II

Department of Housing and Urban Development

Delegation of Authority for the Office of Field Policy and Management;
Redelegation of Authority for the Office of Field Policy and Management;
Orders of Succession; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-01]

Delegation of Authority for the Office of Field Policy and Management

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: Through this notice, the Secretary of the Department of Housing and Urban Development delegates to the Assistant Deputy Secretary for Field Policy and Management authority for the management and oversight of the Department's field operations.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Section A. Authority

The Secretary of HUD hereby delegates to the Assistant Deputy Secretary for Field Policy and Management authority for the management and oversight of the Department's field operations. In carrying out this authority, the Assistant Deputy Secretary for Field Policy and Management shall, among other duties:

1. Coordinate the implementation of the Department's policies and programs in the field in consultation with field program directors. Program coordination does not mean program decisionmaking but, rather, collecting local information, measuring community impact, initiating cross-program communication and coordination, and facilitating the resolution of potential program differences through the appropriate channels, if necessary.
2. Manage and assess field resources to ensure that operations are efficient and effective.
3. Coordinate and convey the Strategic Plan and Management Action Plan with the field.
4. Advise the Secretary on policy and management of the field.

Section B. Authority To Redelegate

The Assistant Deputy Secretary for Field Policy and Management is

authorized to redelegate to employees of HUD any of the authority delegated under section A above.

Section C. Authority Superseded

This Delegation supersedes all previous delegations from the Secretary of HUD to the Assistant Deputy Secretary for Field Policy and Management.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 9, 2012.

Shaun Donovan,

Secretary.

[FR Doc. 2012-25709 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-02]

Order of Succession for the Office of Field Policy and Management

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Office of Field Policy and Management. This Order of Succession supersedes all prior Orders of Succession for the Office of Field Policy and Management.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). Persons with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of Field Policy and Management when, by reason of absence, disability, or vacancy in office, the Assistant Deputy Secretary for Field Policy and Management is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies

Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes any previous Order of Succession for the Office of Field Policy and Management.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Deputy Secretary for Field Policy and Management is not available to exercise the powers or perform the duties of the Assistant Deputy Secretary, the following officials within the Office of Field Policy and Management are hereby designated to exercise the powers and perform the duties of the Office. An individual who is serving in an acting capacity in a position listed below shall not act as the Assistant Deputy Secretary for Field Policy and Management:

(1) Associate Assistant Deputy Secretary for Field Policy and Management;

(2) Deputy Director for Field Policy and Management;

(3) Director of Field Operations and Support; and

(4) Regional Administrator, HUD Region IV.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all prior Orders of Succession for the Office of Field Policy and Management.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,

Assistant Deputy Secretary.

[FR Doc. 2012-25710 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-03]

Redelegation of Authority for Office of Field Policy and Management

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Redelegating of Authority.

SUMMARY: Through this notice, the Assistant Deputy Secretary for Field Policy and Management redelegates certain operational management authority to the HUD Regional Administrators located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Fort Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA); and Region X (Seattle, WA).

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, Department of Housing and Urban Development, Room 9262, 451 7th Street SW., Washington, DC 20410-0500, telephone number, 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register**, the Secretary of HUD delegates to the Assistant Deputy Secretary for Field Policy and Management authority for the management and oversight of the Department's field operations, and further authorizes the Assistant Deputy Secretary to redelegate such authority. Through this notice, the Assistant Deputy Secretary for Field Policy and Management redelegates certain operational management authority to the HUD Regional Administrators. On March 26, 2002 (67 FR 13791), and April 5, 2007 (72 FR 16809), HUD published Delegations of Authority from the Secretary to the Regional Directors/ Administrators of Field Policy and Management. This notice supersedes these and all prior redelegations to the HUD Regional Administrators.

Section I: Authority Redelegated

A. *Cross-Program Coordination.* Each Regional Administrator is redelegated the following duties:

1. Develop and implement place-based Management Plans in consultation with field program directors;
2. Coordinate cross-program projects and Field Office Quality Management Reviews;
3. Prepare briefing papers and hot issue documents;
4. Lead disaster relief efforts;
5. Lead problem-solving teams to address significant issues involving

internal and external stakeholders and program areas;

6. Convene on-site program teams (i.e., CPD, OGC, FHEO), as necessary and in consultation with field program directors to review proposed, major projects or initiatives for place-based impact;

7. Assist state and local housing officials in assessing the impact of housing foreclosures;

8. Convene place-based teams, as necessary and in consultation with field program directors, to review Consolidated Plans during the 45-day review period;

9. Provide comments to Public Indian Housing (PIH) Field Directors on public housing disposal and/or demolition applications;

10. Review with other program leaders the status of the HUD-VASH program to maximize utilization; and

11. Consult with program directors regarding implementation of departmental management goals, secretarial and Presidential initiatives, and Annual Performance Plan commitments.

Regional Administrators can request review by Headquarters of decisions made by program directors. Where the Regional Administrator and relevant program director disagree on a major program decision, the Regional Administrator may report the disagreement to the Assistant Deputy Secretary, Field Policy and Management, who may then raise the matter with the relevant Assistant Secretary or equivalent. The relevant Assistant Secretary or equivalent makes the final determination, subject to review by the Deputy Secretary, as necessary.

B. *Administrative Management.* Each Regional Administrator is delegated the following administrative duties:

1. Determine official office hours and opening, closing, and emergency procedures;
2. Authorize excused absence by administrative directive for up to three days for office closure or group dismissal for severe environmental disturbance or other managerial reasons (e.g., loss of heating or air conditioning) in field office location; and
3. Regional Administrators may request a waiver of specific directives and handbook provisions pertaining to programs in the Offices of Housing, Public and Indian Housing, Community Planning and Development, and Fair Housing and Equal Opportunity. Waiver is not authorized for the HUD Litigation Handbook and regulations, or those departmental directives and handbook provisions mandated by or directly

predicated on a statute, executive order, or regulation. Waiver requests by the Regional Administrator will be forwarded to the Assistant Deputy Secretary, the Office of Field Policy and Management, who will forward the requests to the respective program Assistant Secretary for final decision. All waivers requests must be in writing and specify the grounds for requesting the waiver. Regional Administrators will be notified in writing of the program Assistant Secretary's decision, through the Office of Field Policy and Management leadership. Only the program Assistant Secretary may grant waivers or make a specific delegation of waiver authority.

C. *Representation.* Each Regional Administrator is redelegated the following duties:

1. Serve as the lead point of contact for nontribal local elected or appointed officials;
2. Serve as one of the principal points of contact with industry groups with the support of and in consultation with field program directors;
3. Manage and conduct labor/management relations;
4. Manage all inquiries and correspondence, including Freedom of Information Act (5 U.S.C. 552, as amended) requests and Congressional and intergovernmental communications, in consultation with field program directors;
5. Respond to all media inquiries in conjunction with Headquarters, Office of Public Affairs and field program directors;
6. Administer the local office's Web page and Internet sources;
7. Monitor and evaluate customer service; and
8. Enter into cosponsorship agreements, with the concurrence of the General Counsel and the relevant program Assistant Secretary or equivalent.

Section II: Authority To Redelegate

Except for those authorities specifically excluded in Section III of this notice, this authority may be redelegated, as appropriate, from Regional Administrators to Field Office Directors within the respective jurisdictions.

Section III: Authority Non-Redelegate

The following authorities may not be redelegated from the Regional Administrators to the Field Office Directors or to any other employee:

1. The authority to enter into cosponsorship agreements;
2. The authority to request waivers as provided by section I.B.3. above; and

3. The authority to sign local, area-wide, or center-wide negotiated impact and implementation (I&I) or memorandum of understanding (MOA) agreements with unions representing smaller units consisting of either Headquarters and/or Field employees on issues confined to a single program area and within the Regional Administrators' own budget authority, including the resolution of unfair labor practice charges and bargaining impasses.

Section IV: Delegations Superseded

This notice supersedes all prior delegations of authority to the Regional Directors/Administrators from the Secretary of HUD or the Assistant Deputy Secretary, Field Policy and Management.

Authority: Section 7(d)(q) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25711 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-04]

Order of Succession for HUD Region I

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Boston Regional Office and its Field Offices (Region I). This Order of Succession supersedes all previous Orders of Succession for HUD Region I.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register**, the Secretary delegates to the Assistant Deputy Secretary for Field Policy and Management authority and responsibility for the management and oversight of the Department's field

operations. Through this notice, the Assistant Deputy Secretary for Field Policy and Management is issuing this Order of Succession of officials authorized to perform the functions and duties of the Boston Regional Office (HUD Region I) and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region I. Accordingly, the Assistant Deputy Secretary designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. *Boston Regional Office Order of Succession*

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Regional Director, Office of Multifamily Housing;
- d. Director, Region I, Office of Fair Housing and Equal Opportunity.

2. *Hartford Field Office Order of Succession*

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Connecticut Multifamily Program Center.

3. *Providence Field Office Order of Succession*

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Providence Multifamily Program Center.

4. *Manchester Field Office Order of Succession*

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, New Hampshire Multifamily Program Center.

5. *Burlington Field Office Order of Succession*

- a. Director, Bangor Field Office;

b. Director, Manchester Field Office.

6. *Bangor Field Office Order of Succession*

- a. Director, Burlington Field Office;
- b. Director, Manchester Field Office.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all prior Orders of Succession for HUD Region I.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25712 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-05]

Order of Succession for HUD Region II

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the New York Regional Office and its Field Offices (Region II). This Order of Succession supersedes all previous Orders of Succession for Region II.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the New York Regional Office and its Field Offices

when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all previous Orders of Succession for Region II.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. New York Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Multifamily Housing Director;
- d. Public and Indian Housing Director.

2. Buffalo Field Office Order of Succession

- a. Director, Public and Indian Housing;
- b. Director, Community Planning and Development;
- c. Associate Regional Counsel, Housing Finance and Programs;
- d. Deputy Regional Administrator.

3. Albany Field Office Order of Succession

- a. Director, Albany Financial Operations Center;
- b. Division Director, Albany Financial Operations Center;
- c. Deputy Regional Administrator.

4. Syracuse Field Office Order of Succession

- a. Director, Albany Field Office;
- b. Director, Albany Financial Operations Center;
- c. Deputy Regional Administrator.

5. Newark Field Office Order of Succession

- a. Director, Public and Indian Housing;

- b. Director, Multifamily Housing;
- c. Associate Regional Counsel, Housing Finance and Programs;
- d. Deputy Regional Administrator.

6. Camden Field Office Order of Succession

- a. Deputy Regional Administrator;
- b. Director, Newark Field Office;
- c. Director, Newark Public and Indian Housing.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for HUD Region II.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012–25713 Filed 10–18–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5550–D–06]

Order of Succession for HUD Region III

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Office of Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Philadelphia Regional Office and its Field Offices (Region III). This Order of Succession supersedes all prior Orders of Succession for HUD Region III.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410–0500, telephone number 202–402–3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of

Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Philadelphia Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all previous Orders of Succession for Region III.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. Philadelphia Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Director, Community Planning and Development.

2. Baltimore Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Multifamily Housing HUB.

3. Charleston Field Office Order of Succession

- a. Director, Multifamily Program Center;
- b. Project Manager Supervisor, Multifamily Program Center.

4. Pittsburgh Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

5. Richmond Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;

b. Director, Multifamily Housing.

6. Washington DC Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

7. Wilmington Field Office Order of Succession

- a. Management Analyst;
- b. Deputy Regional Administrator.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for HUD Region III.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25714 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-07]

Order of Succession for HUD Region IV

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Atlanta Regional Office and its Field Offices (Region IV). This Order of Succession supersedes all previous Orders of Succession for HUD Region IV.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Atlanta Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region IV.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. Atlanta Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Director, Atlanta Homeownership Center;
- d. Director, Atlanta Multifamily Housing HUB.

2. Birmingham Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

3. Colombia Field Office Order of Succession

- a. Director, Community Planning and Development;
- b. Director, Public and Indian Housing.

4. Greensboro Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

5. Jackson Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

6. Jacksonville Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs.
- b. Director, Community Planning and Development.

7. Knoxville Field Office Order of Succession

- a. Director, Community Planning and Development;
- b. Director, Knoxville Multifamily Housing Program Center.

8. Louisville Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

9. Memphis Field Office Order of Succession

- a. Director, Public and Indian Housing.

10. Miami Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

11. Nashville Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

12. Orlando Field Office Order of Succession

- a. Director, Tampa Field Office;
- b. Deputy Regional Administrator.

13. San Juan Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

14. Tampa Field Office Order of Succession

- a. Supervisory Housing Programs Specialist, Homeownership Center;
- b. Supervisory Project Manager, Multifamily Housing.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials

whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for Region IV.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25715 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-08]

Order of Succession for HUD Region V

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Chicago Regional Office and its Field Offices (Region V). This Order of Succession supersedes all previous Orders of Succession for HUD Region V.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Chicago Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region V.

Accordingly, the Assistant Deputy Secretary, for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. Chicago Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Director, Multifamily Housing HUB.

2. Cincinnati Field Office Order of Succession

- a. Supervisory Project Manager, Multifamily Housing;
- b. Management Analyst, Field Policy and Management.

3. Cleveland Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

4. Columbus Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Multifamily HUB.

5. Detroit Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Multifamily HUB.

6. Flint Field Office Order of Succession

- a. Director, Grand Rapids Field Office;
- b. Management Analyst, Field Policy and Management.

7. Grand Rapids Field Office Order of Succession

- a. Supervisory Project Manager, Multifamily Housing;
- b. Management Analyst, Field Policy and Management.

8. Indianapolis Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;

- b. Director, Public and Indian Housing.

9. Milwaukee Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Multifamily Housing.

10. Minneapolis Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Multifamily HUB.

11. Springfield Field Office Order of Succession

- a. Deputy Regional Administrator. These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for Region V.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25716 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-09]

Order of Succession for HUD Region VI

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Fort Worth Regional Office and its Field Offices (Region VI). This Order of Succession supersedes all previous Orders of Succession for HUD Region VI.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 9262, Washington, DC 20410-0500, telephone number 202-

402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary, for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Fort Worth Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region VI.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office are hereby designated to exercise the powers and perform the duties of the Office:

1. Fort Worth Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Regional Director, Public and Indian Housing;
- d. Director, Multifamily Housing HUB.

2. Albuquerque Field Office Order of Succession

- a. Senior Management Analyst, Field Policy and Management;
- b. Director, Community Planning and Development.

3. Houston Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Program Center Director, Multifamily Housing;
- c. Program Center Director, Community Planning and Development.

4. Little Rock Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

5. Lubbock Field Office Order of Succession

- a. Senior Management Analyst, Field Policy and Management.

6. New Orleans Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

7. Oklahoma City Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Senior Management Analyst, Field Policy and Management.

8. San Antonio Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

9. Shreveport Field Office Order of Succession

- a. Management Analyst, Field Policy and Management;
- b. Supervisory Housing Program Specialist, Single Family Housing.

10. Tulsa Field Office Order of Succession

- a. Management Analyst, Field Policy and Management;
- b. Supervisory Housing Program Specialist, Single Family Housing.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for Region VI.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25717 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR-5550-D-10]

Order of Succession for HUD Region VII

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary, for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Kansas City Regional Office and its Field Offices (Region VII). This Order of Succession supersedes all previous Orders of Succession for HUD Region VII.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Kansas City Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region VII.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified

by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. Kansas City Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Deputy Regional Counsel;
- d. Regional Director, Public and Indian Housing.

2. Omaha Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

3. Des Moines Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Multifamily Housing.

4. St. Louis Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for Region VII.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25718 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-11]

Order of Succession for HUD Region VIII

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the

Order of Succession for the Denver Regional Office and its Field Offices (Region VIII). This Order of Succession supersedes all previous Orders of Succession for HUD Region VIII.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Denver Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region VIII.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. Denver Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Director, Multifamily Housing HUB;
- d. Director, Denver Single Family Homeownership Center.

2. Salt Lake City Field Office Order of Succession

- a. Deputy Regional Administrator;

- b. Director, Helena Field Office.

3. Helena Field Office Order of Succession

- a. Deputy Regional Administrator;
- b. Director, Fargo Field Office.

4. Casper Field Office Order of Succession

- a. Deputy Regional Administrator;
- b. Director, Sioux Falls Field Office.

5. Sioux Falls Field Office Order of Succession

- a. Deputy Regional Administrator;
- b. Director, Salt Lake City Field Office.

6. Fargo Field Office Order of Succession

- a. Deputy Regional Administrator;
- b. Director, Helena Field Office.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for Region VIII.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25719 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR-5550-D-12]

Order of Succession for HUD Region IX

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the San Francisco Regional Office and its Field Offices (Region IX). This Order of Succession supersedes all previous Orders of Succession for HUD Region IX.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant

General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the San Francisco Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region IX.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. San Francisco Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Director, Public and Indian Housing;
- d. Director, Multifamily Housing.

2. Fresno Field Office Order of Succession

- a. Director, Sacramento Field Office.

3. Honolulu Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

4. Las Vegas Field Office Order of Succession

- a. Director, Reno Field Office.

5. Los Angeles Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

6. Phoenix Field Office Order of Succession

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Public and Indian Housing.

7. Reno Field Office Order of Succession

- a. Director, Las Vegas Field Office.

8. Sacramento Field Office Order of Succession

- a. Director, Reno Field Office.

9. San Diego Field Office Order of Succession

- a. Director, Los Angeles Field Office.

10. Santa Ana Field Office Order of Succession

- a. Director, Los Angeles Field Office.

11. Tucson Field Office Order of Succession

- a. Director, Phoenix Field Office.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for Region IX.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25720 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5550-D-13]

Order of Succession for HUD Region X

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, designates the Order of Succession for the Seattle Regional Office and its Field Offices (Region X). This Order of Succession supersedes all previous Orders of Succession for HUD Region X.

DATES: *Effective Date:* October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel, Administrative Law Division, U.S. Department of Housing and Urban Development 451 7th Street SW., Room 9262, Washington, DC 20410-0500, telephone number 202-402-3502 (this is not a toll-free number). This number may be accessed through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Assistant Deputy Secretary for Field Policy and Management, Department of Housing and Urban Development, is issuing this Order of Succession of officials authorized to perform the functions and duties of the Seattle Regional Office and its Field Offices when by reason of absence, disability, or vacancy in office the Regional Administrator or Field Office Directors are not available to exercise the powers or perform the duties of their Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d). This publication supersedes all previous Orders of Succession for Region X.

Accordingly, the Assistant Deputy Secretary for Field Policy and Management designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when by reason of absence, disability, or vacancy in office the Regional Administrator for the Department of Housing and Urban Development or the Field Office Directors are not available to exercise the powers or perform the duties of their Office, the following officials within each Office and those officials specified by Office location are hereby designated to exercise the powers and perform the duties of the Office:

1. Seattle Regional Office Order of Succession

- a. Deputy Regional Administrator;
- b. Regional Counsel;
- c. Regional Director, Community Planning and Development;
- d. Regional Public Affairs Officer, Office of the Regional Administrator.

2. *Spokane Field Office Order of Succession*

- a. Deputy Regional Administrator;
- b. Regional Counsel.

3. *Portland Field Office Order of Succession*

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Field Director, Community Planning and Development.

4. *Boise Field Office Order of Succession*

- a. Deputy Regional Administrator;

- b. Regional Counsel.

5. *Anchorage Field Office Order of Succession*

- a. Associate Regional Counsel, Housing Finance and Programs;
- b. Director, Community Planning and Development.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his/hers in this order are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for HUD Region X.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 9, 2012.

Patricia A. Hoban-Moore,
Assistant Deputy Secretary.

[FR Doc. 2012-25721 Filed 10-18-12; 8:45 am]

BILLING CODE 4210-67-P



FEDERAL REGISTER

Vol. 77

Friday,

No. 203

October 19, 2012

Part III

The President

Proclamation 8890—Death of Arlen Specter

Presidential Documents

Title 3—**Proclamation 8890 of October 15, 2012****The President****Death of Arlen Specter****By the President of the United States of America****A Proclamation**

As a mark of respect for the memory of Arlen Specter, I hereby order, by the authority vested in me by the Constitution and laws of the United States of America, that on the day of his interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

H.R. 1272/P.L. 112-179
Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2012 (Oct. 5, 2012; 126 Stat. 1411)

H.R. 1791/P.L. 112-180
To designate the United States courthouse under

construction at 101 South United States Route 1 in Fort Pierce, Florida, as the "Alto Lee Adams, Sr., United States Courthouse". (Oct. 5, 2012; 126 Stat. 1415)

H.R. 2139/P.L. 112-181
Lions Clubs International Century of Service Commemorative Coin Act (Oct. 5, 2012; 126 Stat. 1416)

H.R. 2240/P.L. 112-182
Lowell National Historical Park Land Exchange Act of 2012 (Oct. 5, 2012; 126 Stat. 1420)

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H.R. 3556/P.L. 112-184
To designate the new United States courthouse in Buffalo, New York, as the "Robert H. Jackson United States Courthouse". (Oct. 5, 2012; 126 Stat. 1424)

H.R. 4158/P.L. 112-185
To confirm full ownership rights for certain United States astronauts to artifacts from the astronauts' space missions. (Oct. 5, 2012; 126 Stat. 1425)

H.R. 4223/P.L. 112-186
Strengthening and Focusing Enforcement to Deter Organized Stealing and

Enhance Safety Act of 2012 (Oct. 5, 2012; 126 Stat. 1427)

H.R. 4347/P.L. 112-187
To designate the United States courthouse located at 709 West 9th Street in Juneau, Alaska, as the "Robert Boochever United States Courthouse". (Oct. 5, 2012; 126 Stat. 1432)

H.R. 5512/P.L. 112-188
Divisional Realignment Act of 2012 (Oct. 5, 2012; 126 Stat. 1433)

H.R. 6189/P.L. 112-189
Reporting Efficiency Improvement Act (Oct. 5, 2012; 126 Stat. 1435)

H.R. 6215/P.L. 112-190
To amend the Trademark Act of 1946 to correct an error in the provisions relating to remedies for dilution. (Oct. 5, 2012; 126 Stat. 1436)

H.R. 6375/P.L. 112-191
91 VA Major Construction Authorization and Expiring Authorities Extension Act of 2012 (Oct. 5, 2012; 126 Stat. 1437)

H.R. 6431/P.L. 112-192
To provide flexibility with respect to United States support for assistance provided by international financial institutions for Burma,

and for other purposes. (Oct. 5, 2012; 126 Stat. 1441)

H.R. 6433/P.L. 112-193
FDA User Fee Corrections Act of 2012 (Oct. 5, 2012; 126 Stat. 1443)

S. 300/P.L. 112-194
Government Charge Card Abuse Prevention Act of 2012 (Oct. 5, 2012; 126 Stat. 1445)

S. 710/P.L. 112-195
Hazardous Waste Electronic Manifest Establishment Act (Oct. 5, 2012; 126 Stat. 1452)

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