AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 225 November 21, 2012

Pages 69733–70104

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, December 11, 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

Printed on recycled paper.

Contents

Federal Register

Vol. 77, No. 225

Wednesday, November 21, 2012

Agriculture Department
See Forest Service

Air Force Department
NOTICES
Meetings:
U.S. Air Force Academy Board of Visitors, 69811

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Qualifying State Relief from Disabilities Program, 69895–69896
Relief of Disabilities, 69895

Bureau of Consumer Financial Protection
RULES
Consumer Leasing, 69735–69736
Truth in Lending, 69736–69739

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69846–69848
Medicare Program:
Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2013, 69848–69850
Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2013, 69850–69859
Part A Premiums for CY 2013 for Uninsured Aged and for Certain Disabled Individuals who have Exhausted Other Entitlement, 69859–69861

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Parents and Children Together Evaluation, 69861–69863

Coast Guard
RULES
Drawbridge Operations:
Black River, La Crosse, WI, 69759–69761
Upper Mississippi River, Clinton, IA, 69761
Upper Mississippi River, Dubuque, IA, 69759
Regulated Navigation Areas:
Recovery Operations, the Port of New York and New Jersey, NJ and NY, 69761–69765

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Procurement Contracts, 69806–69807
Meetings; Sunshine Act, 69807

Defense Department
See Air Force Department
See Navy Department
NOTICES
Meetings:
Threat Reduction Advisory Committee, 69807
Privacy Act; Systems of Records, 69807–69811

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
DC Choice Evaluation, 69812
National Assessment of Educational Progress 2014–16 System Clearance, 69814
Needs Assessment and Workplan Guide for Technical Assistance and Continuing Education Program, 69813–69814
State Plan for Independent Living for State Independent Living Services and Center for Independent Living Programs, 69812–69813
Meetings:
National Assessment Governing Board, 69814–69816

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Occupational Code Assignment, 69897–69898

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Final Authorization of State Hazardous Waste Management Program Revisions:
Colorado, 69765–69768
PROPOSED RULES
Final Authorization of State Hazardous Waste Management Program Revisions:
Colorado, 69788
NOTICES
Access to Confidential Business Information:
Electronic Consulting Services, Inc., and its Identified Subcontractors, Cherokee Services Group and Dell Services Federal Government, 69820–69821
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69821–69824
Certain New Chemicals; Receipt and Status Information, 69824–69827

Grant Funding Guidance for State and Tribal Response Programs for FY2013 under CERCLA, 69827–69837
Meetings:
SFIREG Full Committee, 69837
Pesticide Experimental Use Permit Applications:
MON 87410 and MON 87411 Pesticide-Incorporated Protectant Corn Events, 69838–69839
Registration Review Final Decisions:
Tralomethrin and Fenarimol, 69839–69840
Request to Voluntarily Cancel Iodomethane Pesticide Registrations and Amend a Registration, 69840–69842

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 69842

Federal Aviation Administration
RULES
Airworthiness Directives:
Cessna Aircraft Company Airplanes, 69742–69744
The Boeing Company Airplanes, 69739–69742, 69744–69747
The Boeing Company Model Airplanes, 69747–69754
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 69916

Federal Communications Commission
PROPOSED RULES
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, 69934–69992
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69842

Federal Energy Regulatory Commission
RULES
Promoting Transmission Investment Through Pricing Reform, 69754–69759
PROPOSED RULES
Enhanced Natural Gas Market Transparency, 69781–69785
NOTICES
Combined Filings, 69816–69818
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
Cirrus Wind 1, LLC, 69819
Proctor & Gamble Paper Products Co., 69819–69820
QC Power Strategies Fund LLC, 69819

Federal Maritime Commission
NOTICES
Agreements Filed, 69842

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 69843

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Training Certification for Entry-Level Commercial Motor Vehicle Operators, 69916–69918
Meetings:
Motor Carrier Safety Advisory Committee, 69918

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69918–69919
Environmental Impact Statements; Availability, etc.:
Chicago, IL to Omaha, NE, Regional Passenger Rail System Study, 69920
Chicago, IL to St. Louis, MO High Speed Rail Corridor Program, etc., 69920–69921
Petitions for Waivers of Compliance, 69921–69924

Federal Reserve System
RULES
Consumer Leasing, 69735–69736
Truth in Lending, 69736–69738
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69843–69845

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 69845

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Review of Native Species that are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions, 69994–70060
NOTICES
Endangered and Threatened Species:
Permit Applications, 69890–69891
Endangered and Threatened Wildlife and Plants:
Permit Applications, 69891–69893
Meetings:
Bristol Bay Federal Subsistence Regional Advisory Council, 69893–69894
North Slope Federal Subsistence Regional Advisory Council, 69893

Food and Drug Administration
NOTICES
Public Hearings:
Antiseptic Patient Preoperative Skin Preparation Products, 69863–69865

Foreign-Trade Zones Board
NOTICES
Applications for Reorganizations/Expansions under Alternative Site Framework:
Foreign-Trade Zone 171, Liberty County, TX, 69789

Forest Service
NOTICES
Meetings:
Bristol Bay Federal Subsistence Regional Advisory Council, 69893–69894
North Slope Federal Subsistence Regional Advisory Council, 69893

General Services Administration
RULES
Acquisition Regulations:
Administrative Matters; Correction, 69768

Health and Human Services Department
See Centers for Medicare & Medicaid Services

See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
NOTICES
Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort, 69845–69846

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Housing Administration Healthcare Facility Documents, 69870–69890

Indian Health Service
See Indian Health Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Indian Health Service Contract Health Services Report, 69865–69866

Industry and Security Bureau
NOTICES
Meetings:
President's Export Council Subcommittee on Export Administration, 69789–69790
Regulations and Procedures Technical Advisory Committee, 69790

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69930–69931
Meetings:
Art Advisory Panel, 69931

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Hot-Rolled Carbon Steel Flat Products from People's Republic of China, 69790–69792
Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Pasta from Italy, 69793–69794
Certain Pasta from Turkey, 69792–69793
Membership Opportunities:
Manufacturing Council; Application Period Extension, 69794–69795

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Lodgings of Proposed Consent Decrees under the Clean Air Act, 69894–69895

Labor Department
See Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Follow-Up Survey Information for Green Jobs and Health Care Impact Evaluation, American Recovery Reinvestment Act Grants, 69896–69897

Land Management Bureau
NOTICES
Filings of Plats of Surveys:
Alaska, 69894

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Privacy Act; Systems of Records, 69898–69899

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Production Plan Reports, 69924–69925

National Institute of Standards and Technology
NOTICES
Meetings:
Malcolm Baldrige National Quality Award Board of Overseers, 69795–69796

National Institutes of Health
NOTICES
Government-Owned Inventions; Availabilities for Licensing, 69866–69869
Meetings:
National Advisory Council on Alcohol Abuse and Alcoholism, National Advisory Council on Drug Abuse, and National Cancer Advisory Board, 69869
National Center for Complementary and Alternative Medicine, 69869
National Heart, Lung, and Blood Institute, 69869–69870

National Oceanic and Atmospheric Administration
RULES
Groundfish Fisheries of the Exclusive Economic Zone off Alaska and Pacific Halibut Fisheries:
Observer Program, 70062–70103
NOTICES
Fisheries of the Exclusive Economic Zone off Alaska:
Application for Exempted Fishing Permit, 69796–69797
Takes of Marine Mammals Incidental to Specified Activities:
Pile Driving in Port Townsend Bay, WA, 69797–69806

National Science Foundation
NOTICES
Meetings; Sunshine Act, 69899

National Transportation Safety Board
NOTICES
Public Conferences:
Geographic Information Systems in Transportation Safety, 69899–69900

Navy Department
NOTICES
Intents to Grant Partially Exclusive Patent Licenses:
Jinga-hi, Inc., 69811–69812

Nuclear Regulatory Commission
NOTICES
Meetings:
Advisory Commitee on Reactor Safeguards, 69900–69901

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 69901

Pipeline and Hazardous Materials Safety Administration
NOTICES
Assessments of Hazardous Materials Incident Data Collections, Analyses, Reportings, and Uses, 69925–69926
Compliance Date Extension for Air-Passenger Notification of Hazardous Material Restrictions, 69926–69927
Meetings:
International Standards on Transport of Dangerous Goods, 69927
Safety Advisories:
Shippers and Carriers of Air Bags, 69927–69928

Presidential Documents
PROCLAMATIONS
Special Observances:
National Family Week (Proc. 8906), 69733–69734

Presidio Trust
PROPOSED RULES
Public Use Limit on Commercial Dog Walking; Revised Disposal Conditions, 69785–69788

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 69903–69905, 69908–69910
Fixed Income Clearing Corp., 69913–69915
International Securities Exchange, LLC, 69905–69908, 69910–69911
NASDAQ Stock Market LLC, 69911–69912
NYSE Arca, Inc., 69901–69903

Small Business Administration
NOTICES
Disaster Declarations:
New York; Amendment 2, 69915
Rhode Island; Amendment 1, 69915

State Department
NOTICES
Meetings:
Advisory Committee on Historical Diplomatic Documentation, 69915–69916

State Justice Institute
NOTICES
Meetings:
SJI Board of Directors, 69916

Surface Transportation Board
RULES
Solid Waste Rail Transfer Facilities, 69769–69780
NOTICES
Acquisition and Operation Exemptions:
Transco Railway Products Inc. from D&W Railroad LLC, 69928–69929
Continuances in Control Exemptions:
Western Carolina Railway Service Corp., Steven C. and Cheryl R. Hawkins; Aiken Railway Co., LLC, 69929

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board
RULES
Defense Production Act:
Prioritization and Allocation Authority Exercised by the Secretary of Transportation, 69769

Treasury Department
See Internal Revenue Service
NOTICES
Meetings:
President's Advisory Council on Financial Capability, 69929–69930

Separate Parts In This Issue

Part II
Federal Communications Commission, 69934–69992

Part III
Interior Department, Fish and Wildlife Service, 69994–70060

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 70062–70103

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8906.....69733

12 CFR
213.....69735
226.....69736
1013.....69735
1026 (2 documents) 69736, 69738

14 CFR
39 (4 documents) 69739, 69742, 69744, 69747

15 CFR
902.....70062

18 CFR
2.....69754
35.....69754

Proposed Rules:
152.....69781

33 CFR
117 (3 documents) 69759, 69761
165.....69761

36 CFR

Proposed Rules:
1002.....69785

40 CFR
271.....69765

Proposed Rules:
271.....69788

47 CFR

Proposed Rules:
1.....69934
27.....69934
73.....69934

48 CFR
504.....69768

49 CFR
33.....69769
1155.....69769

50 CFR
679.....70062

Proposed Rules:
17.....69994

Federal Register
Vol. 77, No. 225
Wednesday, November 21, 2012

Presidential Documents

Title 3—

The President

Proclamation 8906 of November 16, 2012

National Family Week, 2012

By the President of the United States of America

A Proclamation

The bonds that tie us to our loved ones have always played an important role in the American story. Families of every makeup continue to guide our country's progress by supporting one another with unshakable devotion and instilling strength of character in their children. This week, we celebrate the unity and compassion that keep our families strong.

Every family deserves the chance to make a better future for themselves and their children. That is why strong families will always be at the heart of my Administration's agenda—from the classroom to the workplace to our military. Over the past 4 years, we have worked to bring a complete and competitive education within reach for all our children, and we have striven to help them grow up healthy by broadening access to nutritious meals. To ensure families have health coverage when they need it most, the Affordable Care Act put in place comprehensive reforms that will hold insurance companies accountable, improve health care quality, and expand access to affordable coverage. My Administration has also pursued greater workplace flexibility, so working parents do not face a choice between their jobs and meeting their families' needs. Moreover, we continue to promote the critical role fathers can play in enhancing the intellectual, emotional, and financial well-being of our sons and daughters. Finally, at a time when many of our military families are stretched thin, we are mobilizing communities and organizations nationwide to give our service members and their loved ones the support they have earned.

America's prosperity has always come from an economy that is built on a strong and growing middle class—families who can own homes, send their kids to college, and save enough for retirement. As our economic recovery continues, we must keep working to give them the security they deserve, and to widen the circle of opportunity for all who are working hard to get ahead. During National Family Week, let us recommit to keeping America's promise alive for every family.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 18 through November 24, 2012, as National Family Week. I invite all States, communities, and individuals to join in observing this week with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, 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.

[FR Doc. 2012–28457
Filed 11–20–12; 8:45 am]
Billing code 3295–F3

Rules and Regulations

Federal Register
Vol. 77, No. 225
Wednesday, November 21, 2012

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1449]

RIN 7100–AD94

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

[Docket No. CFPB–2012–0042]

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are publishing final rules amending the official interpretations and commentary for the agencies' regulations that implement the Consumer Leasing Act (CLA). Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by increasing the threshold for exempt consumer leases from $25,000 to $50,000 and requiring that, on or after December 31, 2011, this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Accordingly, the exemption threshold was adjusted to $51,800 effective January 1, 2012. Based on the annual percentage increase in the CPI–W as of June 1, 2012, the Board and the Bureau are adjusting the exemption threshold from $51,800 to $53,000, effective January 1, 2013.

Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in the **Federal Register**.

DATES: This final rule is effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: David Friend, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases from $25,000 to $50,000, effective July 21, 2011.[1] In addition, the Dodd-Frank Act requires that this threshold be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act.[2]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA in an interim final rule, 12 CFR part 1013 (Bureau Interim Final Rule).[3] The Bureau Interim Final Rule substantially duplicated the Board's Regulation M, including the revisions to the threshold for exempt transactions made by the Board in April 2011. Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[4]

Section 213.2(e)(1) of the Board's Regulation M and § 1013.2(e)(1) of the Bureau's Regulation M, and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. *See* comments 2(e)-9 in Supplements I of 12 CFR part 213 and 12 CFR part 1013.

II. Adjustment and Commentary Revision

Effective January 1, 2013, the adjusted exemption threshold amount is $53,000. This adjustment is based on the CPI–W index in effect on June 1, 2012, which was reported on May 15, 2012. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. The CPI–W is a subset of the CPI–U index (based on all urban

[1] Public Law 111–203 § 1100E, 124 Stat. 1376 (2010).

[2] 76 FR 18349 (Apr. 4, 2011).

[3] 76 FR 78500 (Dec. 19, 2011).

[4] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority * * * over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: ''Subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

consumers) and represents approximately 28 percent of the U.S. population. The adjustment reflects a 2.4 percent increase in the CPI–W from April 2011 to April 2012 and is rounded to the nearest $100 increment. Accordingly, the Board and the Bureau are revising the commentaries to their respective regulations to add new subparagraph 2(e)–9.iv stating that, from January 1, 2013 through December 31, 2013, the threshold amount is $53,000. These revisions are effective January 1, 2013.

III. Administrative Law Matters

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). This annual adjustment is required by statute. The amendment in this notice is technical and non-discretionary, and it applies the method previously established in the agencies' regulations for determining adjustments to the exemption threshold. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Advertising, Consumer leasing, Reporting and recordkeeping requirements.

Board of Governors of the Federal Reserve System

Text of Final Revisions

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

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

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 § 1100E, 124 Stat. 1376.

■ 2. In Supplement I to Part 213, under *Section 213.2—Definitions,* under *2(e) Consumer Lease,* new paragraph 9.iv is added to read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

Section 213.2 Definitions

* * * * *

2(e) Consumer Lease.

9. *Threshold amount.* * * *

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

* * * * *

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 1013 is revised to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 § 1100E, 124 Stat. 1376.

■ 2. In Supplement I to part 1013, under *Section 1013.2—Definitions,* under *2(e) Consumer Lease,* new paragraph 9.iv is added to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

Section 1013.2 Definitions

* * * * *

2(e) Consumer Lease.

9. *Threshold amount.* * * *

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 8, 2012.

Robert deV. Frierson,

Secretary of the Board.

Dated: November 6, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–27996 Filed 11–20–12; 8:45 am]

BILLING CODE 6210–01–P; 4810–AM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. 1450]

RIN 7100–AD94

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0043]

Truth in Lending (Regulation Z)

AGENCIES: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are publishing final rules amending the official interpretations and commentary for the agencies' regulations that implement the Truth in Lending Act (TILA). Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by increasing the threshold for exempt consumer credit transactions from $25,000 to $50,000 and requiring that, on or after December 31, 2011, this threshold be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Accordingly, the exemption threshold was adjusted to $51,800 effective January 1, 2012. Based on the annual percentage increase in the CPI–W as of June 1, 2012, the Board and the Bureau are adjusting the exemption threshold from $51,800 to $53,000, effective January 1, 2013.

Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Consumer Leasing Act elsewhere in the **Federal Register**.

DATES: This final rule is effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: David Friend, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions [1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that this threshold be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act.[3]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA in an interim final rule, 12 CFR part 1026 (Bureau Interim Final Rule).[4] The Bureau Interim Final Rule substantially duplicated the Board's Regulation Z, including the revisions to the threshold for exempt transactions made by the Board in April 2011. Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[5]

Section 226.3(b)(1)(ii) of the Board's Regulation Z and § 1026.3(b)(1)(ii) of the Bureau's Regulation Z, and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. *See* comments 3(b)–1 in Supplements I of 12 CFR part 226 and 12 CFR part 1026.

II. Adjustment and Commentary Revision

Effective January 1, 2013, the adjusted exemption threshold amount is $53,000. This adjustment is based on the CPI–W index in effect on June 1, 2012, which was reported on May 15, 2012. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The adjustment reflects a 2.4 percent increase in the CPI–W from April 2011 to April 2012 and is rounded to the nearest $100 increment. Accordingly, the Board and the Bureau are revising the commentaries to their respective regulations to add new subparagraph 3(b)–1.iv to state that, from January 1, 2013 through December 31, 2013, the threshold amount is $53,000. These revisions are effective January 1, 2013.

III. Administrative Law Matters

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). This annual adjustment is required by statute. The amendment in this notice is technical and non-discretionary, and it applies the method previously established in the agencies' regulations for determining adjustments to the exemption threshold. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in Lending.

Board of Governors of the Federal Reserve System

Text of Final Revisions

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

---

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) and 12 CFR 1026.3(b)(1)(i).

[2] Public Law 111–203 § 1100E, 124 Stat. 1376 (2010).

[3] 76 FR 18354 (Apr. 4, 2011).

[4] 76 FR 79768 (Dec. 22, 2011).

[5] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority * * * over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: ''Subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Supplement I to part 226, under *Section 226.3—Exempt Transactions,* under *3(b) Credit over applicable threshold amount,* new paragraph 1.iv is added to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.3 Exempt Transactions

* * * * *

3(*b*) *Credit over applicable threshold amount.*

1. *Threshold amount.* * * *

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

* * * * *

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

■ 2. In Supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* under *3(b) Credit over applicable threshold amount,* new paragraph 1.iv is added to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.3 Exempt Transactions

* * * * *

3(*b*) *Credit over applicable threshold amount.*

1. *Threshold amount.* * * *

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 8, 2012.

Robert deV. Frierson,

Secretary of the Board.

Dated: November 6, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–27993 Filed 11–20–12; 8:45 am]

BILLING CODE 6210–01–P; 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0044]

Truth in Lending (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule amending the official interpretations for Regulation Z (Truth in Lending). The Bureau is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Bureau has adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1, 2012. The adjusted dollar amount for 2013 is $625.

DATES: This final rule is effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT: David Friend, Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. 15 U.S.C. 1638(a)(4). TILA requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Bureau's Regulation Z (12 CFR part 1026). Supplement I to Regulation Z contains the Bureau's official interpretations of the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board of Governors of the Federal Reserve System (Board) published amendments to Regulation Z implementing HOEPA, which amended TILA and was contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160. These amendments, reflected in §§ 1026.32 and 1026.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA requirements if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. 15 U.S.C. 1602(bb)(3); 12 CFR 1026.32(a)(1)(ii). The Board adjusted the $400 amount to $611 for the year 2012 on June 13, 2011. The responsibility for promulgating rules under TILA was transferred from the Board to the Bureau effective July 21, 2011.[1] The Bureau restated Regulation Z on December 22, 2011, and the Bureau's Regulation Z is located at 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011).

The Bureau of Labor Statistics (BLS) publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The Bureau uses the Consumer Price Index for All Urban Consumers (CPI–U) index, which is based on all urban consumers and represents approximately 88 percent of the U.S. population, as the index for adjusting the $400 figure. The adjustment to the CPI–U index reported by BLS on May 15, 2012, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2011 to April 2012. The adjustment to the $400 figure below reflects a 2.3 percent increase in the CPI–U index for this period and is

[1] *See* sections 1061 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 11–203, 124 Stat. 1376 (2010). Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

rounded to whole dollars for ease of compliance.

The fee trigger being adjusted in this **Federal Register** notice pursuant to TILA section 103(bb) is used in determining whether a loan is covered by § 1026.32. Such loans have generally been known as ''HOEPA loans.'' In July 2008, the Board revised Regulation Z to adopt additional protections for ''higher-priced mortgage loans,'' using its authority under TILA section 129(l)(2), since redesignated as section 129(p)(2). Those revisions define a class of dwelling-secured transactions, described in § 1026.35, using a threshold based on average market rates. The adjustment published today does not affect the triggers adopted in July 2008 by the Board for higher-priced mortgage loans.

On July 9, 2012, the Bureau issued a proposed rule pursuant to, *inter alia,* section 1431 of the Dodd-Frank Act, which revises the statutory fee trigger for HOEPA loans. The Bureau is mindful of the need to coordinate implementation of this final rule with the effective date of the final rule adopting revisions to the HOEPA fee trigger pursuant to the July 9, 2012 proposal. Accordingly, the adjustment to the fee trigger that is being published today will become effective on January 1, 2013 and will apply for one year, or until final rules the Bureau proposed on July 9, 2012 to implement section 1431 of the Dodd-Frank Act become effective, whichever is earlier.

II. Adjustment and Commentary Revision

Effective January 1, 2013, for purposes of determining whether a home mortgage transaction is covered by § 1026.32 (based on the total points and fees payable by the consumer at or before loan closing), a loan is covered if the points and fees exceed the greater of $625 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the new dollar threshold amount for 2013.

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Because the timing and method of the adjustment are set by statute and are technical and non-discretionary, the Bureau finds that notice and public comment on the change are unnecessary. 5 U.S.C. 553(b)(B).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. 5 U.S.C. 601(2). In any event, the Bureau certifies that this amendment to Regulation Z will not have a significant economic impact on a substantial number of small entities. The only change is to increase the threshold for transactions requiring HOEPA disclosures and protections to reflect the annual percentage increase in the CPI–U. This change is required by statute. Furthermore, the Bureau believes that the number of small entities that will be required to comply with Regulation Z's HOEPA protections solely due to this adjustment because they offer ''HOEPA'' loans is not substantial. In addition, for entities that already offer ''HOEPA'' loans in which the total points and fees payable by the consumer at or before loan consumption exceed the greater of $400 or 8 percent of the loan amount, whichever is less, the Bureau believes the economic impact to comply with Regulation Z for additional ''HOEPA'' loans in which the total points and fees payable by the consumer at or before loan consumption exceed the greater of $625 or 8 percent of the loan amount, whichever is less, will not be significant.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings association, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601; 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In Supplement I to part 1026, under *Section 1026.32—Requirements for Certain Closed-End Home Mortgages, 32(a) Coverage, paragraph 32(a)(1)(ii),* paragraph 2 is amended by adding new paragraph 2.xviii to read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Section 1026.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii).

* * * * *

2. *Annual adjustment of $400 amount.*

* * *

xviii. For 2013, $625, reflecting a 2.3 percent increase in the CPI–U from June 2011 to June 2012, rounded to the nearest whole dollar.

* * * * *

Dated: November 6, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–27997 Filed 11–20–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0498; Directorate Identifier 2011–NM–212–AD; Amendment 39–17238; AD 2012–22–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. This AD was prompted by reports of crown frame web cracking at left buttock line (LBL) 15.0, station (STA) 320. This AD requires measuring the web at STA 320 and, depending on findings, various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions if necessary. We are issuing this AD to prevent complete fracture of the crown frame assembly, and consequent damage to the skin and in-flight decompression of the airplane.

DATES: This AD is effective December 26, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 26, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on

the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on June 12, 2012 (77 FR 34881). That NPRM proposed to require measuring the web at STA 320 and, depending on findings, various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 34881, June 12, 2012), and the FAA's response to each comment.

Support for the NPRM (77 FR 34881, June 12, 2012)

Mr. Caleb Berken stated that the fact that cracks have been seen in five of these airplanes is a little unnerving, but when it is considered that there are only 29 airplanes of this particular series (Model 747–400, –400D, and –400F series airplanes) currently in operation within the United States, these statistics become quite alarming. The commenter stated that he would like to put forth his full support for this proposed rule (77 FR 34881, June 12, 2012) to increase inspection and replacement of compromised parts that have developed within the crown frame web.

Request To Provide Credit for Prior Actions

Boeing requested that we allow credit for work done prior to the effective date of the NPRM (77 FR 34881, June 12, 2012) using Boeing Service Bulletin 747–53A2784, dated August 27, 2009. Boeing stated that Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011 (which is the service information referenced in the NPRM (77 FR 34881, June 12, 2012)), states that ''[n]o more work is necessary on airplanes changed in accordance with the original issue of this service bulletin.'' Boeing stated that the inspections and corrective actions described in Boeing Service Bulletin 747–53A2784, dated August 27, 2009; and Revision 1, dated September 14, 2011; are structurally equivalent.

We agree to add credit for prior actions because no more work is necessary on airplanes changed in accordance with Boeing Service Bulletin 747–53A2784, dated August 27, 2009. We have added new paragraph (l) to this AD to provide credit for actions required by paragraphs (g) through (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2784, dated August 27, 2009. We have re-identified subsequent paragraphs accordingly.

Request To Allow Deviation Authority

Boeing requested that paragraph (1)(3) of the NPRM (77 FR 34881, June 12, 2012) be revised to allow the Boeing Commercial Airplanes Organization Designation Authorization (ODA) to approve alternative methods of compliance (AMOCs) for both repairs and deviations to the modification that are described in either Boeing Service Bulletin 747–53A2784, dated August 27, 2009; or Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011. Boeing requested that we clarify that an AMOC can be approved for both repairs and deviations to the modification, and that the modification described in Boeing Service Bulletin 747–53A2784, dated August 27, 2009, satisfies the requirements of the modification described in Boeing Service Bulletin 747–53A2784 Revision 1, dated September 14, 2011.

We partially agree. The Boeing ODA is not currently authorized to provide AMOC approval of deviations that occur when doing the modification. However, once the AD is issued, we might delegate approval authority to certain authorized representatives of the Boeing ODA to approve AMOCs for deviations during this modification. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 34881, June 12, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 34881, June 12, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 29 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement	1 work-hour × $85 per hour = $85	$0	$85	$2,465.
Inspection and web replacement.	208 work-hours × $85 per hour = $17,680	Up to $21,887	Up to $39,567	Up to $1,147,443.
Post-replacement inspection.	135 work-hours × $85 per hour = $11,475 per inspection cycle.	$0	$11,475 per inspection cycle.	$332,775 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition crack repairs specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–22–02 The Boeing Company: Amendment 39–17238; Docket No. FAA–2012–0498; Directorate Identifier 2011–NM–212–AD.

(a) Effective Date

This AD is effective December 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category, as specified in Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of crown frame web cracking at left buttock line (LBL) 15.0, station (STA) 320. We are issuing this AD to prevent complete fracture of the crown frame assembly, and consequent damage to the skin and in-flight decompression of the airplane.

(f) Compliance

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

(g) Crown Frame Web Measurement

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(1) of this AD, measure the thickness of the crown frame web at STA 320, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011. For airplanes with a 0.136- to 0.145-inch-thick web, no further action is required by this AD.

(h) Detailed Inspection and Web Replacement With No Web Repair Doubler

For airplanes on which the web measures 0.078- to 0.083-inch-thick during the measurement required by paragraph (g) of this AD, and on which a repair doubler is not installed: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(1) of this AD, do a detailed inspection for cracks and a general visual inspection for missing fasteners of the crown frame web at STA 320; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(2) of this AD. Do the applicable related investigative and corrective actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(1) of this AD. Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, provides options for accomplishing the actions that are required for airplanes on which no cracking is found in the crown frame web.

(i) Detailed Inspection and Web Replacement With Web Repair Doubler

For airplanes on which the web measures 0.078- to 0.083-inch-thick during the measurement required by paragraph (g) of this AD, and on which a repair doubler is installed: At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(1) of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(2) of this AD. Do all applicable corrective actions before further flight.

(1) Replace the web with a new web and do all applicable related investigative actions.

(2) Do a detailed inspection for cracks in the upper or lower chord of the crown frame web at STA 320.

(j) Post-Replacement Repetitive Inspections of Replaced Web

Following any web replacement required by this AD, at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011: Do a detailed inspection for cracks of the web, upper chord, lower chord, and lower chord splice, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, except as specified in paragraph (k)(2) of this AD. Do all applicable corrective actions before further flight. If no crack is found, repeat the inspection thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011. Accomplishment of the inspections required by AD 2009–19–05, Amendment 39–16022 (74 FR 48138, September 22, 2009), terminates the requirements of this paragraph.

(k) Exceptions to the Service Information

(1) Where Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14,

2011, specifies a compliance time ''after the original issue date of the service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011, specifies to contact Boeing for appropriate action, accomplish applicable actions before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) through (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2784, dated August 27, 2009.

(m) 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.

(n) Related Information

For more information about this AD, Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

(o) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on October 19, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27637 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD; Amendment 39–17257; AD 2012–23–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Cessna Aircraft Company (Cessna) Model 402C airplanes modified by Supplemental Type Certificate (STC) SA927NW and Model 414A airplanes modified by STC SA892NW. This AD was prompted by report of a Cessna Model 414A airplane modified by STC SA892NW that experienced an asymmetrical flap condition causing an uncommanded roll when the pilot set the flaps to the approach position. We are issuing this AD to prevent failure of the flap system, which could result in an asymmetrical flap condition. This condition could result in loss of control.

DATES: This AD is effective December 26, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 26, 2012.

ADDRESSES: For service information identified in this AD, contact Sierra Industries, Ltd, 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; email: *chip@sijet.com;* Internet: *http://www.sijet.com/r-stol-high.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Michael A. Heusser, Program Manager, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5038; fax: (817) 222–5160; email: *michael.a.heusser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on August 23, 2012 (77 FR 50954). The original NPRM (75 FR 66700, October 29, 2010) proposed to require a complete inspection of the flap system and modification of the flap control system. The SNPRM (77 FR 50954, August 23, 2012) proposed to incorporate additional service information that addresses proper rigging procedures and corrective actions following additional inspection procedures.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM (77 FR 50954, August 23, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD

as proposed except for minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the SNPRM (77 FR 50954, August 23, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the SNPRM.

Costs of Compliance

We estimate that this proposed AD affects 150 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the flap system and modify/replace the flap preselect control cable.	25 work-hours × $85 per hour = $2,125	$1,000	$3,125	$468,750

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–23–01 Cessna Aircraft Company: Amendment 39–17257; Docket No. FAA–2010–1084; Directorate Identifier 2010–CE–056–AD.

(a) Effective Date

This AD is effective December 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company (Cessna) Model 402C airplanes modified by Supplemental Type Certificate (STC) SA927NW and Model 414A airplanes modified by STC SA892NW, all serial numbers, that are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a Cessna Model 414A airplane modified by STC SA892NW that experienced an asymmetrical flap condition causing an uncommanded roll when the pilot set the flaps to the approach position. We are issuing this AD to prevent failure of the flap system, which could result in an asymmetrical flap condition. This condition could result in loss of control.

(f) Compliance

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

(g) Inspection of the Flap Control System

Within 60 days after December 26, 2012 (the effective date of this AD), do a complete inspection of the flap control system following the Inspection Instructions section of Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(h) Modification of the Flap Control System

(1) If any damage to the flap bellcrank or bellcrank mounting structure is found in the inspection required in paragraph (g) of this AD, before further flight, repair the damage and modify the flap control system following the Accomplishment Instructions of Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(2) If no damage to the flap bellcrank or bellcrank mounting structure is found in the inspection required in paragraph (g) of this AD, within 180 days after December 26, 2012 (the effective date of this AD), modify the flap control system following the Accomplishment Instructions of Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(i) Instructions for Continued Airworthiness

Within 7 months after December 26, 2012 (the effective date of this AD), or during your next annual inspection, whichever occurs earlier, incorporate Sierra Industries, Ltd. Instructions for Continued Airworthiness, 82–1, Issue 1, dated June 12, 2012, into your FAA-approved maintenance program.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane 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.

(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.

(k) Related Information

(1) For more information about this AD, contact Michael A. Heusser, Program Manager, Fort Worth ACO, FAA, 2601

Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5038; fax: (817) 222–5160; email: *michael.a.heusser@faa.gov.*

(2) For service information identified in this AD, contact Sierra Industries, Ltd., 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; email: *chip@sijet.com;* Internet: *http://www.sijet.com/r-stol-high.* You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(l) Material Incorporated by Reference

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

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

(i) Sierra Industries, Ltd. Service Bulletin SI09–82 Series-1, Rev. A, dated June 12, 2012.

(ii) Sierra Industries, Ltd. Instructions for Continued Airworthiness, 82–1, Issue 1, dated June 12, 2012.

(3) For Sierra Industries, Ltd. service information identified in this AD, contact Sierra Industries, Ltd., 122 Howard Langford Drive, Uvalde, Texas 78801; telephone: 888–835–9377; email: *chip@sijet.com;* Internet: *http://www.sijet.com/r-stol-high.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on November 5, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27456 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1168; Directorate Identifier 2010–NM–239–AD; Amendment 39–17255; AD 2012–22–17]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–200 and –300 series airplanes. This AD was prompted by reports of cracks in the inner chords at both left-side and right-side stations 859.5, 883.5, and 903.5. This AD requires repetitive inspections of the frame inner chord transition radius for cracks, and related investigative and corrective actions if necessary. We are issuing this AD to prevent large cracks in the frames and adjacent structure that can adversely affect the structural integrity of the airplane.

DATES: This AD is effective December 26, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 26, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *Berhane.Alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 9, 2011 (76 FR 69685). That NPRM proposed to require repetitive inspections of the frame inner chord transition radius for cracks, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 69685, November 9, 2011) and the FAA's response to each comment.

Statement of Intent To Comply With the NPRM (76 FR 69685, November 9, 2011)

American Airlines stated that it will incorporate the NPRM (76 FR 69685, November 9, 2011) requirements into its maintenance program and that any corrective actions will be performed at a time that is appropriate based on the compliance thresholds in the NPRM.

Request To Revise Note 1 to Paragraph (g) of the NPRM (76 FR 69685, November 9, 2011)

Boeing requested that we revise the wording of Note 1 to paragraph (g) of the NPRM (76 FR 69685, November 9, 2011) to clarify that structural inspections of fuselage structure are mandated by AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003). (AD 2003–18–10 requires revising the airworthiness limitations section of the maintenance planning data document to incorporate certain inspections and compliance times to detect fatigue cracking of principal structural elements.) Boeing stated that an alteration of these structural inspections will be required for repair(s) done in accordance with Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011. That service bulletin contains post-repair inspections that already provide alternative method of compliance (AMOC) coverage for the requirements of AD 2003–18–10.

We disagree with the commenter's request. Paragraph F., ''Approval,'' of Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011, already contains approval of the inspections as an AMOC for the requirements of the pertinent paragraphs of AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003). We have not changed the final rule in this regard.

Request To Exclude Certain Inspections

All Nippon Airways (ANA) requested that we include a statement in the proposed requirements of the NPRM (76 FR 69685, November 9, 2011) to give credit for the inspection at the locations where FAA-approved repairs have been accomplished for the subject cracking of the inner chords prior to the release of Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011. ANA stated that Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011, does not describe how operators treat the previously FAA-approved repairs and that a credit statement was included in the service information referenced in AD 2011–02–06, Amendment 39–16579 (76 FR 4224, January 25, 2011). ANA stated that it would have to obtain approvals for all previously FAA-approved repairs as AMOCs to the new AD; and considered this a huge burden that increases costs and work-hours.

We disagree with the commenter's request. The structural issues in the identified unsafe condition for this AD are significantly different and more complex than those addressed by AD 2011–02–06, Amendment 39–16579 (76 FR 4224, January 25, 2011). We are unable to approve AMOCs for repairs that may have had previous FAA approvals without information as to how they mitigate the unsafe condition addressed in this AD. Under the provisions of paragraph (j) of this AD, we will consider requests for approval of an AMOC for previous repairs if sufficient data are submitted to substantiate that the repairs would provide an acceptable level of safety for the unsafe condition addressed in this AD. We have not changed the final rule in this regard.

Request for Global Terminating Action and Delay of AD

Delta Airlines (Delta) requested that we revise the NPRM (76 FR 69685, November 9, 2011) to add the statement ''FAA approved repairs for cracking at the subject locations prior to the release of this service bulletin (Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011), constitute terminating action for the inspections defined in this AD.'' Delta stated that, if previously installed FAA-approved repairs are not approved as terminating action, then it would request that the AD effective date be three months after the release of the AD, rather than two or three weeks after the release of the AD. Delta asserted that this would allow additional time for Boeing and Aviation Partners Boeing to review and provide AMOC information for the large volume of previous repairs associated with this area.

We disagree to add approval of a global terminating action for previously approved repairs. We are unable to approve a global terminating action for repairs that might have had previous FAA approvals without information as to how each repair mitigates the identified unsafe condition addressed in this AD. In addition, requirements that must be met for approvals of AMOC requests exceed those for repair approvals. We also disagree to delay the effective date of this AD. We considered that delaying issuance of this AD is inappropriate in light of the identified unsafe condition. We have not changed the final rule in this regard.

Clarification of Effect of Winglet Installation

We have added new paragraph (c)(2) to this AD, which states that Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (j) of this AD.

Change to Paragraph (j)(3) of This AD

We have removed the reference to Federal Aviation Regulations 14 CFR 25.571, Amendment 45 from this AD that was specified in paragraph (j)(3) of the NPRM (76 FR 69685, November 9, 2011). Removing this reference will neither increase the economic burden on any operator nor increase the scope of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 69685, November 9, 2011), for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 69685, November 9, 2011).

Costs of Compliance

We estimate that this AD will affect 325 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed or HFEC inspection	23 or 26 work-hours × $85 per hour = $1,955 or 2,210 per inspection cycle.	$0	$1,955 or $2,210 per inspection cycle.	Up to $718,250 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	24 work-hours × $85 per hour = $2,040.	$383 to $8,327 per frame	$2,423 to $10,367 per frame.

ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
On-condition detailed and HFEC inspections and measurement.	7 work-hours × $85 per hour = $595 per frame.	$0	$595

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–22–17 The Boeing Company: Amendment 39–17255; Docket No. FAA–2011–1168; Directorate Identifier 2010–NM–239–AD.

(a) Effective Date

This AD is effective December 26, 2012.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011.

(2) Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (j) of this AD.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the inner chords at both left-side and right-side stations 859.5, 883.5, and 903.5. We are issuing this AD to prevent large cracks in the frames and adjacent structure that can adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections, Related Investigative Actions, and Corrective Actions

Except as required by paragraph (h)(2) of this AD, at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011: Perform a detailed inspection or a surface high frequency eddy current (HFEC) inspection for cracking in the frame inner chord transition radius at stations 859.5, 883.5, and 903.5, as applicable, left buttock line and right buttock line 89, below water line 200; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011; except as required by paragraph (h)(1) of this AD. Do all applicable related investigative and corrective actions before further flight. If no cracking is found, repeat the inspections thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011.

Note 1 to paragraph (g) of this AD: The post-repair inspections specified in Tables 2, 4, 6, and 8 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011, may be used in support of compliance with paragraph (c)(2) of Section 121.1109 or 129.109 of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)).

(h) Exceptions to the Service Information

(1) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) Where Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011, specifies a compliance time after the date on that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) No Reporting Required

Although Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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.

(k) Related Information

For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *Berhane.Alazar@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 767–53A0209, Revision 1, dated July 27, 2011.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on October 31, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27344 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0722; Directorate Identifier 2010–NM–262–AD; Amendment 39–17260; AD 2012–23–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 737–100 and –200 series airplanes. The existing AD currently requires various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer (S) 18A, and repair or replacement of cracked parts. This new AD adds airplanes to the applicability statement in the existing AD and adds inspections for cracks in the BS 727 frame outboard chords and the radius of the auxiliary chord, for certain airplanes. This new AD also removes the inspections of the outboard chord of S–18A required by the existing AD. This AD was prompted by several reports of fatigue cracking in the frame outboard chord at BS 727 and in the radius of the auxiliary chord on airplanes that were not affected by the existing AD. We are issuing this AD to detect and correct fatigue cracking of the outboard and auxiliary chords, which could result in reduced structural integrity of the outboard chord and consequent rapid decompression of the airplane.

DATES: This AD is effective December 26, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 26, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 18, 1995 (60 FR 36981, July 19, 1995).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone (425) 917–6450; fax (425) 917–6590; email *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 5, 2011 (76 FR 47522). That NPRM proposed to continue to require various inspections for cracks in the outboard chord of the frame at BS 727, and repair or replacement of cracked parts. That NPRM also proposed to add airplanes to the applicability statement in the existing AD and add inspections for cracks in the BS 727 frame outboard chords and the radius of the auxiliary chord, for certain airplanes. That NPRM also proposed to remove the inspections of the outboard chord of S–18A required by the existing AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 47522, August 5, 2011) and the FAA's response to each comment.

Support for NPRM (76 FR 47522, August 5, 2011)

Europe Airpost has no objection to the NRPM (76 FR 47522, August 5, 2011), and noted that it has already implemented the procedures in Boeing

Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, into its maintenance program.

Request To Remove ''Total'' From Compliance Time

Southwest Airlines (SWA) asked that paragraph (o) of the NPRM (76 FR 47522, August 5, 2011), which specifies the compliance time as ''Before the accumulation of 50,000 total flight cycles, but fewer than or equal to 60,000 total flight cycles, after accomplishing the modification of the outboard chord of the frame * * *'' be changed to delete the word ''total.'' SWA states that this would eliminate any confusion as to whether the subject inspection is to be done between 50,000 and 60,000 total airplane flight cycles, or between 50,000 and 60,000 flight cycles after the modification installation.

We agree with the commenter. The intent of paragraph (o) of this AD is to do the inspection between 50,000 and 60,000 flight cycles after accomplishing the modification. We have changed paragraph (o) of this AD accordingly. In addition, for clarification, we have removed ''total'' from paragraphs (g), (h)(1), (h)(2), (h)(3), and (h)(4) of this AD.

Request To Clarify Certain Compliance Times

Boeing asked that we clarify the compliance time for the inspection specified in paragraph (i)(1) of the NPRM (76 FR 47522, August 5, 2011). Boeing stated that paragraph (c)(1) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), states ''Inspect prior to the accumulation of 4,500 flight cycles after the effective date of this AD.'' The new language in paragraph (i)(1) of the NPRM states ''Inspect prior within 4,500 flight cycles after August 18, 1995.'' Boeing noted that this looks like a typographical error.

We find that there is a terminology error in paragraph (c)(1) of the existing AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), and in paragraph (i)(1) of this AD. We have corrected that paragraph to read: ''Inspect within 4,500 flight cycles after August 18, 1995 * * *.'' We have also corrected similar terminology in paragraphs (i)(2), (i)(3), and (i)(4) of this AD.

Boeing also asked that we clarify the compliance time specified in paragraph (n) of the NPRM (76 FR 47522, August 5, 2011). Boeing stated that Table 3 of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, specifies ''total airplane flight cycles after replacement'' and paragraph (g) of the NPRM addresses previously replaced frame upper outboard chords for comparison. Boeing added that paragraphs (n)(1)(i) and (n)(1)(ii) of the NPRM identify the threshold for a replaced frame upper outboard chord in terms of ''total flight cycles,'' but Table 3 of that service bulletin identifies the threshold based on cycles ''after chord replacement.''

We agree that the compliance time specified in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD should be expressed in terms of flight cycles after replacement of the outboard chords, as identified in Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, not total flight cycles on the airplane. We have clarified the compliance time in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD accordingly.

Request To Include Repair Instructions

Boeing asked that we include repair instructions in paragraph (o) of the NPRM (76 FR 47522, August 5, 2011) for crack findings during the open-hole eddy current inspection. Boeing notes that no repair instructions are provided. Boeing suggests the following be added for the repair: ''Except as required by paragraph (p) of this AD, if any crack is found during the inspection required by this paragraph, before further flight, repair in accordance with Part 3 or Part 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006.''

We agree with the commenter for the reason provided. In paragraph (o) of the NPRM (76 FR 47522, August 5, 2011), we inadvertently omitted the repair language specified in paragraphs (l) through (n) of the NPRM from paragraph (o) of the NPRM. In the preamble of the NPRM in the ''Relevant Service Information'' section, we described additional inspections, and repair or replacement if necessary. Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, contains repair instructions in Part 3 and Part 4. Therefore, we have added the text ''* * * repair in accordance with Part 3 or Part 4 * * *.'' to paragraph (o) of this AD. Paragraph (p) of this AD already contains a reference to paragraph (o) of this AD for the exception to the repair procedure.

Request To Clarify Repair Instructions

Boeing asked that we clarify the repair instructions specified in paragraph (l) of the NPRM (76 FR 47522, August 5, 2011) for cracks found in the auxiliary chord. Boeing stated that paragraph (l) of the NPRM specifies ''If any crack is found, before further flight, repair in accordance with the requirements in paragraph (p) of this AD.'' Boeing noted that paragraph (p) of the NPRM directs the reader to paragraph (s) of the NPRM for an alternative method of compliance (AMOC) if Part 3 or Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, cannot be accomplished. Boeing added that neither Part 3 nor Part 4 provide repair instructions for the auxiliary chord. Boeing added that paragraph (n) of the NPRM provides clear instructions for accomplishing the crack repair.

We acknowledge the commenter's concerns. The inspection identified in paragraph (l) of this AD is required to detect cracks in the auxiliary chord radius of the frame at BS 727. The inspection identified in paragraph (n) of this AD is required to detect cracks in the forward flange of the outboard chord at BS 727. The repair instructions for those areas are specified in different parts of the Accomplishment Instructions of the service information; therefore, the repair identified in paragraph (n) of this AD should not refer to the same repair instructions as those identified in paragraph (l) of this AD. Since Parts 3 and 4 of the Accomplishment Instructions of the service information do not provide repair instructions for the auxiliary chord, we have clarified the repair instructions in paragraph (l) of this AD by changing the reference from paragraph (p) to paragraph (s) of this AD. In addition, we have removed the reference to paragraph (l) from paragraph (p) of this AD for further clarification.

Request To Clarify When Time-Limited Repairs Are Required for Certain Airplanes

Boeing asked that we clarify when time-limited repairs, as specified in paragraph (q) of the NPRM (76 FR 47522, August 5, 2011), installed in accordance with Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, must be replaced. Boeing stated that paragraph (q) of the NPRM identifies replacement for time-limited repairs installed in accordance with Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; but does not provide a compliance time for time-limited repairs installed in accordance with Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Boeing added that the compliance time specified in Table 6 of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, is not to exceed

4,500 flight cycles from the time of the installation.

We agree to clarify paragraph (q) of this AD. In the NPRM (76 FR 47522, August 5, 2011), we did not refer to airplanes identified in Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, as airplanes affected by paragraph (q) of this AD. However, Step 3.b. of ''Part 4—STA 727 Frame Outboard Chord Time-Limited Repair'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, specifies doing the replacement of the time-limited repair at the time specified in paragraph 1.E., ''Compliance,'' of that service bulletin revision (i.e., 4,500 flight cycles after the time-limited replacement). Therefore, we have determined that Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, should be added to paragraph (q) of this AD as a reference for airplanes affected by that paragraph.

Request To Clarify Affected Airplanes

Boeing asked that the affected airplanes be added to paragraph (j) of the NPRM (76 FR 47522, August 5, 2011). Boeing stated that paragraph (h) of the NPRM identifies the affected airplanes, and that paragraph (j) of the NPRM has similar requirements and should match paragraph (h) of the NPRM.

We agree that the affected airplane models should be added to paragraph (j) of this AD for clarification and consistency. We have changed that paragraph to include the affected airplane models.

Boeing also asked that we clarify paragraphs (g), (h), (i), and (j) of the NPRM (76 FR 47522, August 5, 2011), by specifying that the airplanes affected by those paragraphs, which are restated from AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), are only those Model 737–100 and –200 series airplanes having line numbers 1 through 999 inclusive. Boeing stated that the NPRM requirements do not differentiate for Model 737–200 series airplanes having line numbers beyond 999 and do not identify Model 737–200C series airplanes.

We agree that the restated requirements specified in this AD only affect Model 737 airplanes having line numbers 1 through 999 inclusive. We have added that clarification to paragraphs (g), (h), (i), and (j) of this AD.

Request To Clarify Affected Airplanes Relative to Supplemental Structural Inspection Document (SSID) Inspections

Boeing asked that we provide clarification of certain affected airplanes in paragraph (s)(5) of the NPRM (76 FR 47522, August 5, 2011). Boeing stated that AD 2008–08–23, Amendment 39–15477 (73 FR 21237, April 21, 2008), only applies to Model 737–200C series airplanes. Boeing added that Boeing SSID D6–37089, Revision E, dated May 1, 2007, applies to Model 737–100, –200, and –200C series airplanes. Boeing also asked that we clarify that AD 2008–09–13, Amendment 39–15494 (73 FR 24164, May 2, 2008), is only applicable to Model 737–300, –400, and –500 series airplanes. Boeing stated that paragraph (s)(5) of the NPRM refers to Boeing 737–400/500/600 SSID D6–82669, dated May 1, 2007, but noted that Model 737–600 is a next generation (NG) airplane, not a 737 ''Classic'' airplane.

Boeing also asked that the structurally significant item (SSI) F–29 SSID inspections (which describe visual and eddy current inspections of the BS 727 bulkhead outer chord) in paragraph (s)(5) of the NPRM (76 FR 47522, August 5, 2011) refer to Appendix A of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, for consistency. Boeing states that currently paragraph 1.F. of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, refers to table 1 of Appendix A.

We agree that some clarifications are necessary for the reasons provided by the commenter. Therefore, we have included the appropriate information in paragraph (s)(5) of this AD. We clarified that AD 2008–08–23, Amendment 39–15477 (73 FR 21237, April 21, 2008), applies to Model 737–200C series airplanes. We changed the reference to ''Boeing 737–400/500/600 SSID'' to the correct reference, which is ''Boeing 737–300/400/500 SSID.'' In addition, we added a reference to Appendix A, Table 1, of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, for the SSI F–29 SSID inspections.

Request To Clarify Actions Required for Affected Airplanes

Boeing asked that we clarify actions to be taken for airplanes affected by both the restated requirements and the new requirements of the NPRM (76 FR 47522, August 5, 2011). Boeing stated that paragraphs (g) through (j) of the NPRM are identified as applicable to Model 737–100 and –200 series airplanes; and paragraphs (m) and (n) of the NPRM are applicable to airplanes identified in Tables 2 and 3, respectively, of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Boeing noted that Model 737–100 and –200 series airplanes (having line numbers 1 through 999 inclusive) are identified in Groups 1, 2, and 3 of that service bulletin; both tables 2 and 3 of that service bulletin identify Groups 1, 2, and 3. Boeing added that Model 737–100 and –200 series airplanes have threshold and repetitive inspection requirements from both the restated and the new requirements of the NPRM.

We agree with the commenter that some clarification is necessary. We have changed paragraphs (m) and (n) of this AD (new requirements) to include the statement that accomplishing the new inspections in each paragraph ends the corresponding retained inspections in paragraphs (g) through (j) of this AD.

Request To Clarify Revised Paragraph Identifiers

Boeing asked that we clarify the ''Revised paragraph identifiers'' table in the preamble of the NPRM (76 FR 47522, August 5, 2011). Boeing states that paragraph (g) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), corresponds to the new paragraph (r) of the NPRM (optional terminating action), not the new paragraph (l) of the NPRM, which is related to auxiliary chord inspections. Boeing also asked that we clarify that the terminating action specified in paragraphs (h) and (j) of the NPRM refers to the terminating action in paragraph (r) of this AD instead of paragraph (l) of this AD.

We agree that there is an error in the ''Revised paragraph identifiers'' table in the preamble of the NPRM. Paragraph (g) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), pertains to the terminating action in paragraph (r) of this AD; however, since that section of the preamble does not reappear in the final rule, no change to the AD is necessary. We also agree that the terminating action reference in paragraphs (h) and (j) of this AD should refer to paragraph (r) of this AD. We have changed paragraphs (h) and (j) of the final rule accordingly.

Request To Correct Certain Paragraph References

Boeing asked that we correct the references to paragraphs (l)(1)(i) and (l)(1)(ii) of the NPRM (76 FR 47522, August 5, 2011) specified in paragraph (k)(1) of the NPRM to instead refer to paragraphs (k)(1)(i) and (k)(1)(ii) of the

NPRM. Boeing stated that paragraph (l) of the NPRM is related to auxiliary chord inspections, while paragraphs (k)(1)(i) and (k)(1)(ii) of the NPRM relate to the subject crack finding in paragraph (k)(1) of the NPRM.

We agree there is a typographical error in paragraph (k)(1) of the NPRM (76 FR47522, August 5, 2011). Paragraph (l) of the NPRM does not include any subparagraphs and should not have been referenced in paragraph (k)(1) of the NPRM. We have corrected paragraph (k)(1) of the final rule accordingly to refer to paragraph (k)(1)(i) or (k)(1)(ii) of this AD.

In addition, we have clarified paragraph (r) of this AD by referring to inspection paragraphs (g) through (o) of this AD and removing references to paragraphs (p) and (q) of this AD.

Clarification of Service Information Reference

We have removed the service information referenced in paragraph (k)(2) of the NPRM (76 FR47522, August 5, 2011) because it is redundant to the service information specified in paragraph (k) of the NPRM. Paragraph (k) of the final rule specifies to accomplish (k)(1) or (k)(2) of the final rule in accordance with the service information specified in paragraph (k) of the final rule.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 47522, August 5, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 47522, August 5, 2011).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 574 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S. airplanes	Cost on U.S. operators
Various inspections (retained actions from AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995)).	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle.	296	$100,640 per inspection cycle.
Ultrasonic inspection (new action).	13 work-hours × $85 per hour = $1,105 per inspection cycle.	0	$1,105 per inspection cycle.	574	$634,270 per inspection cycle.
Detailed and HFEC inspections (new actions).	13 work-hours × $85 per hour = $1,105 per inspection cycle.	0	$1,105 per inspection cycle.	574	$634,270 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Optional modification (retained action from AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995)).	50 work-hours × $85 per hour = $4,250	$3,680	$7,930
Repair of cracking of the outboard chord frame	514 work hours × $85 per hour = $42,690	13,586	57,276
Time-limited repair cracking of the outboard chord frame	63 work hours × $85 per hour = $5,355	2,732	8,087
Repair of cracking of the outboard chord	49 work hours × $85 per hour = $4,165	4,255	8,420

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), and adding the following new AD:

2012–23–04 The Boeing Company: Amendment 39–17260; Docket No. FAA–2011–0722; Directorate Identifier 2010–NM–262–AD.

(a) Effective Date

This airworthiness directive (AD) is effective December 26, 2012.

(b) Affected ADs

This AD supersedes AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995).

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by several reports of fatigue cracking in the frame outboard chord at body station (BS) 727, and cracks in the radius of the auxiliary chord on airplanes that were not affected by the existing AD (60 FR 36981, July 19, 1995). We are issuing this AD to detect and correct fatigue cracking of the outboard and auxiliary chords, which could result in reduced structural integrity of the outboard chord and consequent rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Initial Inspection: BS 727 Frame Chord Has Been Replaced

This paragraph restates the requirements of paragraph (a) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), with revised service information. For Model 737–100 and –200 series airplanes having line numbers 1 through 999 inclusive, on which the BS 727 frame upper outboard chord has been replaced as specified in Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 30,000 flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles after August 18, 1995 (the effective date of AD 95–12–17) whichever occurs later, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727, in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006; as applicable. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, to accomplish the actions required by this paragraph.

(h) Retained Repetitive Inspections: BS 727 Frame Chord Has Been Replaced

This paragraph restates the requirements of paragraph (b) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), with revised service information. For Model 737–100 and –200 series airplanes having line numbers 1 through 999 inclusive, on which the BS 727 frame upper outboard chord has been replaced as specified in Boeing Service Bulletin 737–53–1088: Repeat the inspections required by paragraph (g) of this AD at the time specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, as applicable, until the optional terminating action described in paragraph (r) of this AD is accomplished.

(1) If, at the time of the most recent inspection required by paragraph (g) or (h) of this AD, the airplane has accumulated 27,000 or more flight cycles, but fewer than 50,000 flight cycles since the replacement of the outboard chord: Perform the next inspection within 15,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles until the airplane has accumulated 50,000 or more flight cycles since the replacement of the outboard chord. Do the inspections required by paragraph (h)(2) of this AD at the time specified.

(2) If, at the time of the most recent inspection required by paragraph (g) or (h) of this AD, the airplane has accumulated 50,000 or more flight cycles, but fewer than 60,000 flight cycles, since the replacement of the outboard chord: Perform the next inspection within 7,500 flight cycles. Repeat the inspection thereafter at intervals not to exceed 7,500 flight cycles until the airplane has accumulated 60,000 or more flight cycles since the replacement of the outboard chord. Do the inspections required by paragraph (h)(3) of this AD at the time specified.

(3) If, at the time of the most recent inspection required by paragraph (g) or (h) of this AD, the airplane has accumulated 60,000 or more flight cycles, but fewer than 70,000 flight cycles, since the replacement of the outboard chord: Perform the next inspection within 5,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles until the airplane has accumulated 70,000 or more flight cycles since the replacement of the outboard chord. Do the inspections required by paragraph (h)(4) of this AD at the time specified.

(4) If, at the time of the most recent inspection required by paragraph (g) or (h) of this AD, the airplane has accumulated 70,000 or more flight cycles since replacement of the outboard chord: Perform the next inspection within 3,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(i) Retained Initial Inspection: BS 727 Frame Chord Has Not Been Replaced or Only Lower Outboard Chord Has Been Replaced

This paragraph restates the requirements of paragraph (c) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), with revised service information. For Model 737–100 and –200 series airplanes having line numbers 1 through 999 inclusive, on which the BS 727 frame outboard chord has not been replaced, or on which only the lower outboard chord has been replaced as specified in Boeing Service Bulletin 737–53–1088: Perform close visual, PESW, and HFEC inspections to detect cracks in the outboard chord of the frame at BS 727, in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006; as applicable. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, to accomplish the actions required by this paragraph. Perform these inspections initially at the time specified in paragraph (i)(1), (i)(2), (i)(3), or (i)(4) of this AD, as applicable.

(1) For airplanes that have accumulated 27,000 or more total flight cycles, but fewer than 50,000 total flight cycles, as of August 18, 1995 (the effective date of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995)): Inspect within 4,500 flight cycles after August 18, 1995.

(2) For airplanes that have accumulated 50,000 or more total flight cycles, but fewer than 60,000 total flight cycles, as of August 18, 1995 (the effective date of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995)): Inspect within 2,500 flight cycles after August 18, 1995.

(3) For airplanes that have accumulated 60,000 or more total flight cycles, but fewer than 70,000 total flight cycles as of August 18, 1995 (the effective date of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995)): Inspect within 1,500 flight cycles after August 18, 1995.

(4) For airplanes that have accumulated 70,000 or more total flight cycles as of August 18, 1995 (the effective date of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995)): Inspect within 500 flight cycles or 90

days after August 18, 1995, whichever occurs first.

(j) Retained Repetitive Inspections: BS 727 Frame Chord Has Been Replaced or Only Lower Outboard Chord Has Been Replaced

This paragraph restates the requirements of paragraph (d) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), with revised service information. For Model 737–100 and –200 series airplanes having line numbers 1 through 999 inclusive, on which the BS 727 frame outboard chord has not been replaced, or on which only the lower outboard chord has been replaced as specified in Boeing Service Bulletin 737–53–1088: Repeat the inspections required by paragraph (i) of this AD at the time specified in paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) of this AD, as applicable, until the optional terminating action described in paragraph (r) of this AD is accomplished.

(1) If, at the time of the most recent inspection required by paragraph (i) or (j) of this AD, the airplane has accumulated 27,000 or more total flight cycles, but fewer than 50,000 total flight cycles: Perform the next inspection within 15,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles until the airplane has accumulated 50,000 or more total flight cycles. Do the inspections required by paragraph (j)(2) of this AD at the time specified.

(2) If, at the time of the most recent inspection required by paragraph (i) or (j) of this AD, the airplane has accumulated 50,000 or more total flight cycles, but fewer than 60,000 total flight cycles: Perform the next inspection within 7,500 flight cycles. Repeat the inspection thereafter at intervals not to exceed 7,500 flight cycles until the airplane has accumulated 60,000 or more total flight cycles. Do the inspections required by paragraph (j)(3) of this AD at the time specified.

(3) If, at the time of the most recent inspection required by paragraph (i) or (j) of this AD, the airplane has accumulated 60,000 or more total flight cycles, but fewer than 70,000 total flight cycles: Perform the next inspection within 5,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles until the airplane has accumulated 70,000 or more total flight cycles. Do the inspections required by paragraph (j)(4) of this AD at the time specified.

(4) If, at the time of the most recent inspection required by paragraph (i) or (j) of this AD, the airplane has accumulated 70,000 or more total flight cycles: Perform the next inspection within 3,000 flight cycles. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(k) Retained Repair, Replacement, and Additional Inspections

This paragraph restates the requirements of paragraph (f) of AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), with revised service information. If any crack is found in the outboard chord of the frame at BS 727 during any inspection required by paragraphs (g) through (j) of this AD, accomplish paragraph (k)(1) or (k)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006; as applicable. As of the effective date of this AD, use only Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, to accomplish the actions required by this paragraph.

Note 1 to paragraph (k) of this AD: Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; and Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006; refer to either Boeing Service Bulletin 737–53–1088, dated December 14, 1989; or Boeing Service Bulletin 737–53–1088, Revision 1, dated May 25, 2006; as an additional source of guidance for procedures to replace the chord.

(1) For any crack that extends from the forward edge of the chord or from the forward fastener hole, but that does not extend past the second fastener hole, accomplish the actions specified in either paragraph (k)(1)(i) or (k)(1)(ii) of this AD. Thereafter, perform initial and repetitive inspections in accordance with paragraphs (g) and (h) of this AD.

(i) Prior to further flight, install the time limited repair. Within 4,500 flight cycles or within 18 months after accomplishing the time-limited repair, whichever occurs first, replace the outboard chord. Or

(ii) Prior to further flight, replace the outboard chord.

(2) For any crack that extends from the forward edge of the chord, or from the forward fastener hole, and that extends past the second fastener hole, prior to further flight, replace the outboard chord. Thereafter, perform initial and repetitive inspections in accordance with paragraphs (g) and (h) of this AD.

(l) New Initial and Repetitive Inspections: BS 727 Auxiliary Chord

For airplanes identified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006: Before the accumulation of 27,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later, do internal detailed and HFEC inspections to detect cracks in the auxiliary chord radius of the frame at BS 727, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Repeat the inspections thereafter at intervals not to exceed 15,000 flight cycles until the optional terminating action described in paragraph (r) of this AD is accomplished. If any crack is found, before further flight, repair in accordance with the requirements of paragraph (s) of this AD.

(m) New Initial and Repetitive Inspections: BS 727 Frame Chord Has Not Been Replaced and Has Not Been Modified

For airplanes identified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006: Do the applicable inspections required by paragraph (m)(1) or (m)(2) of this AD at the time specified, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Except as required by paragraph (p) of this AD, if any crack is found during any inspection required by paragraph (m)(1) or (m)(2) of this AD, before further flight, repair in accordance with Part 3 or Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, as applicable. Repeat the inspections until the optional terminating action described in paragraph (r) of this AD is accomplished. Accomplishing the inspections in this paragraph ends the inspections required by paragraphs (i) and (j) of this AD.

(1) For airplanes on which the inspections specified in Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; have not been performed as of the effective date of this AD: Do the inspections required by paragraphs (m)(1)(i) and (m)(1)(ii) of this AD at the time specified.

(i) Before the accumulation of 27,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later: Do ultrasonic and surface HFEC inspections to detect cracks in the forward flange of the outboard chord of the frame at BS 727. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

(ii) Before the accumulation of 27,000 total flight cycles, or within 10,000 flight cycles after the effective date of this AD, whichever occurs later: Do an open hole eddy current inspection to detect cracks in the forward flange of the outboard chord of the frame at BS 727. Repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles.

(2) For airplanes on which the inspections specified in Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; have been performed as of the effective date of this AD: Repeat the applicable inspection specified in paragraphs (m)(1)(i) and (m)(1)(ii) of this AD thereafter at intervals not to exceed 5,000 flight cycles for the ultrasonic and surface HFEC inspections, and at intervals not to exceed 15,000 flight cycles for the open hole eddy current inspection.

(n) New Initial and Repetitive Inspections: BS 727 Frame Chord Has Been Replaced and Has Not Been Modified

For airplanes identified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006: Do the applicable inspections required by paragraph (n)(1) or (n)(2) of this AD at the time specified, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Except as required by paragraph (p) of this AD, if any crack is found during any inspection required by paragraph (n)(1) or (n)(2) of this AD, before

further flight, repair in accordance with Part 3 or Part 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Repeat the inspections until the optional terminating action described in paragraph (r) of this AD is accomplished. Accomplishing the inspections in this paragraph ends the inspections required by paragraphs (g) and (h) of this AD. The detailed and eddy current inspections of the outboard chord of S–18A specified in Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, are not required by this AD.

(1) For airplanes on which the inspections specified in Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; have not been done as of the effective date of this AD: Do the inspections required by paragraphs (n)(1)(i) and (n)(1)(ii) of this AD at the time specified.

(i) Within 27,000 flight cycles since replacement of the upper outboard chord, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later: Do ultrasonic, low frequency eddy current, and edge HFEC inspections to detect cracks in the forward flange of the outboard chord of the frame at BS 727. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

(ii) Within 27,000 flight cycles since replacement of the upper outboard chord, or within 10,000 flight cycles after the effective date of this AD, whichever occurs later: Do an open hole eddy current inspection to detect cracks in the forward flange of the outboard chord of the frame at BS 727. Repeat the inspections thereafter at intervals not to exceed 15,000 flight cycles.

(2) For airplanes on which the inspections specified in Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; have been done as of the effective date of this AD: Repeat the applicable inspection specified in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD thereafter at intervals not to exceed 5,000 flight cycles for the ultrasonic, low frequency eddy current, and edge HFEC inspections, and at intervals not to exceed 15,000 flight cycles for the open hole eddy current inspection.

(o) New One-Time Inspection: BS 727 Frame Chord Has Been Modified

For airplanes identified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006: Within 60,000 flight cycles after accomplishing the modification of the outboard chord of the frame at BS 727 at S–18A, but no earlier than 50,000 flight cycles after accomplishing the modification; do a one-time follow-on open hole eddy current inspection to detect cracks in the modified chord, in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. Except as required by paragraph (p) of this AD, if any crack is found during the inspection required by this paragraph, before further flight, repair in accordance with Part 3 or Part 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006.

(p) New Repairs

If any crack is found during any inspection required by paragraphs (m), (n), or (o) of this AD, and the repairs specified in Part 3 and Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, cannot be installed using the procedures identified in this service bulletin: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(q) New Replacement of Time-Limited Repair

For any airplane on which a time-limited repair is installed on the outboard chord of the frame at body station BS 727 as specified in Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006: Within 4,500 flight cycles after installation of the repair, or within 6 months after the effective date of this AD, whichever occurs later, replace the repair in accordance with Part 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006.

(r) New Optional Terminating Action

Accomplishment of the applicable action specified in paragraph (r)(1) or (r)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006; constitutes terminating action for the inspections required by paragraphs (g) through (o) this AD.

(1) Installation of the preventative modification.

(2) Replacement of the cracked chord and installation of the preventative modification.

(s) 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.

(4) AMOCs approved previously in accordance with AD 95–12–17, Amendment 39–9268 (60 FR 36981, July 19, 1995), are approved as AMOCs for the corresponding provisions of this AD.

(5) For airplanes identified in Tables 2, 3, and 5 of paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006: The Manager, Seattle ACO, approves the inspection methods, thresholds, and repetitive intervals defined in Appendix A, Table 1, of Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006, as an AMOC for the inspections of the structurally significant items (SSIs) identified in paragraphs (s)(5)(i) and (s)(5)(ii) of this AD. This approval applies only to SSIs F–29A and F–29B of the applicable supplemental structural inspection document (SSID) and only for the portions of the BS 727 outer chord that have been inspected or that have been repaired or modified in accordance with Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006. All provisions of ADs 2008–08–23, Amendment 39–15477 (73 FR 21237, April 21, 2008); and 2008–09–13, Amendment 39–15494 (73 FR 24164, May 2, 2008); that are not specifically referenced in this paragraph remain fully applicable and must be done. If operators choose this AMOC, they must revise their FAA-approved maintenance or inspection program to incorporate the alternative inspections in this paragraph.

(i) Inspections of SSIs F–29A and F–29B required by paragraphs (g) and (h) of AD 2008–08–23, Amendment 39–15477 (73 FR 21237, April 21, 2008), which applies to Model 737–200C series airplanes (Boeing 737–100/200/200C SSID D6–37089, Revision E, dated May 1, 2007).

(ii) Inspections of SSIs F–29A and F–29B required by paragraphs (g) and (h) of AD 2008–09–13, Amendment 39–15494 (73 FR 24164, May 2, 2008), which applies to Model 737–300, –400, and –500 series airplanes (Boeing 737–300/400/500 SSID D6–82669, dated May 1, 2007).

(t) Related Information

For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

(u) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on December 26, 2012.

(i) Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006.

(ii) Reserved.

(4) The following service information was approved for IBR on August 18, 1995 (60 FR 36981, July 19, 1995).

(i) Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, including Addendum, approved for IBR August 18, 1995 (60 FR 36981, July 19, 1995).

(ii) Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995, including Addendum, approved for IBR August 18, 1995 (60 FR 36981, July 19, 1995).

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

(6) You may view this service information at 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.

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

Issued in Renton, Washington, on October 16, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27636 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. RM11–26–000]

Promoting Transmission Investment Through Pricing Reform

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Policy statement.

SUMMARY: The Commission issues this policy statement to provide guidance regarding its evaluation of applications for electric transmission incentives under section 219 of the Federal Power Act. In the six years since the Commission implemented section 219 by issuing Order No. 679, the Commission has acted on numerous applications for transmission incentives. The Commission has now determined it would be beneficial to provide additional guidance and clarity with respect to certain aspects of its transmission incentives policies under section 219 of the Federal Power Act and Order No. 679. In particular, the Commission: reframes its nexus test to focus more directly on the requirements of Order No. 679; expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive return on equity (ROE) based on a project's risks and challenges; provides general guidance that may inform applications for an incentive ROE based on a project's risks and challenges; and promotes additional transparency with respect to the impacts of the Commission's incentives policies. The Commission finds that the additional guidance provided through this policy statement is necessary to encourage transmission infrastructure investment while maintaining just and reasonable rates, consistent with section 219 of the Federal Power Act. The Commission will apply this policy statement on a prospective basis to incentive applications received after the date of its issuance.

DATES: Effective November 15, 2012.

FOR FURTHER INFORMATION CONTACT:

David Borden, Office of Energy Policy and Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–8734, *david.borden@ferc.gov.*

Andrew Weinstein, Office of General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6230, *andrew.weinstein@ferc.gov.*

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Policy Statement

(Issued November 15, 2012)

1. The Commission issues this policy statement to provide guidance regarding its evaluation of applications for electric transmission incentives under section 219 of the Federal Power Act (FPA).[1] In the six years since the Commission implemented section 219 by issuing Order No. 679,[2] the Commission has acted on numerous applications for transmission incentives. The Commission has now determined it would be beneficial to provide additional guidance and clarity with respect to certain aspects of its transmission incentives policies under section 219 of the Federal Power Act and Order No. 679. In particular, the Commission: reframes its nexus test to focus more directly on the requirements of Order No. 679; expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive return on equity (ROE) based on a project's risks and challenges; provides general guidance that may inform applications for an incentive ROE based on a project's risks and challenges; and promotes additional transparency with respect to the impacts of the Commission's incentives policies. The Commission finds that the additional guidance provided through this policy statement is necessary to encourage transmission infrastructure investment while maintaining just and reasonable rates, consistent with section 219 of the FPA. The Commission will apply this policy statement on a prospective basis to incentive applications received after the date of its issuance.

I. Background

2. Section 1241 of the Energy Policy Act of 2005 added a new section 219 to the FPA. The Commission implemented section 219 by issuing Order No. 679, which established by rule incentive-based rate treatments for investment in electric transmission infrastructure for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Since the issuance of Order No. 679, the Commission has evaluated more than 85 applications representing over $60 billion in potential transmission investment.

3. On May 19, 2011, the Commission issued a notice of inquiry (NOI) seeking public comment regarding the scope and implementation of the Commission's incentives policies. The Commission received over 1,500 pages of comments reflecting a wide range of perspectives on the Commission's incentives policies. The Commission appreciates the robust participation by the diverse group of commenters, and has carefully considered the comments received in formulating this policy statement. The Commission's issuance of this policy statement is driven by its experience applying its incentives policies to individual incentive

[1] 16 U.S.C. 824s (2006).

[2] *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 71 FR 43294 (Jul. 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g,* Order No. 679–A, 72 FR 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236, *order on reh'g,* 119 FERC ¶ 61,062 (2007).

applications and comments received in response to the NOI.

II. Policy Statement

4. As noted above, the Commission through this policy statement provides additional guidance with respect to certain aspects of its incentives policies. Specifically, the Commission: reframes the nexus test to focus more directly on the requirements of Order No. 679; expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive ROE based on a project's risks and challenges; provides general guidance that may inform applications for an incentive ROE based on a project's risks and challenges; and promotes additional transparency with respect to the impacts of the Commission's incentives policies. Each of these issues and the Commission's corresponding clarifications are discussed further below.

5. We note that many aspects of the Commission's incentives policies are not addressed in this policy statement. For example, in Order No. 679, the Commission stated that applicants could seek incentives thereunder regardless of their ownership structure,[3] and that the Commission would evaluate incentive applications on a case-by-case basis.[4] The Commission also established rebuttable presumptions to assist in determining whether proposed facilities satisfy the statutory threshold of section 219.[5] In Order No. 679 and subsequent cases applying incentives policies, the Commission has addressed the granting of incentive ROEs that are not based on the risks and challenges of a project, such as incentive ROEs for RTO membership or Transco formation. With respect to aspects of the Commission's incentives policies not addressed in this policy statement, we decline to provide additional guidance at this time.

A. Application of the Nexus Test

6. Order No. 679 established the ''nexus test,'' which requires applicants to demonstrate a connection between the incentive(s) requested under Order No. 679 and the proposed investment, and that the incentive(s) requested address the risks and challenges that a project faces. In Order No. 679, the Commission stated that each incentive:

> ''* * * will be rationally tailored to the risks and challenges faced in constructing new transmission. Not every incentive will be available for every new investment.
>
> Rather, each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. Our reforms therefore continue to meet the just and reasonable standard by achieving the proper balance between consumer and investor interests on the facts of a particular case and considering the fact that our traditional policies have not adequately encouraged the construction of new transmission.'' [6]

7. The Commission refined the nexus test in Order No. 679–A, finding that, in applying the nexus test, the Commission should look at whether the total package of incentives is rationally tailored to the risks and challenges of constructing new transmission.[7] The Commission stated that this approach would protect consumers by recognizing that requested incentives that reduce risk might obviate the need for an incentive ROE based on a project's risks and challenges, or otherwise justify a lower incentive ROE based on a project's risks and challenges.

8. Subsequent to Order No. 679 and Order No. 679–A, the Commission further refined its application of the nexus test by clarifying that the determination of whether a project is ''routine'' or ''non-routine'' is particularly probative in evaluating whether the nexus test was satisfied. In *Baltimore Gas and Electric Company,* the Commission concluded that, once an applicant demonstrates that a project is not routine, the nexus test is satisfied and the project is deemed to face risks and challenges that merit incentive(s).[8]

9. The Commission recognizes that there are a wide range of views on its application of the nexus test and, in particular, the Commission's use of the routine/non-routine analysis as a proxy for the nexus test. Most commenters in the NOI are supportive of the nexus test's focus on evaluating risks and challenges to determine whether a project merits incentives. Some commenters offer additional criteria for assessing risks and challenges, while others are more critical of the nexus test and assert that it is insufficient and requires change. With respect to the Commission's use of the routine/non-routine analysis in reviewing incentive applications since *BG&E,* some commenters support the continued use of the routine/non-routine analysis, while others seek more clarity from the Commission.

10. Based on experience to date with the application of Order No. 679, the Commission now believes it is essential to re-frame its application of the nexus test to focus more directly on the requirements adopted in Order Nos. 679 and 679–A.[9] The Commission will no longer rely on the routine/non-routine analysis adopted in *BG&E* as a proxy for the nexus test. While prior orders found that analysis probative, based on our experience to date applying our incentives policies and the comments received in response to the NOI, we believe it is necessary to analyze the need for each individual incentive, and the total package of incentives, instead of relying on a proxy. Consistent with Order No. 679–A, the Commission will continue to require applicants seeking incentives to demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges. Applicants ''must provide sufficient explanation and support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. If some of the incentives would reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE.'' [10]

B. Risk-Reducing Incentives

11. The Commission authorizes a company's base ROE utilizing a range of reasonableness resulting from a discounted cash flow (DCF) analysis that is applied to a selected proxy group representing firms of comparable risk. The resulting base ROE authorized by the Commission is designed to account for many of the risks associated with transmission investment and to support that investment. Nonetheless, the Commission recognizes that there may be risks associated with investment in particular transmission projects that are not accounted for in the base ROE. In Order No. 679, the Commission recognized that some transmission incentives—such as recovery of 100 percent of Construction Work in

[3] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 4. Section 219(b)(1) requires that the Commission establish rules for incentives, ''* * * regardless of the ownership of the facilities.'' 16 U.S.C. 824s(b)(1).

[4] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43.

[5] *Id.* P 58.

[6] *Id.* P 26.

[7] Order No. 679–A, FERC Stats. & Regs. ¶ 31,236 at P 27. *See also* 18 CFR 35.35(d) (2006) (''Incentive-based rate treatments for transmission infrastructure investment. * * * The applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219, that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project, and that resulting rates are just and reasonable.* * *'')

[8] 120 FERC ¶ 61,084, at PP 52–54 (2007) (*BG&E*).

[9] 18 CFR 35.35(d).

[10] Order No. 679–A, FERC Stats. & Regs. ¶ 31,236 at P 27.

Progress (CWIP), recovery of 100 percent of pre-commercial costs as an expense or as a regulatory asset, and recovery of 100 percent of prudently incurred costs of transmission facilities that are abandoned for reasons beyond the applicant's control—reduce the financial and regulatory risks associated with transmission investment.[11] The Commission reaffirms in this policy statement that these risk-reducing incentives may mitigate risk not accounted for in the base ROE, and we therefore expect incentives applicants to first examine the use of risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges.[12]

12. The CWIP and pre-commercial cost incentives both serve as useful tools to ease the financial pressures associated with transmission development by providing up-front regulatory certainty, rate stability and improved cash flow, which in turn can result in higher credit ratings and lower capital costs.[13] Specifically, the CWIP incentive addresses timing issues associated with the recovery of financing costs for large transmission investments and allows recovery of a return on construction costs during the construction period rather than delaying cost recovery until the plant is placed into service. The Commission has also found that allowing companies to include 100 percent of CWIP in rate base would result in greater rate stability for customers by reducing the ''rate shock'' when certain large-scale transmission projects come on line.[14]

13. Regarding 100 percent recovery of pre-commercial cost as an incentive, the Commission has permitted recipients of this incentive to expense and recover pre-commercial costs that would otherwise be capitalized in CWIP, thus providing for earlier cost recovery and improving early stage project cash flows. The Commission has also made deferred cost recovery available to applicants to address cost recovery restrictions at the state level and to provide greater flexibility for applicants to recover costs, recognizing that deferred cost recovery is intended to ''* * * increase the certainty of cost recovery to encourage more transmission investment.'' [15] The Commission also recognizes the usefulness of deferred cost recovery of pre-commercial costs for applicants who do not have a formula rate in effect prior to incurring pre-commercial costs, by allowing the applicant to defer all such costs not included in CWIP as a regulatory asset until the applicant has a formula rate in effect for cost recovery.[16] The Commission has previously found that this incentive provides up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and assist in the construction of transmission projects.[17]

14. Regarding the incentive that allows for 100 percent recovery of prudently incurred costs of transmission facilities that are abandoned for reasons beyond the control of the transmission owner, the Commission has found this incentive reduces the regulatory risk of non-recovery of prudently incurred costs.[18] The Commission has previously stated that, in addition to the challenges presented by the scope and size of a project, factors like various federal and state siting approvals introduce a significant element of risk. Granting this incentive ameliorates such risk by providing companies with more certainty during the pre-construction and construction periods.[19]

15. In the NOI, numerous commenters discuss the interplay of risk-reducing incentives on the need for and appropriate level of an incentive ROE. For example, Certain State and Consumer-Owned Entities state that if a project's risks exceed the risk that is accounted for in the base ROE, incentives may be appropriate.[20] Other commenters state that the Commission should strike an appropriate balance between consumer and investor interests, and that if incentives are compounded without consideration of the reduced risk effect of some of the incentives, this approach tips the risk in favor of the investor and to the detriment of the transmission customer. Numerous commenters also argue that risk-reducing incentives mitigate the need for an incentive ROE based on a project's risks and challenges to attract investment. For example, Joint Commenters [21] note that the biggest risks for transmission projects relate to siting and permitting delays, cash flow shortage, or abandonment concerns, but argue that, even where the level of these risks is unusually high, they can be mitigated by granting risk-reducing incentives. Joint Commenters further contend that, when incentives are appropriate, risk-reducing incentives should be the first (and often the only) incentives considered.[22] Other commenters point out that risk also is mitigated through the assurance of cost recovery at the state level.

16. In Order No. 679–A, the Commission stated that a project that receives risk-reducing transmission incentives, like those discussed above,

---

[11] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 115, 117, and 163.

[12] The Commission clarifies that placing a priority on risk-reducing incentives does not require separate applications for risk-reducing incentives and an incentive ROE based on a project's risks and challenges. Rather, in a single application an applicant could first demonstrate how risk-reducing incentives are utilized and then seek to demonstrate, as discussed further below, that remaining risks and challenges merit an incentive ROE based on the project's risks and challenges.

[13] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 115, 117, and 163.

[14] *See, e.g., PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.,* 135 FERC ¶ 61,229 (2011). *See also PPL Elec. Utils. Corp.,* 123 FERC ¶ 61,068, at P 43 (2008), *reh'g denied* 124 FERC ¶ 61,229.

[15] Order No. 679, *FERC* Stats. & Regs. ¶ 31,222 at PP 175, 178.

[16] *See, e.g., Atlantic Grid,* 135 FERC ¶ 61,144 (2011). Like the pre-commercial cost incentive, all transmission incentives are intended to be available to all existing utilities and non-incumbent utilities.

[17] *See, e.g., DATC Midwest Holdings, L.L.C.,* 139 FERC ¶ 61,224 (2012).

[18] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

[19] *See, e.g., PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.,* 135 FERC ¶ 61,229 (2011).

[20] Certain State and Consumer-Owned Entities September 12, 2011 Comments at 39. Certain State and Consumer-Owned Entities include Connecticut Public Utilities Regulatory Authority, Attorney General for the State of Connecticut, Connecticut Office of Consumer Counsel, Attorney General for the State of Delaware, Delaware Public Service Commission, Public Advocate of Delaware, Attorney General for the State of Illinois, Maine Public Utilities Commission, Attorney General for the Commonwealth of Massachusetts, Massachusetts Department of Public Utilities, Massachusetts Municipal Wholesale Electric Company, New England Conference of Public Utilities Commissioners, Attorney General for the State of New Hampshire, New Hampshire Electric Cooperative, Inc., New Hampshire Office of Consumer Advocate, New Hampshire Public Utilities Commission, Rhode Island Public Utilities Commission and Division of Public Utilities and Carriers, Attorney General for the State of Rhode Island, Vermont Department of Public Service, and Vermont Public Service Board.

[21] Joint Commenters include Joint Comments of American Forest & Paper Association, American Public Power Association, California Municipal Utilities Association, California Public Utilities Commission, City and County of San Francisco, Connecticut Office of Consumer Counsel, Electricity Consumers Resource Council, Indiana Utility Regulatory Commission, Maryland Office of People's Counsel, Modesto Irrigation District, Montana Public Service Commission, National Association of State Utility Consumer Advocates, New England Conference of Public Utilities Commissioners, New Hampshire Public Utilities Commission, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Northern California Power Agency, Office of the Nevada Attorney General, Bureau of Consumer Protection, Office of the Ohio Consumers' Counsel, Old Dominion Electric Cooperative, Organization of MISO States, Pennsylvania Office of Consumer Advocate, Public Power Council, Public Service Commission of the State of New York, Public Service Commission of Wisconsin, Sacramento Municipal Utility District, South Dakota Public Utilities Commission, State of Maine, Office of the Public Advocate, Transmission Agency of Northern California, the Vermont Department of Public Service, and the Vermont Public Service Board.

[22] Joint Commenters September 12, 2011 Comments at 80.

would likely face lower risks. Therefore, that project may not warrant an incentive ROE, or may warrant a lower incentive ROE, based on the project's risks and challenges.[23] Based on the Commission's experience under Order No. 679, and after careful consideration of comments on the NOI as to the benefits of risk-reducing incentives, the Commission clarifies that many risks not accounted for in the base ROE can be alleviated through risk-reducing incentives such as those discussed earlier in this section. In cases where an incentive ROE based on risks and challenges is requested in combination with risk-reducing incentives, the Commission must carefully apply its total package analysis to ensure that the effect of the risk-reducing incentives is appropriately accounted for in determining whether an incentive ROE based on risks and challenges is warranted, and if warranted, what level is appropriate. For this reason, the Commission expects incentives applicants to seek to reduce the risk of transmission investment not otherwise accounted for in its base ROE by using risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges.[24]

C. Incentive ROEs Based on Project Risks and Challenges

17. Some commenters in the NOI suggest that the Commission specifically identify project characteristics or risks and challenges that would merit an incentive ROE. We decline to do so. Instead, we will continue to allow applicants the flexibility necessary to demonstrate why their projects may merit an incentive ROE, and at what level, based on those project's risks and challenges, but we provide general guidance below that may inform applications for this type of transmission incentive.

1. Showings and Commitments for Remaining Risks and Challenges

18. As discussed above, many of the risks not captured by traditional ratemaking policies can be addressed through risk-reducing incentives. While the record in the NOI proceeding does not show that incentive ROEs have resulted in significant rate increases for consumers,[25] incentive ROEs likely put more upward pressure on transmission rates than risk-reducing incentives. Therefore incentive applicants should first examine risk-reducing incentives.

19. However, a project may face certain risks and challenges that may not be addressed through either the traditional ratemaking policies or risk-reducing incentives. In such instances, an incentive ROE based on a project's risks and challenges may be appropriate.[26] Based on the Commission's experience under Order No. 679 and the comments received on the NOI, the Commission expects applicants seeking an incentive ROE based on a project's risks and challenges to make the following four showings as part of their application for that incentive.

a. Identification of Risks and Challenges

20. When applying for an incentive ROE based on the project's risks and challenges, applicants will first be expected to demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives. To make this demonstration, the Commission suggests that applicants identify risks and challenges specific to the project for which an incentive ROE is being requested.

21. Investments in the following types of transmission projects [27] may face the types of risks and challenges that may warrant an incentive ROE based on the project's risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives:

1. Projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;

2. Projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;

3. Projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.[28]

22. This list is not exhaustive, but rather indicative of the types of projects that the Commission believes, based on its experience and expertise with respect to industry trends and system investment needs, may warrant an incentive ROE based on the project's risks and challenges. More generally, the Commission anticipates that applicants will seek an incentive ROE based on a project's risks and challenges for projects that provide demonstrable consumer benefits by making the transmission grid more efficient, reliable, and cost-effective. Thus, consistent with our statements in Order No. 679, we note that reliability-driven projects may be considered for an incentive ROE based on a project's risks and challenges, but only if they present specific risks and challenges not otherwise mitigated by available risk-reducing incentives.[29]

23. Under our current incentive policies, the Commission considers an applicant's proposed use of an advanced transmission technology both: (1) as part of the overall nexus analysis, accounting for the risks and challenges associated with utilizing such advanced technology into that overall nexus analysis; [30] and (2) where an applicant seeks a stand-alone incentive ROE based on its utilization of an advanced technology.[31] The Commission

[23] Order No. 679–A, FERC Stats. & Regs. ¶ 31,236 at P 27.

[24] The Commission appreciates that non-incumbents seeking incentives may face challenges implementing some risk-reducing incentives because they may not have the appropriate rate structures in place under which to effectuate these transmission incentives. In such instances, the Commission anticipates subsequent section 205 filings by non-incumbent incentive applicants for cost recovery. As noted above, all transmission incentives are intended to be available to all existing utilities and non-incumbent utilities.

[25] *See,* ITC Holdings Corp. September 12, 2011 Comments at 16: ''The incentives granted to transmission projects have had generally positive, not negative, effects on consumer rates and service, especially when improved reliability, reduced congestion and access to a more diverse supply of generation, including renewable resources, are taken into account. One reason for this is that the cost of transmission incentives is small compared to the cost of energy, distribution and congestion.''

[26] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94.

[27] These investments could include both investment in new transmission facilities, as well as investment in transmission upgrades, retrofits, and projects that modernize the existing transmission grid.

[28] Examples of projects that meet this description include those that create additional incremental capacity without significant construction (e.g., through the use of dynamic line rating), that allow for more efficient balancing of variable energy resources, and/or that provide increased grid stability. In addition, the Commission is concerned that its current practice of granting incentive ROEs and risk-reducing incentives may not be effectively encouraging the deployment of new technologies or the employment of practices that provide demonstrated benefits to consumers. Accordingly, the Commission remains open to alternative incentive proposals aimed at supporting projects that achieve these ends.

[29] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94.

[30] *See Tallgrass Transmission, LLC,* 125 FERC ¶ 61,248, at P 59 (2008) (''[t]he associated challenges can be incorporated into the overall nexus analysis, but the technology does not, in and of itself, appear to justify a separate advanced technology adder.''); *RITELine Indiana & Illinois LLC,* 137 FERC ¶ 61,039 at P 62 (2011).

[31] *See The United Illuminating Co.,* 126 FERC ¶ 61,043, at P 14 (2009) (''In reviewing requests for separate adders for advanced technology, the Commission reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology that will improve reliability, reduce congestion, or improve technology.''). *See*

Continued

continues to encourage the deployment of advanced technologies that ''increase the capacity, efficiency, or reliability of an existing or new transmission facility.'' [32] However, the Commission is concerned that its current approach may contribute to confusion, including with respect to the distinct standards that the Commission applies in these two contexts. To address this concern, the Commission will no longer consider requests under Order No. 679 for a stand-alone incentive ROE based on an applicant's utilization of an advanced technology. Instead, as noted above, the Commission will consider transmission projects that apply advanced technologies as indicative of the types of projects facing risks and challenges that may warrant an incentive ROE. As a result, we will consider deployment of advanced technologies as part of the overall nexus analysis when an incentive ROE is sought.

b. Minimization of Risks

24. The Commission expects an applicant that requests an incentive ROE based on a project's risks and challenges to demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development. For example, risks may be reduced through the risk-reducing incentives described in section II.B, or through mitigating costs by implementing best practices in their project management and procurement procedures. Applicants should consider taking measures tailored to mitigate the various risks associated with their transmission projects and to identify such measures in their applications. For example, applicants may take measures to mitigate risks associated with siting and environmental impacts by pursuing joint ownership arrangements. The Commission encourages incentives applicants to participate in joint ownership arrangements and agrees with commenters to the NOI that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks.[33]

c. Consideration of Alternatives

25. The Commission expects applicants for an incentive ROE based on a project's risks and challenges to demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Such a showing should help identify the demonstrable consumer benefits of the proposed project and its role in promoting a more efficient, reliable and cost-effective transmission system.[34]

26. The Commission appreciates that there may be timing challenges for applicants making this showing, and thus the Commission will be flexible in the approaches it allows for applicants to make this showing. In particular, this showing could be satisfied through participation in open processes that are already in existence. For example:

1. The applicant could show that its project was, or will be, considered in an Order No. 890 or Order No. 1000-compliant transmission planning process that provides the opportunity for projects to be compared against transmission or non-transmission alternatives.[35]

2. The applicant could show that its project was considered by a local regulatory body, such as a state utility commission, that evaluated alternatives to its proposed project (transmission or non-transmission alternatives) and determined that the proposed transmission project is preferable to the alternatives evaluated.

27. The above approaches should not be seen as exclusive, however, and the Commission will remain open to alternative methods to making this showing.[36]

d. Commitment to Cost Estimates

28. Finally, the Commission expects applicants for an incentive ROE based on a project's risks and challenges to commit to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate. For example, the Commission has approved an applicant's proposal to limit the incentive ROE based on a project's risks and challenges to the cost estimate utilized at the time of RTO approval.[37] Our intent is not to be prescriptive as to how applicants might structure this commitment; instead, the Commission is open to approaches that control transmission development costs and provide more transparency regarding how incentives will be applied to costs beyond initial estimates.[38]

29. The Commission recognizes the challenges of determining the appropriate cost estimate for a project. For example, most applicants seek incentives from the Commission at a relatively early stage in the project development process, often before state siting or other processes raise challenges that can impact the design and ultimate cost of a project. One option may be for applicants to commit to limiting the application of an incentive ROE based on a project's risks and challenges to the last cost estimate relied upon to include or retain the project in a regional transmission planning process.[39]

30. The Southwest Power Pool Regional State Committee (SPP RSC) in its comments on the NOI identifies a definitive cost estimate that would serve as the initial threshold limit for an incentive ROE, a 10% dead-band above or below the definitive cost estimate around which changes in costs are shared equally between shareholders and customers, and a provision for addressing cost increases that are outside the control of the transmission owner.[40] The Commission believes that aspects of the SPP RSC proposal highlighted here may provide useful guidance to applicants when seeking incentive ROEs based on a project's risks and challenges.

III. Conclusion

31. As noted above, the Commission is relying on its experience and expertise with respect to industry trends and system investment needs to provide additional guidance and clarity through this policy statement. Six years after

also NSTAR Elec. Co., 127 FERC ¶ 61,052 at P 27 (2009).

[32] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 298.

[33] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 354, 357; Order No. 679–A FERC Stats. & Regs. ¶ 31,236, at P 102. *See also Central Maine Power Company,* 125 FERC ¶ 61,182, at P 61 (2008); *Xcel Energy,* 121 FERC ¶ 61,284 at P 55 (2007). Evidence regarding whether an applicant for incentives considered joint ownership arrangements may be relevant in assessing whether the applicant took appropriate steps to minimize its risks during project development.

[34] This showing draws on recommendations made by commenters in the NOI, who suggested that the Commission require an assessment of lower cost alternatives to any proposed transmission project as part of a filing requesting transmission incentives.

[35] In making this showing, the applicant need not show that its project was selected in a regional transmission plan for purposes of cost allocation. Instead, the focus would be on whether the project was or will be considered in a process where it could be compared to other projects and shown to be preferable to any alternatives that were evaluated.

[36] For example, projects that are required to complete an environmental impact statement (EIS) may submit the analysis on the consideration of alternatives, per the requirements of the EIS, as making such a showing.

[37] *RITELine Illinois & Indiana LLC,* 137 FERC ¶ 61,039, at P 5 (2011).

[38] Concern about the effects of allowing transmission incentives to be applied to costs over those estimated was expressed by a number of commenters in the NOI proceeding.

[39] If factors outside applicant's control cause significant deviation from the cost estimate upon which the ROE incentive was initially granted, the Commission can revisit that cost estimate (e.g., a regional planner requires significant acceleration of a project construction timeline).

[40] SPP RSC September 12 Comments at 5, 12–13.

issuing Order No. 679, the Commission believes that it is appropriate and in the public interest to evaluate the impacts of its incentives policy and give guidance as to how the Commission will implement that incentives policy going forward. In order to further the mandate of FPA section 219 and encourage transmission investment in the future, the Commission will continue to monitor its incentives policy and may identify new policy issues, trends, and developments in transmission investment that may warrant modifications to the Commission's incentives policy. As part of this effort, the Commission will continually assess measures to further transparency in its incentives policy and the impacts of that policy on consumers.

IV. Document Availability

32. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

33. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By the Commission. Commissioner Clark is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28231 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1002]

Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Illinois Central Railroad Drawbridge across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter when there is less impact on navigation, instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

DATES: This deviation is effective from 7 a.m., December 16, 2012, to 7 a.m. March 4, 2013.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–1002 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–1002 in the ''Search'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Chicago, Central & Pacific Railroad requested a temporary deviation for the Illinois Central Railroad Drawbridge across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa, to open on signal if at least 24 hours advance notice is given in order to facilitate needed bridge maintenance and repairs. The Rock Illinois Central Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges must open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 7 a.m. December 16, 2012 until 7 a.m., March 4, 2013.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Illinois Central Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 19.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: November 8, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–28282 Filed 11–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0937]

RIN 1625–AA09

Drawbridge Operation Regulation; Black River, La Crosse, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Canadian Pacific Railroad Drawbridge across the Black River at Mile 1.0 near La Crosse, Wisconsin. The drawspan shall immediately open upon demand once the vessel requiring an opening establishes contact with the remote operator located in Minneapolis,

Minnesota, via radiotelephone on VHF–FM Channel 16, or by standard telephone calling (507) 895–6087. The remote drawbridge operator will ensure the drawspan can safely be opened, immediate move it to the open to navigation position, and then maintain constant contact with the vessel until it has completely transited the bridge.

DATES: This rule is effective November 21, 2012.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0937 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0937 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On November 14, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Black River, La Crosse, Wisconsin, in the **Federal Register** (76 FR 70384). We received no comments on the rule. A public meeting was held on November 29, 2011, in La Crosse, Wisconsin, at which no objections were presented against the rule. On June 15, 2012, through July 15, 2012, we authorized a test deviation period to gauge the effects of the rule on the waterway users. No objections were presented during or after the test deviation period.

B. Basis and Purpose

The Black River is a navigable waterway of the United States from its mouth at mile 698.2 of the Upper Mississippi River, to approximately mile 3.0. Heavy recreational vessel traffic can be found along the length of the river and commercial navigation primarily operates up to mile 1.4. In this reach commercial barge operations handle cement, chemical, and fuel products at various loading terminals. A large recreational vessel manufacturer and marine repair facility are also located within this stretch of river.

In order to reduce wait time for requested drawbridge openings, while also reducing operating costs, Canadian Pacific requested a change to operation of this drawbridge. Canadian Pacific proposed that the drawbridge be operated via a procedure where vessels contact a remote drawbridge operator through VHF–FM Channel 16 or telephone (507) 895–6087 and request an opening. The remote operator would then ensure that no trains are in the block and then open the drawspan as appropriate. Once opened to navigation, the drawbridge would remain raised until the remote operator verifies safe passage of the vessel by means of radio or telephone confirmation with the passing vessel, video monitoring, and boat detection equipment.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 60 days in which no comments were received.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The impact of this regulatory action upon the current regulatory text is that it communicates a change in the procedure to open the drawbridge. Specifically, this action changes the regulatory text from ''The draw of the CP Rail railroad bridge, mile 1.0 at La Crosse, shall open on signal if at least two hours notice is given'' to ''The drawspan of the Canadian Pacific Railroad Bridge, mile 1.0, at La Crosse, Wisconsin is operated by a remote operator located at the Canadian Pacific Railway Minneapolis Operations Center, in Minneapolis, Minnesota. Drawspan shall open upon demand by contacting remote operator via VHF–FM Channel 16 or telephone (507) 895–6087.''

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This action is based on the expected reduction in wait time for drawspan openings and will not impact the local businesses, organizations, or government entities in the community.

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The Coast Guard provided a comment period of 60 days in which no comments were received.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. The Coast Guard provided a comment period of 60 days in which no comments were received.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. The Coast Guard provided a

comment period of 60 days in which no comments were received.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.1081 to read as follows:

§ 117.1081 Black River.

The drawspan of the Canadian Pacific Railroad Bridge, mile 1.0, at La Crosse, Wisconsin is operated by remote operator located at the Canadian Pacific Railway Minneapolis Operations Center, in Minneapolis, Minnesota. Drawspan shall open upon demand by contacting remote operator via VHF–FM Channel 16 or telephone (507) 895–6087.

Dated: October 31, 2012.

Roy A. Nash,

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

[FR Doc. 2012–28285 Filed 11–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0995]

Drawbridge Operation Regulation; Upper Mississippi River, Clinton, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Clinton Railroad Drawbridge across the Upper Mississippi River, mile 518.0, at Clinton, Iowa. The deviation is necessary to allow time for performing needed maintenance and repairs to the bridge. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

DATES: This deviation is effective from 12:01 a.m. December 15, 2012, until 9 a.m., March 15, 2013.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0995 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0995 in the ''Search'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

The Union Pacific Railroad Company requested a temporary deviation for the Clinton Railroad Drawbridge, mile 518.0, at Clinton, Iowa, across the Upper Mississippi to open on signal if at least 24 hours advance notice is given in order to facilitate needed bridge maintenance and repairs. The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 12:01 a.m. December 15, 2012, until 9 a.m., March 15, 2013.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: November 8, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–28284 Filed 11–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1009]

RIN 1625–AA11

Regulated Navigation Area; Recovery Operations, the Port of New York and New Jersey, NJ and NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) encompassing all waters of the Sector New York and Captain of the Port (COTP) New York Zone south of the George Washington Bridge at mile 11.0 on the Hudson River and west of the Hell Gate Railroad bridge at mile 8.2 on the East River. This action is necessary to prevent maritime traffic from interfering with spilled oil recovery operations, removal of sunken recreational vessels, debris, and cargo containers, and to ensure the safety of the response crews on scene. It will do

so by prohibiting vessels from entering or remaining in the RNA unless authorized by the COTP or his Designated Representative.

DATES: This rule is effective with actual notice for purposes of enforcement from November 9, 2012 through February 1, 2013, and effective in the Code of Federal Regulations from November 21, 2012 through February 1, 2013. Comments and related material must be received by the Coast Guard on or before December 7, 2012. Requests for public meetings must be received by the Coast Guard on or before December 7, 2012.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2012–1009. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division at Coast Guard Sector New York, telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Isaac Slavitt, First Coast Guard District Waterways Management Division, Boston, MA, telephone (617) 223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

APA Administrative Procedure Act
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

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

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

2. Viewing Comments and Documents

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

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 553(b) provides that a general notice of proposed rulemaking (NPRM) must be published ''unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.'' This rule identifies the persons who will be subject to the RNA regulation: All mariners in or seeking to enter a defined area of the Sector New York and COTP New York zone between November 9, 2012, and February 1, 2013. Section 553(b)(B) authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM would be contrary to public interest since immediate

action is necessary to protect vessels, persons, port infrastructure, and salvage crews in the Port of New York and New Jersey from hazards created by multiple oil spill recovery operations, debris, cargo container, and recreational vessel salvage and retrieval operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Normal notice and comment procedures cannot be followed due to the immediate threat of collision and/or exposure to hazardous pollutants posed by the sunken containers, vessels, and other floating debris and associated pollution response and recovery operations associated with the post-storm recovery from Hurricane Sandy.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

The oil pollution response and recovery operations of sunken vessels, cargo containers, and debris involves large machinery and construction vessel operations above and in the navigable waters of the Port of New York and New Jersey pose hazards to waterway users. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the response and recovery crews. In order to mitigate the inherent risks involved in these operations, it is necessary to control vessel movement through the area.

The purpose of this rule is to ensure the safety of waterway users, the public, and pollution response and recovery workers for the duration of the response and recovery operations during the effective period. The RNA will also protect recovery vessels desiring to transit the Arthur Kill by ensuring that vessels are only permitted to transit at no-wake speed.

D. Discussion of the Interim Rule

The Coast Guard is establishing a temporary RNA encompassing all waters of the Sector New York and COTP zone, codified at 33 CFR 3.05–30, south of the George Washington Bridge at mile 11.0 on the Hudson River and west of the Hell Gate Railroad Bridge at mile 8.2 on the East River. This temporary RNA was necessitated by Hurricane Sandy, which struck the New York City area in late October 2012 and which caused damage requiring immediate cleanup efforts.

The COTP New York is enforcing a RNA in the vicinity of current oil spill response and debris recovery operations due to post Hurricane Sandy conditions. The recovery of spilled oil, debris, vessels, and cargo containers involves large machinery and construction vessel operations above and upon the navigable waters of the Port of New York and New Jersey. These operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to response and recovery workers. Certain portions of the waterway within the RNA must be closed to vessel traffic due to the quantity of sunken vessels and or floating debris. The ongoing recovery operations are, by their nature, hazardous and pose risks to all vessel traffic. In order to mitigate the inherent risks involved in the operations, it is necessary to control vessel movement through the area.

This action is intended to restrict vessel traffic on the Arthur Kill, Buttermilk Channel, Great Kills Harbor north of (pa) 40–32–01.290N, 074–08–30.895W (Great Kills Harbor Channel Buoy 9 LLNR 35488) and (pa) 40–32–02.854N, 074–08–28.532W (Great Kills Harbor Channel Buoy 10 LLNR 35490), Sheepshead Bay west of (pa) 40–34–53.198N, 073–55–51.984W (Sheepshead Bay Lighted Buoy 12 LLNR 34370), and Jamaica Bay east of the Gil Hodges Memorial/Marine Parkway Bridge at mile 3.0. Vessels may be restricted from additional areas as necessary due to the dynamic nature of this response and recovery operation.

These operations are tentatively scheduled to take place starting on November 9, 2012 and lasting through February 1, 2013. Vessels required to participate in the Vessel Movement Reporting System codified at 33 CFR 161 Subpart B are required to transit the Arthur Kill at No Wake speed.

The COTP will cause notice of enforcement or suspension of enforcement of this RNA to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Marine Information Broadcasts, Local Notice to Mariners, and at *http://homeport.uscg.mil/newyork.*

E. Regulatory Analyses

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

1. Regulatory Planning and Review

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

2. Impact on Small Entities

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

This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of the Sector New York and COTP New York zone during the effective period.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will only require authorized vessels to transit at no-wake speed when transiting the Arthur Kill. Vessels can transit through Anchorage Channel and the East River to bypass Buttermilk Channel. Great Kills Harbor and Sheepshead Bay are already effectively closed due to the quantity of sunken vessels and debris in the waterways. Also, due to the extent of continuing debris reports received by the U.S. Coast Guard and U.S. Army Corps of Engineers (USACE), the COTP has determined that the local waters are not safe for recreational vessel transits after daylight hours and Arthur Kill, Buttermilk Channel, Great Kills Harbor north of (pa) 40–32–01.290N, 074–08–30.895W (Great Kills Harbor Channel Buoy 9 LLNR 35488) and (pa) 40–32–02.854N, 074–08–28.532W (Great Kills Harbor Channel Buoy 10 LLNR 35490), Sheepshead Bay west of (pa) 40–34–53.198N, 073–55–51.984W (Sheepshead Bay Lighted Buoy 12 LLNR 34370), and Jamaica Bay east of the Gil Hodges Memorial/Marine Parkway Bridge at mile 3.0 are not safe for recreational vessel transits at any time. The RNA will only be in effect until response and recovery operations are complete. Portions of the RNA will be opened to vessel traffic as soon as the COTP New

York deems it safe to do so. We will issue maritime advisories widely available to users of the port updating the status and locations of all waters restricted to vessel transits as they become available.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves a RNA which requires vessels to transit at No Wake speed and restricts some areas to vessel transits during Hurricane Sandy response and recovery operations. This temporary rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.l04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–1009 to read as follows:

§ 165.T01–1009 Safety Zone; Recovery Operations, the Port of New York and New Jersey, NJ and NY.

(a) *Regulated Navigation Area.* The following area is a Regulated Navigation Area (RNA): All navigable waters of the Sector New York and Captain of the Port (COTP) Zone defined in 33 CFR 3.05–30, south of the George Washington Bridge at mile 11.0 on the Hudson River and west of the Hell Gate Railroad Bridge at mile 8.2 on the East River.

(b) *Effective dates and enforcement periods.* This rule is effective and will be enforced with actual notice from

November 9, 2012 through February 1, 2013, except that enforcement may be suspended in accordance with paragraph (d)(8) of this section.

(c) *Definitions.* The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP Sector New York, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.13, as well as the following regulations, apply.

(2) During periods of enforcement, all vessels must transit at a No-wake speed to minimize surge when transiting the Arthur Kill.

(3) During periods of enforcement, all persons and vessels given permission to enter or operate in the RNA must comply with the instructions of the COTP or the designated representative. Upon being hailed by an official patrol vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(4) During periods of enforcement, no vessels are authorized to transit or operate within Buttermilk Channel, within Great Kills Harbor north of (pa) 40–32–01.290N, 074–08–30.895W (Great Kills Harbor Channel Buoy 9 LLNR 35488) and (pa) 40–32–02.854N, 074–08–28.532W (Great Kills Harbor Channel Buoy 10 LLNR 35490), within Sheepshead Bay west of (pa) 40–34–53.198N, 073–55–51.984W (Sheepshead Bay Lighted Buoy 12 LLNR 34370), and within Jamaica Bay east of the Gil Hodges Memorial/Marine Parkway Bridge at mile 3.0.

(5) Vessel operators required to participate in the Vessel Movement Reporting System codified at 33 CFR part 161, subpart B, and desiring to enter or operate within the RNA must contact the COTP or the designated representative via VHF channel 11 or 16 or 718–354–4088 (Sector New York Vessel Traffic Center) to obtain permission to do so.

(6) Recreational vessel operators desiring to enter or operate within the RNA must contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York Command Center) to obtain permission to do so, and will be permitted to enter or operate within the RNA only during daylight hours.

(7) The COTP may impose additional requirements within the RNA due to unforeseen changes to the response and recovery operations.

(8) The COTP will make notice of specific waterway closures and restrictions, and of any suspension of enforcement, by all means available to affect the widest public distribution including, but not limited to, Marine Information Broadcasts, Local Notice to Mariners, and at *http://homeport.uscg.mil/newyork.*

Dated: November 9, 2012.

D.B. Abel,

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

[FR Doc. 2012–28272 Filed 11–20–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2012–0396; FRL–9753–6]

Colorado: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize states to operate their hazardous waste management programs in lieu of the federal program. Colorado has applied to the EPA for final authorization of changes to its hazardous waste program under RCRA. The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the state's changes through this final action.

DATES: This final authorization will become effective on January 22, 2013 unless the EPA receives adverse written comments by December 21, 2012. If adverse written comments are received, the EPA will publish a timely withdrawal of this final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R08–RCRA–2012–0396, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: lin.moye@epa.gov.*
- *Fax:* (303) 312–6341.
- *Mail:* Moye Lin, Region 8, Resource Conservation and Recovery Program, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone number: (303) 312–6667.
- *Hand Delivery or Courier:* Deliver your comments to Moye Lin, Region 8, Resource Conservation and Recovery Program, Mailcode 8P–R, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Deliveries are accepted only during the Regional Office's normal hours of operation, 9:00 a.m. to 3:00 p.m. Special arrangements should be made for deliveries of boxed information. The public is welcome to view Docket ID No. EPA–R08–RCRA–2012–0396 at the Region 8 EPA Library, 1595 Wynkoop Street, Denver, Colorado 80202–1129 during the Library's normal hours of operation, Monday through Thursday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2012–0396. The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected from disclosure through *http://www.regulations.gov,* or email. The federal Web site, *http://www.regulations.gov,* 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 may not be 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 through *http://www.regulations.gov* or in hard copy from 9:00 a.m. to 3:00 p.m., Monday through Thursday at the EPA Region 8 Library at the address and contact above, or the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530, contact: Randy Perila, phone number (303) 692–3364. The public is advised to call in advance to verify business hours.

FOR FURTHER INFORMATION CONTACT: Moye Lin, (303) 312–6667, *Lin.Moye@epa.gov* or Randy Perila, (303) 692–3364, *randy.perila@state.co.us.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that Colorado's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Colorado Final Authorization to operate its hazardous waste program with the changes described in the authorization application. Colorado has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Colorado including issuing permits, until Colorado is authorized to do so.

C. What is the effect of today's authorization decision?

This decision means that a facility in Colorado subject to RCRA will now have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Colorado has enforcement responsibilities under its state hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Conduct inspections, and require monitoring, tests, analyses, or reports; (2) enforce RCRA requirements, suspend or revoke permits, and, (3) take enforcement action regardless of whether Colorado has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Colorado is being authorized by this action are already effective under state law, and are not changed by this action.

D. Why wasn't there a proposed rule before today's rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, we are publishing a separate document that proposes to authorize the state program changes in the proposed rules section of today's **Federal Register**.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We will then address all public comments in a later **Federal Register** notice. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Colorado hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For what has Colorado previously been authorized?

Colorado initially received final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41036), to implement the RCRA hazardous waste management program. We granted authorization for changes to the state's program on: October 24, 1986, effective November 7, 1986 (51 FR 37729); May 15, 1989, effective July 14, 1989 (54 FR 20847); May 10, 1991, effective July 9, 1991 (56 FR 21601); April 7, 1994, effective June 6, 1994 (59 FR 16568); November 14, 2003, effective January 13, 2004 (68 FR 64550) and March 12, 2008 (73 FR 13141) effective May 12, 2008; August 12, 2009, effective October, 13, 2009 (74 FR 40518).

G. What changes are we approving with today's action?

Colorado submitted a final complete program application on December 21, 2011, seeking authorization of their changes in accordance with 40 CFR 271.21. Colorado's revisions consist of regulations that govern Federal Hazardous Waste revisions promulgated from January 8, 2010 through June 4, 2010 (RCRA Clusters XX). In addition, approval today is granted for revisions submitted in a prior application. We now make a final decision, subject to receipt of written comments that oppose this action; that Colorado's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Colorado final authorization for the following program changes (the federal citation followed by the analog from the Code of Colorado Regulations (6 CCR 7007–3), revised through December 30, 2011):

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Land Disposal Restrictions Phase III (Checklist 151).	61 FR 15566–15660 April 8, 1996; 61 FR 15660–15668 April 8, 1996; 61 FR 19117 April 30, 1996; 61 FR 33680–33690 June 28, 1996; 61 FR 36419–36421 July 10, 1996; 61 FR 43924–43931 August 26, 1996; 62 FR 7502–7600 February 19, 1997.	Colorado Hazardous Regulations, 6 CCR 1007–3 effective December 30, 2011; 268.1(c)(3)–(c)(3)(ii), 268.1(c)(4), 268.1(c)(4)(i)–(iv), 268.1(e)(3), 268.1(e)(4), 268.2(f), 268.2(i), 268.2(j), 268.3(a)–(c), 268.3(c)(1)–(6), 268.7(a), 268.7(a)(3)(ii), 268.7(b)(3)(ii), 268.7(b)(4)(iv)–(v), 268.8, 268.9(a) & (d), 268.9(d)(1)(i)–(ii), 268.39(a)–(g), 268.40(a), 268.40(e), 268.40(g), 268.40 Table, 268.42 Table 1, 268.48(a) Table UTS, Appendix XI.
2. Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (Checklist 189).	65 FR 67068–67133, November 8, 2000.	Colorado Hazardous Regulations, 6 CCR 1007–3 effective December 30, 2011; 261.32, 261 Appendix VII & VIII, 268.33(a), 268.33(b) intro, 268.(b)(1)–(5), 268.33(c), 268.33(d) intro, 268.33(d)(1) & (2), 268.40/Table, 268.40(a)/Table.
3. OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Checklist 222).	75 FR 1236–1262, January 8, 2010.	Colorado Hazardous Regulations, 6 CCR 1007–3 effective December 30, 2011; 262.10(d), 262.55, 262.58(a), 262.58(a)(1) & (2), 262.58(b), 262.80(a), 262.80(a)(1) & (2), 262.80(b), 262.81, 262.82(a), 262.82(a)(1), 262.82(a)(1)(i) & (ii), 262.82(a)(2) including Note to Paragraph (a)(2), 262.82(a)(2)(i) & (ii), 262.82(a)(2)(ii)(A) & (B), 262.82(a)(2)(iii), 262.82(a)(3), 262.82(a)(3)(i) including Note to Paragraph (a)(3)(i), 262.82(a)(3)(ii) including Note to Paragraph (a)(3)(ii), 262.82(a)(4), 262.82(a)(4)(i) & (ii), 262.82(b), 262.82(b)(1) & (2), including Note to Paragraph (b)(2), 262.82(b)(3), 262.82(c), 262.82(c)(1), 262.82(c)(1)(i) & (ii), 262.82(c)(2), 262.82(d), 262.82(d)(1) & (2), 262.82(e), 262.82(e)(1) & (2), 262.82(f), 262.82(f)(1)–(4), 262.82(f)(5), 262.82(f)(5)(i) & (ii), 262.82(g), 262.83(a), 262.83(b), 262.83(b)(1), 262.83(b)(1)(i)–(iii), 262.83(b)(2), 262.83(b)(2)(i) & (ii), 262.83(c) & (d), 262.83(d)(1)–(14) including Note to Paragraph (d)(14), 262.83(e), 262.84(a), 262.84(a)(1) & (2), 262.84(b), 262.84(b)(1)–(7), 262.84(c)–(e), 262.85(a) & (b), 262.85(b)(1)–(4), 262.85(c), 262.85(c)(1) & (2), 262.85(d) & (e) including Note to Paragraph (e), 262.85(f) & (g) including Note to Paragraph (g), 262.86(a) & (b), 262.87(a), 262.87(a)(1)–(5), 262.87(a)(5)(i) & (ii), 262.87(a)(6), 262.87(b), 262.87(b)(1)–(3), 262.87(c), 262.87(c)(1), 262.87(c)(1)(i)–(iv), 262.87(c)(2), 262.88, 262.89(a), 262.89(a)(1), 262.89(a)(2), 262.89(b)–(d), 263.10(d), 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d), 267.80(a)table.
4. Hazardous Waste Technical Corrections and Clarifications (Checklist 223).	75 FR 12989–13009, March18, 2010, 75 FR 31716–31717, June 4, 2010.	Colorado Hazardous Regulations, 6 CCR 1007–3 effective December 30, 2011; 262.23(f), 262.23(f)(1), 262.23(f)(1)(i)–(ii), 262.23(f)(2)–(4).

H. Where are the revised State rules different from the Federal rules?

Colorado has requirements that are more stringent than the federal rules at 262.55, Colorado requires an exception report be filed with the Colorado Department of Public Health and Environment in addition to the required submission to the EPA Office of Enforcement and Compliance Assurance. Colorado is more stringent in Checklist 151. Colorado has not adopted a state analog to 40 CFR 268.1(c)(3). Colorado does not allow for the disposal of hazardous waste in underground injection wells. Pursuant to state law, Section 25–15–205(3), C.R.S., the disposal of liquid hazardous waste in Colorado is strictly prohibited. This prohibition includes the disposal of hazardous waste in injection wells.

Colorado is broader-in-scope than the federal rules at: 261.32 (K140) and 261 Appendix VII (K901 & K902), 261 Appendix VIII (P909, P910 and P911) and 268.40/table (K140, U408, K901, K902, P910 &P911).

I. Who issues and administers permits after the authorization takes effect?

Colorado will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits that were issued prior to the effective date of this authorization until Colorado has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Colorado is not yet authorized.

J. How does today's action affect Indian Country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes: (1) Lands within the exterior boundaries of the following Indian reservations located within or abutting the state of Colorado, (a) Southern Ute Indian Reservation and (b) Ute Mountain Ute Indian Reservation; (2) any land held in trust by the United States for an Indian tribe, and (3) any other areas that are ''Indian country'' within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where the EPA will continue to implement and administer the RCRA program.

K. What is codification and is the EPA codifying Colorado's hazardous waste program as authorized in this rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the CFR, which occurs when the EPA references the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart G, for this authorization of Colorado's program changes until a later date. The EPA is not codifying the rules documented in

this **Federal Register** notice in this authorization application.

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes Colorado state requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by Colorado state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective *January 22, 2013.*

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 21, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–28338 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 504

[GSAR Change 55; GSAR Case 2006–G510; Docket 2008–0007; Sequence 13]

RIN 3090–AI72

General Services Administration Acquisition Regulation (GSAR); Rewrite of Part 504, Administrative Matters; Correction

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Correcting amendment.

SUMMARY: The General Services Administration (GSA) published a document in the **Federal Register** on October 1, 2012 (77 FR 59790), revising Administrative Matters. The final rule contained a typographical error which needs to be corrected.

DATES: *Effective date:* November 21, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, at 202–357–9652, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1275 First Street, 7th Floor, Washington, DC 20417, 202–501–4755. Please cite GSAR Case 2006–G510.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** at 77 FR 59790 on October 1, 2012 contained a typographical error. This notice is to correct the error in the Code of Federal Regulations.

List of Subject in 48 CFR Part 504

Government procurement.

Accordingly, 48 CFR part 504 is corrected by making the following correcting amendment:

PART 504—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 504 continues to read as follows:

Authority: 40 U.S.C. 121(c).

504.604 [Amended]

■ 2. Amend section 504.604, in paragraph (a)(3) by removing the word ''must''.

Dated: November 15, 2012.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration.

[FR Doc. 2012–28291 Filed 11–20–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 33

[Docket No. OST 2010–0298]

RIN 2105–AD83

Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act

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

ACTION: Confirmation of effective date.

SUMMARY: On October 1, 2012, the Department published a final rule requesting comment at 77 FR 59793 to clarify the priorities and allocation authorities exercised by the Secretary of Transportation (Secretary) under title I of the Defense Production Act of 1950 and to establish the administrative procedures by which the Secretary will exercise this authority. In the final rule, the Department requested comment on certain revised definitions found in 49 CFR 33.20. No comments were received by the comment closing date of October 31, 2012. As a result, this document confirms that the October 1 final rule will not be changed and its effective date is November 30, 2012.

DATES: *Effective Date:* This document confirms that the Department's final rule at 77 FR 59793 is effective on November 30, 2012.

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE., Room W96–320, Washington, DC 20590; telephone: (202) 366–6136; email: *donna.o'berry@dot.gov*.

SUPPLEMENTARY INFORMATION: As the Department received no comments on its final rule published on October 1, 2012, we are making no changes to the rule and its effective date is November 30, 2012.

Issued in Washington, DC, on November 14, 2012.

Ronald Jackson,

Assistant General Counsel for Operations.

[FR Doc. 2012–28303 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1155

[Docket No. EP 684]

Solid Waste Rail Transfer Facilities

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: These final rules govern land-use-exemption permits for solid waste rail transfer facilities. The Clean Railroads Act of 2008 amended the U.S. Code to restrict the jurisdiction of the Surface Transportation Board over solid waste rail transfer facilities. The Act also added three new statutory provisions that address the Board's regulation of such facilities, which is now limited to issuance of ''land-use-exemption permits'' in certain circumstances. In 2009, as required by the Act, the Board issued interim rules. In 2011, based on the comments received and further evaluation, the Board revised the 2009 Rules and sought comments on the changes. After further evaluation and review of the comments received on the 2011 Rules, the Board now adopts the 2011 Rules as final rules with minor modification.

DATES: These rules will be effective on December 21, 2012.

FOR FURTHER INFORMATION CONTACT: Lucille Marvin, The Office of Public Assistance, Governmental Affairs, and Compliance, (202) 245–0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Clean Railroads Act of 2008, Public Law 110–432, 122 Stat. 4848, (CRA) amended 49 U.S.C. 10501(c)(2) to restrict the jurisdiction of the Surface Transportation Board (Board or STB) over solid waste rail transfer facilities. The CRA also added three new statutory provisions—49 U.S.C. 10908–10910—that address the Board's regulation of such facilities, which is now limited to issuance of ''land-use-exemption permits'' in certain circumstances. Under the CRA, a solid waste rail transfer facility must comply with all applicable federal and state requirements respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, in the same manner as any similar solid waste management facility not owned or operated by or on behalf of a rail carrier, except for laws affecting the siting of the facility that are covered by the land-use-exemption permit. As required by the CRA, the Board issued interim rules in a decision served January 14, 2009. *Solid Waste Rail Transfer Facilities* (*2009 Decision*), EP 684 (STB served Jan. 14, 2009). Those interim rules were published in the **Federal Register** on January 27, 2009 (74 FR 4714) (2009 Rules). Based on the comments received and further evaluation, the Board served a decision on March 11, 2011, which revised the 2009 Rules and sought comments on the changes. *Solid Waste Rail Transfer Facilities* (*2011 Decision*), EP 684 (STB served Mar. 11, 2011). The revised interim rules were published in the **Federal Register** on March 24, 2011 (76 FR 16538) (2011 Rules). After further evaluation and review of the comments received on the 2011 Rules, the Board now adopts the 2011 Rules as final rules with minor modifications. The final rules are set forth below.

Under 49 U.S.C. 10501(a), the Board has jurisdiction over ''transportation by rail carrier.'' Section 10501(b), as modified by the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803 (1995), provides that both ''[t]he jurisdiction of the Board over transportation by rail carriers'' (which includes the carriers' rail facilities, *see* 49 U.S.C. 10102(9)), and ''the remedies provided under [49 U.S.C. 10101–11908]'' are ''exclusive,'' and ''preempt the remedies provided under Federal or State law.'' Prior to enactment of the CRA, the Board's preemptive jurisdiction extended to solid waste rail transfer facilities owned or operated by rail carriers. Accordingly, state permitting or preclearance requirements (including environmental, zoning, and often land-use requirements) that, by their nature, could be used to deny a railroad the right to conduct its operations or proceed with transportation activities at rail transfer facilities, including solid waste rail transfer facilities, as authorized by the Board, were preempted. *See* 49 U.S.C. 10501(b); *N.Y. Susquehanna & W. Ry.* v. *Jackson,* 500 F.3d 238, 252–55 (3d Cir. 2007); *Green Mountain R.R.* v. *Vermont,* 404 F.3d 638, 641–43 (2d Cir. 2005). Other state actions related to these facilities were preempted if, as applied, they would have the effect of unreasonably burdening or interfering with transportation by rail carrier. *See N.Y. Susquehanna,* 500 F.3d at 252; *Green Mountain,* 404 F.3d at 643.

The CRA modified the Board's jurisdiction over solid waste rail transfer facilities. The CRA provides that solid waste rail transfer facilities, as defined in 49 U.S.C. 10908(e)(1)(H), must now

comply with all applicable Federal and state requirements (including environmental requirements) that apply to similar solid waste management facilities that are not owned or operated by or on behalf of a rail carrier, except as otherwise provided in the CRA.[1] The CRA gives the Board the authority, if petitioned, to issue land-use-exemption permits that preempt state and local laws and regulations ''affecting the siting'' of such facilities (except to the extent that the Board requires the facility to comply with such provisions). 49 U.S.C. 10909(f).[2]

The Final Rules

The Board received comments on the 2011 Rules.[3] We now adopt final rules based on suggestions made in the parties' comments and on the Board's review of the revised interim regulations. We address the comments received on the 2011 Rules and our revisions made in response to the comments below. The final rules are in full below.

A. Environmental Impact Statement (EIS) Notice

In the *2011 Decision,* slip op. at 7–8, the Board concluded that an EIS generally should be prepared for each land-use-exemption-permit application. NSWMA argues that, consequently, the Board should add separate environmental notice procedures to the CRA rules to allow for full public participation during the early stages of the Board's environmental review, including ''scoping''—the process that determines the issues to be addressed in an EIS.[4] NSWMA points out that 49 CFR 1105.10(a) of the Board's environmental rules requires an applicant for a Board action that warrants an EIS to give the Board's Office of Environmental Analysis (OEA) six months' notice prior to filing its application, but does not require the applicant to serve the notice on affected state and local agencies or otherwise publish it.[5] NSWMA is concerned that, unless state and local officials are served with the § 1105.10(a) notice when it is filed at the Board, these public officials will lose the opportunity to participate meaningfully in ''key EIS scoping proceedings'' for projects seeking land-use-exemption permits.[6] NSWMA contrasts the absence of advance environmental notice in the interim and revised interim CRA rules with the advance notice that the Board requires for applications for a land-use-exemption permit.[7]

We reject NSWMA's assertion that the Board's procedures do not give regional, state or local officials a meaningful opportunity to participate at the early stages of the EIS process and that additional notice is necessary. The Board's existing procedures provide that consultation letters are sent by the Board to potentially interested or affected Federal, state, and local agencies, soliciting their comments on possible environmental impacts, prior to publication of a Notice of Intent to Prepare an EIS. *See Policy Statement on Use of Third-Party Contracting in Preparation of Envtl. Documentation,* 5 S.T.B. 467 (2001); *see also* 40 CFR 1501.2(d)(2). Thus, the Board's existing procedures give public officials the opportunity for early input into the process of developing the scope of the Draft EIS. But the opportunity for early participation in the environmental review process does not stop there. The Notice of Intent to Prepare an EIS, which includes a description of the proposed action and provides a period for written comments on the draft scope of the EIS, is then published in the **Federal Register** and served. 49 CFR 1105.10(a)(2). The scoping process also typically includes a meeting in the project area that gives state and local officials and members of the public an opportunity to be heard. The Board issues a final scope of study for the EIS only after considering the scoping comments.[8] Therefore, we find that no additional notice is necessary.

NSWMA also is concerned that state and local officials and the public will not receive notice of requests submitted by applicants to OEA seeking to reclassify the requirement that an EIS be prepared in particular cases under 49 CFR 1155.24(a)[9] and 1105.6(d) because such requests are not published in the **Federal Register**.[10] We do not believe that **Federal Register** publication is necessary. Section 1105.6(d) of the Code of Federal Regulations has been in effect since 1991. *See Implementation of Envtl. Laws,* EP 55 (Sub-No. 22A) (ICC served July 31, 1991); 56 FR 36104 (July 31, 1991). In recent years, OEA has received a number of reclassification requests. For example, rail construction cases normally require preparation of an EIS. Nevertheless, in certain rail construction cases where there is little potential for significant environmental impacts, applicants have requested that OEA reclassify the level of environmental review to allow for the preparation of a more limited Environmental Assessment rather than an EIS. Until now, however, we have not received any suggestions that

[1] The CRA does not affect the Board's jurisdiction, or the scope of Federal preemption, over a rail carrier's transportation-related activities involving commodities other than solid waste. 49 U.S.C. 10908(d).

[2] The *2009 Decision* and the *2011 Decision* contain further discussion of the CRA and the Board's initial and subsequent implementation of the legislation.

[3] The Board received comments and replies from the following: Connecticut Department of Environmental Protection (CTEP); National Solid Wastes Management Association, et al. (NSWMA); Association of American Railroads (AAR); Atlantic County Utilities Authority (ACUA); New Jersey Department of Environmental Protection and New Jersey Meadowlands Commission (collectively, NJDEP); and the Township of Bensalem, Bucks County, Pennsylvania (Bensalem). Additionally, after the deadline for initial comments, the Board received comments from the Rhode Island Resource Recovery Corporation (RIRRC). As no party would be prejudiced, we will accept this late filing.

[4] NSWMA's Comments 2–4; CTEP's Comments 1 (adopting NSWMA's comments).

[5] We note that the 6-month prefiling requirement that NSWMA relies on is frequently waived. *See* 49 CFR 1105.10(c)(2); *see, e.g., Tongue River R.R.—Rail Construction & Operation—In Custer, Powder River & Rosebud Cntys., Mont.,* FD 30186, letter from Victoria Rutson, Director, Office of Environmental Analysis (Oct. 18, 2012); *R.J. Corman R.R.—Construction & Operation Exemption—In Clearfield Cnty., Pa.,* FD 35116, letter from Victoria Rutson, Director, Office of Environmental Analysis (Jan. 24, 2008). As a practical matter, many applicants do not have their projects adequately developed to allow the environmental review to begin months in advance of the filing of an application.

[6] NSWMA's Comments 3.

[7] Pursuant to 49 CFR 1155.20(a)(2) and 1155.22(b) of the 2011 Rules, the Notice of Intent and Application must each be served on the governor, municipality, state, and any relevant Federal or state regional planning entity where the facility is located. The Notice of Intent must also be published at least once during each of three consecutive weeks in a newspaper of general circulation in the county in which the facility is located. 49 CFR 1155.20(a)(2).

[8] Opportunities for public input on environmental issues continue throughout the duration of the proceeding. Following scoping, the Board prepares a Draft EIS, which is made available for review and comment by the public, government agencies, and other interested parties (typically for 45 days). Thereafter, a Final EIS is issued that considers comments on the Draft EIS, sets forth any additional analyses, and makes final environmental recommendations for the Board to consider in reaching its final decision. Finally, our CRA procedures specifically allow for final public comments following the conclusion of the environmental review on how the information developed during the environmental review should be weighed with transportation and other concerns. 49 CFR 1155.23(b).

[9] We note that, contrary to AAR's assertion in its reply brief, a written request to reclassify pursuant to §§ 1155.24(a) and 1105.6(d) is distinct from a petition for waiver pursuant to § 1155.22(d)(4). (*See* AAR's Reply Comments 9 n.5.) A petition for waiver of regulations pertaining to applications for land-use-exemption permits must be issued by the Director of the Office of Proceedings. 49 CFR 1155.22(d)(4). Requests to reclassify the environmental review requirements must be decided by the Director of OEA. 49 CFR 1155.24(a) (''OEA may reclassify the environmental review requirements * * *, pursuant to 49 CFR 1105.6(d).''); 49 CFR 1105.2 (''The [Director] of [OEA] * * * is delegated the authority * * * to render initial decisions on requests for waiver or modification of any of these rules for individual proceedings * * *.'').

[10] NSWMA's Comments 3.

Federal Register publication is needed to provide adequate notice of a request to reclassify the level of environmental review for a proposed action.

Our CRA rules are designed to give interested state and local officials and the public the ability to protect their interest in having the Board conduct an appropriate level of environmental review of applications for land use exemption permits. Sections 1155.20(a)(2) and 1155.22(b) will provide for notice to agencies and interested persons in the project area that an application for a particular land use exemption permit is to be filed. Once a case is docketed at the Board, interested persons and agencies can keep track of the status of the case, including requests to reclassify the level of environmental review and any responses, by checking the Board's Web site. Moreover, state and local environmental officials are likely to have advance notice of proposed solid waste rail transfer facilities because these facilities would have to comply with the same applicable Federal and state requirements as non-rail solid waste management facilities, except for laws affecting siting that are covered by the application for a land-use-exemption permit. Finally, even if a request for reclassification of the EIS requirement is granted, state and local officials and the public have numerous opportunities during the environmental review process to argue to the Board that the environmental impacts of the project will be significant enough to require the preparation of an EIS. *See supra* n.8. When information emerges during the environmental review process to indicate that a proposed action could result in potentially significant environmental impacts, the Board will heighten the level of environmental review as appropriate. *See Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S., LLC,* FD 35147 et al., slip op. at 2–3 (STB served Sept. 25, 2008) (suspending procedural schedule to prepare an Environmental Assessment in case where it had been originally determined that no environmental review was necessary).

B. EIS Requirements

NJDEP argues that 49 CFR 1155.21(c) does not reflect the Board's determination in 49 CFR 1155.24(a) that an EIS generally should be prepared for each land-use-exemption-permit application.[11] Section 1155.21(c) states that an ''applicant shall certify that it has submitted an Environmental and/or Historic Report * * * if an Environmental and/or Historic Report is required.'' 49 CFR 1155.21(c).[12] NJDEP asks that the Board remove the clause ''if an Environmental and/or Historic Report is required'' from this section.

It would be inappropriate to grant NJDEP's request. As the Board specifically stated in the *2011 Decision,* slip op. at 25–26 (citing 49 CFR 1105.10(d)), applicants need not file Environmental and/or Historic Reports describing the potential environmental impacts of their proposals if third-party contractors are used to assist the environmental staff in preparing the Board's environmental documentation, which generally will be an EIS. Thus, the 2011 Rules properly made clear that, even when a third-party contractor is used and Environmental and/or Historic Reports are not required from the applicant, the Board can still prepare an EIS.

NJDEP also argues that the clause in § 1155.21(c) stating ''if an Environmental and/or Historic Report is required'' conflicts with 49 CFR 1155.20(c). The latter section states that ''[a]pplicant must also submit an Environmental and/or Historic Report containing the information described at 49 CFR 1155.[24](b),[13] 1105.7, and 1105.8, to the extent applicable, at least 45 days prior to filing an application.'' [14] Although § 1155.20(c) does not include the language ''if an Environmental and/or Historic Report is required,'' it does specifically acknowledge later in that section that the ''reporting requirements that would otherwise apply are waived * * * if the applicant or the Board hires a third-party consultant.'' Thus, there is no conflict between the two sections. Nevertheless, for clarity, we will add a reference in § 1155.21(c) to § 1155.20(c).

C. Interpretation of 49 U.S.C. 10910

In the *2011 Decision,* the Board added a procedural requirement that applicants and interested parties state whether the law affecting siting from which exemption is sought is an environmental, public health, or public safety standard that falls under the traditional police powers of the state, and if not, to explain why not. *2011 Decision,* slip op. at 5; 49 CFR 1155.21(a)(7). The Board reasoned that this information was necessary because of 49 U.S.C. 10910 and the Board's standard for review in revised 49 CFR 1155.26(b)(6),[15] and stated that, if a law affecting siting is covered by 49 U.S.C. 10910, the Board will not issue a land-use-exemption permit unless the applicant has shown that compliance with that law meets the unreasonable burden or discrimination test. *2011 Decision,* slip op. at 5

The procedural requirement in § 1155.21(a)(7), and the Board's substantive standard of review found at § 1155.26(b)(6), were based on the Board's interpretation of § 10910, which provides that ''[n]othing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome and do not discriminate against rail carriers.'' When the 2009 Rules and 2011 Rules were issued, the Board read § 10910 as confirming judicial and Board precedent establishing that, notwithstanding the express Federal preemption in 49 U.S.C. 10501(b), state and local bodies nonetheless retain police powers to protect the public health and safety, so long as the state and local regulations do not serve to regulate railroad operations or unreasonably interfere with interstate commerce. *E.g., N.Y. Susquehanna,* 500 F.3d at 252–55; *Green Mountain,* 404 F.3d at 643. Consistent with this precedent, the Board, notwithstanding the separate express preemption provisions of § 10909, interpreted the CRA as preserving the state's historic police powers to protect public health and safety where the law in question does not unreasonably burden interstate

[11] NJDEP's Comments 3.

[12] We have made minor editorial changes to the 2011 Rules, including capitalizing ''Environmental Report'' and ''Historic Report'' consistently throughout.

[13] The 2011 Rules inadvertently cited to 49 CFR 1155.25(b) rather than 49 CFR 1155.24(b). We have revised the final rules to cite the correct regulation. *See infra* note 31 and accompanying text.

[14] In response to several comments on the 2009 Rules, the Board noted in the *2011 Decision* that, although 49 CFR 1105.7 does not address issues specific to solid waste management, much of the information in the environmental reporting rules does apply to solid waste rail transfer facilities. Thus, the Board concluded that it would ''continue to require applicants to comply with the environmental reporting requirements in 49 CFR 1105.7 to the extent applicable.'' *2011 Decision,* slip op. at 25. Several provisions of these rules also contain the proviso that Environmental Reports should contain the information described at § 1105.7, to the extent applicable. 49 CFR 1155.20(c), 1155.24(b). We have revised § 1155.21(c) to add ''to the extent applicable'' to comport with § 1155.20(c), § 1155.24(b) and our discussion in the *2011 Decision.*

[15] Section 1155.26(b)(6) of the 2011 Rules, which was also located in the Board's 2009 Rules at 49 CFR 1155.27(b)(4), states that ''[a] land-use-exemption permit will not exempt a state requirement that a rail carrier comply with an environmental, public health, or public safety standard that falls under the traditional police powers of the state unless the requirement is unreasonably burdensome to interstate commerce or discriminates against rail carriers.''

commerce or discriminate against rail transportation.

AAR, however, argues that the Board misinterpreted 49 U.S.C. 10910 and that the Board can issue a land-use-exemption permit under section 10909 even if the law affecting siting falls under the state's traditional police powers and the requirement does not unreasonably burden interstate commerce or discriminate against rail carriers.[16] AAR points to the balancing of interests contemplated by section 10909(c) and (d), which, it claims, suggests that no single factor, such as the absence of an undue burden on interstate commerce, requires denial of a land-use-exemption permit. It further argues that section 10909(f) provides the Board with express authority to preempt ''all'' state laws affecting siting of a solid waste rail transfer facility, including those that might otherwise fall under the traditional police powers of the state. Arguing that the specific provisions of § 10909 dictate the proper interpretation of section 10910, AAR believes that section 10910 should be read to state that ''[Other than with respect to state laws and requirements affecting siting, n]othing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome and do not discriminate against rail carriers.'' [17]

We find that both AAR's interpretation of section 10910 and the one originally adopted by the Board are plausible readings of the statute. The statute is ambiguous, and the Board has struggled to interpret a number of its provisions, including section 10910. At this juncture, however, we need not resolve the statutory ambiguity by definitively choosing one interpretation of section 10910 over the other. We do not need to interpret section 10910 definitively in order to effectively carry out the intent of Congress in the CRA. As AAR acknowledges, the Board has the discretion *not* to preempt a law affecting siting.[18] Therefore, the difficult question regarding the preemptive effect of section 10910 would only arise in the event that an applicant for a land-use-exemption permit were to make a persuasive case that the Board should preempt a law affecting siting promulgated under the state's traditional police powers that does not impose an unreasonable burden on interstate commerce and was not being used to discriminate against a rail carrier. We cannot predict whether this scenario will come before the Board. Should the situation described above arise in the future, the Board will, as appropriate, examine the meaning of section 10910 in the context of that specific factual dispute and the particular state law in question. Accordingly, we will remove interim rule § 1155.26(b)(6) from our final rules.[19]

With respect to the procedural requirement in § 1155.21(a)(7) of our interim rules, the information requested in that rule would assist the Board in deciding whether to issue a land-use-exemption permit. The CRA specifically permits the Board to ''consider and give due weight to'' six enumerated factors, as well as ''any other relevant factors, as determined by the Board.'' 49 U.S.C. 10909(d). Although AAR disagreed with the statutory interpretation of section 10910 in the *2011 Decision,* it did not specifically object to the imposition of a procedural requirement requesting information on whether the law from which exemption is sought is a public health or safety standard that falls under the traditional police powers of the state. In fact, AAR acknowledged that the extent of the burden placed on interstate commerce, and whether the law discriminates against rail carriers, are factors in deciding whether to issue a preemptive land-use-exemption permit.[20] We will thus continue to require the information requested in 49 CFR 1155.21(a)(7).

D. Effect of Land-Use-Exemption Permit

NJDEP believes that 49 CFR 1155.26(d) of the 2011 Rules does not reflect the Board's intent. Specifically, NJDEP points to the Board's statement in the *2011 Decision* that ''[u]ltimately, a land-use-exemption permit would only exempt a facility from complying with laws, regulations, and orders affecting the siting that are specified in the permit. The Board will require the applicant to comply with all other laws, regulations, orders, or other requirements affecting the siting of a facility.'' *2011 Decision,* slip op. at 5. NJDEP argues that this statement conflicts with § 1155.26(d) of our 2011 Rules, which states in relevant part that ''a Board-issued land-use-exemption permit will require compliance with such state laws, regulations, orders, or other requirements not otherwise expressly exempted in the permit unless the Board determines otherwise.'' 49 CFR 1155.26(d). NJDEP believes that the qualifier at the end of this section should be removed. We agree that the language of this section does not reflect the fact that a land-use-exemption permit will exempt only those laws specified in the permit, and will reword that section in order to clarify the effect of a permit. Section 1155.26(d) will now state as follows: ''If the Board grants a land-use-exemption permit for a solid waste rail transfer facility, such permit would only exempt a facility from complying with state laws, regulations, orders, or other requirements affecting the siting of a facility that are specified therein. The permit will require compliance with all other state laws, regulations, orders, or other requirements not otherwise expressly exempted in the permit.''

E. The Process To Come Before the Board

CTEP and NSWMA request that the Board require, as a prerequisite, that an applicant seek state or local approval under the challenged laws and rules before they can be included on the list to be preempted under 49 CFR 1155.21(7), unless it is ineffective or demonstrably futile to do so.[21] This request was also adopted by ACUA, Bensalem, and RIRRC.[22]

As the Board previously explained in the *2011 Decision,* slip op. at 10, this suggestion conflicts with the language of the CRA, which explains that a rail carrier that owns or operates a facility may come before the Board prior to seeking a siting determination from the state. *See* 49 U.S.C. 10909(a)(1). Thus, we will not adopt the proposed change.

F. Definition of ''State Requirements''

ACUA notes that, pursuant to 49 CFR 1155.2(e), ''[s]tate requirements * * * does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a state, including a locality or municipality, unless a state expressly delegates such authority to such political subdivision.'' [23] ACUA states that ''it should be noted that in New Jersey, and perhaps other states, delegation of state authority may be to

[16] AAR also claims that our interpretation of section 10910 in the *2011 Decision* conflicts with our interpretation of that section in the *2009 Decision.* (AAR's Comments 4.) Given our decision here, there is no need to address this argument.

[17] AAR's Comments 6 n.5, 20 n.12.

[18] AAR's Comments 6 n.5 (*citing* 49 U.S.C. 10909(f) (''An exemption may require compliance with such State laws, regulations, orders, or other requirements.'')).

[19] Former § 1155.26(b)(7) is now renumbered as § 1155.26(b)(6) in the final rules.

[20] AAR's Comments 14–15.

[21] CTEP's Comments 1; NSWMA's Comments 4.

[22] ACUA's Comments 1; Bensalem's Comments 1; RIRRC's Comments 1.

[23] ACUA's Comments 1.

an entity other than a 'locality or municipality' and that a utility authority may * * * constitute a political subdivision.'' [24] Section 1155.2(e) mirrors the language of 49 U.S.C. 10908(e)(3), the plain language of which indicates that a political subdivision of a state includes a locality or municipality, but may also include other entities. We will continue to follow the language of the statute.

ACUA also states that ''entities such as County Utilities Authorities in New Jersey which have been designated as the implementation agency for the State Solid Waste Management Plan should be entitled to notice at each level of the process.'' [25] In response to the comment, we will broaden the list of entities that are required to receive service of applications for land-use-exemption permits and related Notices of Intent to include any agency designated as the implementation agency for the solid waste management plan of the state in which the solid waste rail transfer facility is located or proposed to be located. We have adjusted 49 CFR 1155.20(a)(2)(ii), 1155.22(b), 1155.22(d)(4), 1155.25(a), and 1155.25(b) accordingly.

G. Other Comments

AAR suggests that we add language to 49 CFR 1155.2(a)(10)(ii)(B). Specifically, AAR argues that instead of stating ''a facility where solid waste is transferred or transloaded solely from a tank truck directly to a rail tank car,'', that section should read ''to or from a tank truck directly to a rail tank car,''.[26] The language of that section, however, mirrors the language of 49 U.S.C. 10908(e)(1)(H)(ii)(II).[27] We will continue to follow the language of the statute.

AAR also proposes that we modify the language of 49 CFR 1155.20(a) and 1155.22(a) so that an applicant need not file a Notice of Intent if it is required to submit an application due to a governor's petition pursuant to 49 CFR 1155.13. AAR argues that the petition would provide sufficient notice of intent.[28] As such, AAR requests that the Board revise the language of § 1155.20(a) to ''Except where an application is required by Subpart B, [a]n applicant * * * shall give its Notice of Intent to file a land-use-exemption-permit application by complying with the following procedures * * * .'' Similarly, AAR requests that the Board revise the language of § 1155.22(a) to ''Except where an application is required by Subpart B, [t]he applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20.'' We decline to adopt AAR's proposed changes. We believe that all applicants, including those who are required to file an application pursuant to a governor's petition, should comply with the application procedures, including the Notice of Intent provisions, provided in Subpart C. A Notice of Intent under Subpart C provides broader notice than a petition under Subpart B,[29] and it also serves to notify the Board and all parties that the application process is commencing.

AAR also notes that the schedule in 49 CFR 1155.26(a)(2) omits the deadlines for the Notice of Intent.[30] We will add language to § 1155.26(a)(2) to account for the deadlines for the Notice of Intent.

Both AAR and NJDEP accurately note that certain references in the revised interim rules to 49 CFR 1155.25 are in error.[31] Section 1155.21(c) should read ''[t]he applicant shall certify that it has submitted an Environmental and/or Historic Report containing the information in 49 CFR 1155.24(b), 1105.7, and 1105.8 * * * .'' Similarly, the first sentence of § 1155.20(c) has been revised to read ''[a]pplicant must also submit an Environmental and/or Historic Report containing the information described at 49 CFR 1155.24(b), 1105.7, and 1105.8 * * * .'' Finally, the citation at the end of § 1155.20(c) has been changed to 49 CFR 1155.24(c).

ACUA poses a question regarding 49 CFR 1155.12(b), which pertains to facilities which were in existence on October 16, 2008, but have since ceased operations. Assuming a facility can prove it was operating as a solid waste rail transfer facility on October 16, 2008, and has since ceased operations, ACUA wonders whether § 1155.12(b) would render the facility, should it seek to restore operations, subject to review as a proposed facility. ACUA also asks under what circumstances, if any, a facility which ''no longer operates as such'' may allege continuous operations to maintain its exemption. We will not address those issues in this proceeding because the answers would depend on the factual circumstances of the particular case.

Paperwork Reduction, Regulatory Flexibility, and Environmental Certifications

In the *2011 Decision,* published in the **Federal Register** at 76 FR 16538 on March 24, 2011, the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.11, regarding: (1) Whether the collection of information associated with the land-use-exemption permit application is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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. No comments related to these questions were received.

The proposed rules were submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11. No comments were received from OMB, which approved the collection, titled ''Applications for Land-Use-Exemption Permits,'' and assigned it Control No. 2140–0018. Unless renewed, OMB approval expires June 30, 2014. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.11, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

In accordance with the Regulatory Flexibility Act at 5 U.S.C. 605(b), we certify that the final rules will not have a significant economic impact on a substantial number of small entities. The basis for this determination is as follows. While applicants for land-use-exemption permits could be small entities, as defined in 13 CFR part 121,

[24] ACUA's Comments 1.

[25] ACUA's Comments 1.

[26] AAR's Comments 20.

[27] Section 1155.2(a)(10)(ii)(B) of the 2011 Rules erroneously quoted the CRA with respect to the word ''solely.'' We are correcting that here so that the final rule mirrors the CRA.

[28] AAR's Comments 20.

[29] Under Subpart C, 49 CFR 1155.20 provides that an applicant shall serve its Notice of Intent on the Board; the governor of the state where the facility is located; the municipality, state, and any relevant political subdivision of a state or federal or state regional planning entity in the jurisdiction of which the facility is located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). Additionally, the applicant must publish its Notice of Intent at least once during each of three consecutive weeks in a newspaper of general circulation in each county in which any part of the facility is located. By contrast, under Subpart B, 49 CFR 1155.11 provides that a petition filed by the governor be filed with the Board; served on the rail carrier that owns or operates the facility; and served on the facility, if its address is different than that of the rail carrier's.

[30] AAR's Comments 21.

[31] AAR's Comments 20; NJDEP's Comments 4.

under neither the statute nor the final rules could the Board, on its own, require a party to apply for a Board permit. *See* 49 U.S.C. 10908(b)(2)(B), 10909(a). In general, that decision is solely within the control of the entity. The one exception is that a governor of the state in which an existing facility is located could petition the Board, under 49 U.S.C. 10908(b)(2)(B) and 49 CFR part 1155 subpart B, to require that facility to obtain a land-use-exemption permit in order for it to continue to operate. Even in that circumstance, the authority lies with the state governors—not the Board—to initiate the Board's processes. In all other scenarios, a party can avoid being subject to the Board's rules regarding land-use-exemption permits by complying with state requirements. Therefore, the final rules will not circumscribe or mandate the conduct of a substantial number of small entities.

Moreover, any burdens imposed on small entities come from the plain language of the CRA and the requirements that Congress has imposed on this agency. In revising our 2009 Rules and 2011 Rules, we have attempted to simplify the process wherever possible. Finally, we have provided a waiver provision that could mitigate any negative impacts on small entities. Our rules specifically provide that an applicant may request a waiver of any particular part of the application procedures. *See* 49 CFR 1155.22(d)(4).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The rules set forth below are adopted as final rules.

2. Notice of this decision will be published in the **Federal Register**. The final rules will be effective on December 21, 2012.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

List of Subjects in 49 CFR Part 1155

Administrative practice and procedure.

Decided: November 14, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board revises part 1155 of title 49, chapter X, of the Code of Federal Regulations to read as follows:

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

Subpart A—General

Sec.

1155.1 Purpose and scope.
1155.2 Definitions.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

1155.10 Contents of petition.
1155.11 Filing and service of petition.
1155.12 Participation in petition procedures.
1155.13 Board determination with respect to a Governor's petition.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit

1155.20 Notice of intent to apply for a land-use-exemption permit.
1155.21 Contents of application.
1155.22 Filings and service of application.
1155.23 Participation in application proceedings.
1155.24 Environmental review.
1155.25 Transfer and termination of a land-use-exemption permit.
1155.26 Board determinations under 49 U.S.C. 10909.
1155.27 Petitions to modify, amend, or revoke a land-use-exemption permit.

Appendix A to Part 1155—Form Notice of Intent To Apply

Appendix B to Part 1155—Form Federal Register Notice

Authority: 49 U.S.C. 721(a), 10908, 10909, 10910.

PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

Subpart A—General

§ 1155.1 Purpose and scope.

49 U.S.C. 10501(c)(2)(B) excludes solid waste rail transfer facilities from the Board's jurisdiction except as provided under 49 U.S.C. 10908 and 10909. Sections 10908 and 10909 provide the Board authority to issue land-use-exemption permits for solid waste rail transfer facilities when certain conditions are met. The regulations in this part concern land-use-exemption permits and the Board's standard for review.

§ 1155.2 Definitions.

(a) Unless otherwise provided in the text of these regulations, the following definitions apply in this part:

(1) *Commercial and retail waste* means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(2) *Construction and demolition debris* means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(3) *Environmental Impact Statement or ''EIS''* means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major federal action significantly affecting the quality of the human environment.

(4) *Household waste* means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(5) *Industrial waste* means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 *et seq.*), mining or oil and gas waste.

(6) *Institutional waste* means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(7) *Municipal solid waste* means household waste, commercial and retail waste, and institutional waste.

(8) *Office of Environmental Analysis or ''OEA''* means the Board staff that prepares the Board's environmental documents and analyses.

(9) *Solid waste* means construction and demolition debris; municipal solid waste; household waste; commercial and retail waste; institutional waste; sludge; industrial waste; and other solid waste, as determined appropriate by the Board, but not waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles), or waste generated as a result of a railroad accident, incident, or derailment.

(10) *Solid waste rail transfer facility*—

(i) Means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in 49 U.S.C. 10102) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity

takes place outside of original shipping containers; but

(ii) Does not include—

(A) The portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(B) A facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.

(11) *Sludge* means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(b) *Exceptions.* Notwithstanding paragraph (a) of this section, the terms *household waste, commercial and retail waste,* and *institutional waste* do not include yard waste and refuse-derived fuel; used oil; wood pallets; clean wood; medical or infectious waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(c) *Land-use-exemption permit* means the authorization issued by the Board pursuant to the authority of 49 U.S.C. 10909(a) and includes the term ''siting permit'' in 49 U.S.C. 10909(e).

(d) *State laws, regulations, orders, or other requirements affecting the siting of a facility,* as used in 49 U.S.C. 10909(f) and 49 CFR 1155.27(d), include the requirements of a state or a political subdivision of a state, including a locality or municipality, affecting the siting of a facility.

(e) *State requirement,* as used in 49 U.S.C. 10908 does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a state, including a locality or municipality, unless a state expressly delegates such authority to such political subdivision.

Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit

§ 1155.10 Contents of petition.

A petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, submitted by the Governor of the state or that Governor's designee, shall contain the following information:

(a) The Governor's name.

(b) The state's name and the name of any agency filing on behalf of the Governor.

(c) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.

(d) The name of the rail carrier that owns or operates the facility or the rail carrier on whose behalf the facility is operated.

(e) A good-faith certification that the facility qualified as a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2, on October 16, 2008.

(f) Relief sought (that the rail carrier that owns or operates the facility be required to apply for a land-use-exemption permit).

(g) Name, title, and address of representative of petitioner to whom correspondence should be sent.

§ 1155.11 Filing and service of petition.

(a) When the petition is filed with the Board, the petitioner shall serve concurrently, by first class mail, a copy of the petition on the rail carrier that owns or operates the solid waste rail transfer facility and on the facility if the address is different than the rail carrier's address. A copy of the certificate of service shall be filed with the Board at the same time.

(b) Upon the filing of a petition, the Board will review the petition and determine whether it conforms to all applicable regulations. If the petition is substantially incomplete or is otherwise defective, the Board will reject the petition without prejudice for stated reasons by order within 15 days from the date of filing of the petition.

(c) If the petition is rejected, a revised petition may be resubmitted, and the Board will determine whether the resubmitted application conforms with all prescribed regulations.

§ 1155.12 Participation in petition proceedings.

(a) An interested person may file a reply to the petition challenging any of the information contained in the petition that is required by 49 CFR 1155.10(c) through (e) and may offer evidence to support its contention. The petitioner will have an opportunity to file a rebuttal.

(b) A facility can acknowledge that it was a solid waste rail transfer facility on October 16, 2008, but no longer operates as such and therefore is not required to seek a land-use-exemption permit. To do so, a facility must file with the Board a certification stating that it:

(1) No longer operates as a solid waste transfer facility;

(2) Understands that by certifying that it no longer operates as a solid waste transfer facility, it no longer qualifies as a facility in existence on October 16, 2008 for purposes of the Clean Railroad Act and these regulations; and

(3) Understands that if it seeks a land-use-exemption permit in the future, it would be required to do so as a proposed facility.

(c) *Filing and service of replies.* (1) Any reply shall be filed with the Board (the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423) within 20 days of the filing with the Board of the petition.

(2) A copy of the reply shall be served on petitioner or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Any rebuttal to a reply shall be filed and served by petitioner no later than 30 days after the filing of the petition.

§ 1155.13 Board determination with respect to a Governor's petition.

The Board shall accept the Governor's complete petition on a finding that the facility qualified as a solid waste rail transfer facility, as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2, on October 16, 2008. If the Board finds that the facility currently does not qualify for or require a land-use-exemption permit, any future use of the facility as a solid waste rail transfer facility would require an application for a land-use-exemption permit as a proposed facility and/or the proper state permits. In a decision granting the Governor's petition, the Board shall require that the rail carrier that owns or operates the facility, or the operator of the facility, file a land-use-exemption-permit application within 120 days of the service date of the decision.

Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit

§ 1155.20 Notice of intent to apply for a land-use-exemption permit.

(a) *Filing and publication requirements.* An applicant (i.e., a solid waste rail transfer facility, or the rail carrier that owns or operates the facility) shall give its Notice of Intent to file a land-use-exemption-permit application by complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Board in the format prescribed in Appendix A to this part. The Notice of Intent shall be filed in accordance with the time

requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) The Governor of the state where the facility is located;

(ii) The municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity in the jurisdiction of which the solid waste rail transfer facility is located or proposed to be located; and

(iii) The appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2).

(3) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the proposed or existing facility is located.

(b) *Time limits.* (1) The Notice of Intent must be served on the parties discussed above at least 15 days, but not more than 30 days, prior to the filing of the land-use-exemption-permit application;

(2) The three required newspaper Notices must be published within the 30-day period prior to the filing of the application; and

(3) The Notice of Intent must be filed with the Board either concurrently with service on the required parties or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant must also submit an Environmental and/or Historic Report containing the information described at 49 CFR 1155.24(b), 1105.7, and 1105.8, to the extent applicable, at least 45 days prior to filing an application. OEA may reject any report that it deems inadequate. The environmental and historic reporting requirements that would otherwise apply are waived, however, if the applicant or the Board hires a third-party consultant, OEA approves the scope of the consultant's work, and the consultant works under OEA's supervision to prepare an EIS or other environmental documentation. In such a case, the consultant acts on behalf of the Board, working under OEA's direction to collect the needed environmental information and compile it into an EIS or other appropriate environmental documentation. *See* 49 U.S.C. 10909(h); 49 CFR 1155.24(c).

§ 1155.21 Contents of application.

Applications for land-use-exemption permits for the facility, and any proposed future expansion within 10 years of the application date, shall contain the following information, including supporting documentation:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Summary of why a land-use-exemption permit is being sought.

(4) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.

(5) The name of the rail carrier that owns or operates the facility or the rail carrier on whose behalf the facility is operated, the line of railroad serving the facility, the milepost location of the facility, and the milepost and names of the stations that the facility is located between.

(6) Name, title, and address of representative of applicant to whom comments should be sent.

(7) Copies of the specific state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility from which the applicant requests entire or partial exemption, any publicly available material providing the criteria for the application of the state, local, or municipal laws, regulations, orders, or other requirements affecting the siting, and a description of any action that the state, local, or municipal authority has taken affecting the siting of the facility. The applicant shall state whether each law, regulation, order or other requirement from which an exemption is sought is an environmental, public health, or public safety standard that falls under the traditional police powers of the state. If the applicant states that the requirement is not such a standard, it shall explain the reasons for its statement.

(8) Certification that the laws, regulations, orders or other requirements from which the applicant requests exemption are not based on federal laws, regulations, orders, or other requirements.

(9) Certification that the facility complies with all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the facility except for those from which it seeks exemption.

(10) Certification that the applicant has applied or will apply for the appropriate state permits not affecting siting.

(11) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these types of lands.

(12) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan, or, that the facility is consistent with the restrictions implemented by the applicable state under The Highlands Conservation Act, Public Law No. 108–421, placed on its proposed location. For facilities in existence as of October 16, 2008, state whether the facility is located on any of these lands, and, if so, address whether the facility is consistent with the restrictions placed on the location by the applicable state under that law.

(13) An explanation of how the facility comes within the Board's jurisdiction under 49 U.S.C. 10501.

(14) The owner and operator of the facility.

(15) The interest of the rail carrier in the facility.

(16) An explanation of how the facility meets the definition of a solid waste rail transfer facility at 49 U.S.C. 10909(e)(1)(H).

(17) A statement whether the applicant has sought permission from the applicable state, local, or municipal authority with respect to some or all of the facility in its application and received an unsatisfactory result affecting the siting of the facility. The applicant shall provide information about the unsatisfactory result and shall include all relevant orders, decisions, or other notices of the denial.

(18) A detailed description of the operations and activities that will occur/are occurring at the facility.

(19) Detailed map showing the subject facility on sheets not larger than 11x17 inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the facility on the rail line and its relation to other rail lines in the area, highways, water routes, population centers, and any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1).

(20) Detailed drawing of the subject facility on sheets not larger than 11x17 inches, drawn to scale, and with the scale shown thereon. The drawing must show, in clear relief, the exact boundaries of the facility, structures at the facility, the location and type of the operations taking place at the facility, the proposed traffic configuration for the solid waste entering and leaving the facility, reasonable future expansion planned for the next 10 years that the applicant requests to be included in the land-use-exemption permit, any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1), and any other information that the applicant believes would be relevant.

(21) A detailed justification for why any future expansion planned for the next 10 years should be covered by the land-use-exemption permit.

(b) *Statement.* A statement that sets forth, based on currently available information, the reasons why the Board should grant a land-use-exemption permit to the applicant under the standards in 49 U.S.C. 10909(c), (d) and the regulations in this part. Specifically, the applicant shall include an explanation of whether the laws, regulations, or other requirements affecting siting of the facility from which exemption is sought, on their face or as applied, unreasonably burden the interstate transportation of solid waste by railroad or discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility, and, if so, why.

(c) *Environmental impact.* The applicant shall certify that it has submitted an Environmental and/or Historic Report containing the information in 49 CFR 1155.24(b), 1105.7, and 1105.8, to the extent applicable, if an Environmental and/or Historic Report is required. *See* 49 CFR 1155.20(c).

(d) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(e) *Draft* ***Federal Register*** *Notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the **Federal Register** within 20 days of the application's filing with the Board. The draft notice shall be in the form set forth in Appendix B to this part.

(f) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the applicant having knowledge of the facts and matters relied upon.

Verification

State of _____ ss.

County of _____

_____ (Name of affiant) makes oath and says that (s)he is the _____ (title of affiant) of the _____ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in Finance Docket No. ____ (Sub-No. ____); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me _____ in and for the State and County above named, this ____ day of ____, 20____.

My commission expires _____

§ 1155.22 Filings and service of application.

(a) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20. The affidavit shall include the dates of service, posting, and newspaper publication of the Notice of Intent.

(b) When the application is filed with the Board, the applicant shall serve concurrently, by first-class mail, a copy on the Governor of the state where the facility is located; the municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located or proposed to be located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). A copy of the certificate of service shall be filed with the Board at the same time.

(c) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a comment upon request. A copy of the certificate of service shall be filed with the Board at the same time.

(d)(1) Upon the filing of a land-use-exemption-permit application, the Board will review the application and determine whether it conforms to all applicable regulations. If the application is substantially incomplete or is otherwise defective, the Board shall reject the application for stated reasons by order within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the **Federal Register** by the Board, through the Director of the Office of Proceedings, within 20 days of the filing of the application.

(2) If the application is rejected, a revised application may be submitted and the Board will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted within 60 days of the order rejecting the incomplete or improper application need not be subject to new notice and publication under § 1155.20, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(3) The resubmission of a complete and properly filed land-use-exemption-permit application shall be considered a de novo filing for the purposes of computation of the time periods prescribed in the regulations contained in this part.

(4) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. When the petition is filed with the Board, the applicant shall serve, by first-class mail, a copy on the Governor of the state where the facility is located; the municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located or proposed to be located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). A copy of the certificate of service shall be filed with the Board at the same time. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection.

§ 1155.23 Participation in application proceedings.

(a) *Initial comments.* Interested persons may become parties to a land-use-exemption-permit proceeding by filing initial comments with the Board within 45 days of the filing of the application. Comments should contain the following information, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning any organization or public interest it represents.

(3) Reasons, in general, why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c), (d) and this part.

(4) Any rebuttal to the evidence and argument submitted by applicant.

(b) *Final comments.* Interested persons, including the applicant, within 30 days after the close of OEA's environmental review, may comment on how the information developed during OEA's environmental review concerning the considerations at 49 U.S.C. 10909(d)(1) through (5) should be weighed with the remaining transportation and other relevant considerations at 49 U.S.C. 10909(d)(6) through (7). The parties will have an additional 15 days to respond to other parties' arguments. All pleadings shall be limited to weighing the information developed during OEA's environmental review with transportation and other concerns, and should not be directed towards the adequacy of OEA's environmental review. (Interested persons may comment on the adequacy of OEA's environmental review during the normal comment period for the EIS as provided in 49 CFR 1105.10(a)(4). *See* 49 CFR 1155.24(a).) All comments under this paragraph shall contain the information required in paragraphs (a)(1) through (2) of this section.

(c) *Filing and service of comments and replies (including evidence and argument).* (1) Initial comments shall be filed with the Board (addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423) within 45 days of the filing with the Board of a land-use-exemption-permit application. An original and 10 copies of each comment shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(2) Final comments shall be filed and served on all parties within 30 days of the close of the environmental review. An original and 10 copies of such comments shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Replies to final comments shall be filed and served on all parties no later than 45 days after the close of the environmental review. An original and 10 copies of such replies shall be filed with the Board. A copy of each reply to comments shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

§ 1155.24 Environmental review.

(a) A land-use-exemption permit generally will require the preparation of an EIS. OEA may reclassify the environmental review requirements of land-use-exemption proceedings on a case-by-case basis, pursuant to 49 CFR 1105.6(d).

(b) An applicant for a land-use-exemption permit must submit an Environmental Report, at least 45 days prior to filing a land-use-exemption-permit application, containing the information described at 49 CFR 1105.7 to the extent applicable to solid waste rail transfer facilities. Applicants shall concurrently file a Historic Report containing the information at 49 CFR 1105.8 if applicable. The Environmental Report must also contain a discussion of the five factors for consideration listed at 49 U.S.C. 10909(d)(1) through (5) and address any associated environmental impacts as they relate to the facility for which a land-use-exemption permit is sought.

(c) The Board strongly encourages applicants to use third-party contractors to assist OEA in preparing the appropriate environmental documentation in land-use-exemption-permit proceedings. *See* 49 CFR 1105.10(d). The environmental reporting requirements outlined above that would otherwise apply are waived if an applicant hires a third-party contractor, OEA approves the scope of the contractor's work, and the contractor works under OEA's direct supervision. *See* 49 CFR 1105.10(d). If an applicant does not hire an independent third-party contractor, the Board may hire a third-party contractor and charge the costs for the contractor to the applicant. *See* 49 U.S.C. 10909(h).

(d) The Board's procedures set forth in 49 CFR 1105.10 for implementation of environmental laws are controlling unless superseded by provisions in this Part.

(e) An applicant for a land-use-exemption permit must follow the Board's procedures at 49 CFR 1105.9 for compliance with the Coastal Zone Management Act, 16 U.S.C. 1451 through 1465, if that act is applicable.

§ 1155.25 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit may be transferred from a rail carrier to an acquiring rail carrier without the need for a new application for a land-use-exemption permit if the rail line associated with the solid waste rail transfer facility is transferred to another rail carrier or to an entity formed to become a rail carrier pursuant to authority granted by the Board under 49 U.S.C. 10901, 10902, or 11323. When seeking Board authority under 49 U.S.C. 10901, 10902, or 11323, the applicant(s) shall specifically advise the Board, the municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, of the intended transfer. The **Federal Register** notice concerning the acquisition shall include a statement that a solid waste rail transfer facility with a Board-issued land-use-exemption permit is included in the acquisition.

(b) When a carrier plans to cease using a facility as a solid waste rail transfer facility, or when a facility is transferred to any party in any manner other than that described in paragraph (a) of this section, the entity that received the land-use-exemption permit must notify the Board, the municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, in writing no later than 60 days prior to the proposed cessation or transfer. Upon receipt of that notice, the Board will publish notice in the **Federal Register** that the land-use-exemption permit will be terminated on the 60th day unless otherwise ordered by the Board.

§ 1155.26 Board determinations under 49 U.S.C. 10909.

(a) *Schedule.* (1) The schedule in paragraph (a)(2) of this section shall govern the process for Board consideration and decisions in land-use-exemption-permit application proceedings from the time the application is filed until the time of the Board's decision on the merits:

(2) At least 45 days prior to filing of application—Environmental Report

(and/or Historic Report, if applicable) filed and environmental process initiated pursuant to 49 CFR 1155.24. Within 30 days prior to filing of application—Notice of Intent filed with the Board pursuant to the deadlines and requirements described in 49 CFR 1155.20(b)(3).

(i) Day 0—Application filed.

(ii) Day 20—Due date for Notice of Application to be published in the **Federal Register**.

(iii) Day 45—Due date for initial comments.

(iv) 30 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for final comments.

(v) 45 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for replies to final comments.

(3) A decision on the merits will be due 90 days after a full record is developed.

(b) *Standard for review.* (1) The Board will issue a land-use-exemption permit only if it determines that the facility at the existing or proposed location would not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument.

(3) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(4) The Board will reject an application from a person who is not a rail carrier, but is instead operating on behalf of a rail carrier unless;

(i) The applicant has sought permission from the applicable state, local, or municipal authority with respect to some or all of the property in the application and received an unsatisfactory result affecting the siting of the facility, or

(ii) The Governor of the state has petitioned the Board to require the facility to apply under subpart B of this part.

(5) The Board will issue a land-use-exemption permit to an applicant that has received an unsatisfactory result from a state, local or municipal authority affecting the siting of the facility only if it finds that the laws, regulations, or other requirements affect the siting of the facility, on their face or as applied, either;

(i) Unreasonably burden the interstate transportation of solid waste by railroad, or

(ii) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

(6) A land-use-exemption permit will only exempt state, local, or municipal laws, regulations, orders, other requirements, or portions thereof, affecting the siting of the solid waste rail transfer facility.

(c) *Considerations.* As required by 49 U.S.C. 10909(d), the Board will consider and give due weight to the following, as applicable:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the state or state subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to federal and state law;

(4) Regional solid waste disposal plans developed pursuant to federal or state law;

(5) Any federal and state environmental protection laws or regulations applicable to the site;

(6) Any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) Any other relevant factors, as determined by the Board.

(d) *Permits.* If the Board grants a land-use-exemption permit for a solid waste rail transfer facility, such permit will only exempt a facility from complying with state laws, regulations, orders, or other requirements affecting the siting of the facility that are specified therein. The permit will require compliance with all other state laws, regulations, orders, or other requirements not otherwise expressly exempted in the permit.

§ 1155.27 Petitions to modify, amend, or revoke a land-use-exemption permit.

General rule. Petitions to modify, amend, or revoke land-use-exemption permits shall be decided in accordance with the Board's normal standard of review for petitions to reopen administratively final Board actions at 49 CFR 1115.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions:

(a) An entity that petitions for a modification or amendment requesting an expansion of federal preemption or the facility's operations or physical size is subject to the notice and application requirements in this subpart C. The language of the notifications shall be modified to note that the petition is for a modification or amendment.

(b) The Board will approve or deny petitions to modify, amend, or revoke a land-use-exemption permit within 90 days after the full record for the petition is developed.

Appendix A to Part 1155—Form Notice of Intent To Apply

Docket No. FD ____(Sub-No. ____)

Notice of Intent to apply for a land-use-exemption permit for a solid waste rail transfer facility.

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2. The solid waste rail transfer facility, owned by (name of owner), and operated by (name of operator), is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a (name of rail carrier) line of railroad known as _____ at milepost _____ between (station name) at milepost _____ and (station name) at milepost _____.

The reason(s) for the proposed permit application is (are) _____ (explain briefly and clearly the activities undertaken, or proposed to be undertaken, by the applicant at the solid waste rail transfer facility. Describe the specific state and local laws,

regulations, orders or other requirements affecting siting from which the applicant requests entire or partial exemption and any action that the state, local, or municipal authority has taken affecting the siting of the facility. Also, if applicant is not the rail carrier, provide the name of the rail carrier that owns or operates the facility or has the facility operated on its behalf.)

(Include this paragraph for facilities not in existence on October 16, 2008). Applicant certifies that, based on information in its possession, the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. Applicant further certifies that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Public Law 108–421, placed at its proposed location). Any relevant documentation in the railroad's possession on these issues will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

The application containing the information set forth at 49 CFR 1155.21 will include the applicant's case for the granting of the land-use-exemption permit. Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board initial comments concerning the application within 45 days after the application is filed.

The party's initial comments should contain that party's initial arguments in support or opposition based on the information available at that point including the following, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning the organization or public interest the commenter represents.

(3) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d), and the Board's regulations at 49 CFR 1155.27.

(4) If the applicant files under 49 CFR 1155.22, specific reasons why commenter supports or opposes the Board's accepting the application.

(5) Any rebuttal of material submitted by applicant.

The parties' initial comments will be considered by the Board in determining what disposition to make of the application. Parties seeking further information concerning the filing of comments should refer to 49 CFR 1155.24.

Interested persons also will have the opportunity to provide detailed comments during the Board's environmental review under the National Environmental Policy Act. 49 CFR 1105.10 and 49 CFR 1155.25. Questions concerning the environmental review process or potential environmental issues may be directed to the Board's Office of Environmental Analysis (OEA). After the close of the environmental review, interested parties may file final comments on how the information developed during the environmental review should be weighed by the Board in determining whether to grant the requested land-use-exemption permit. *See* 49 CFR part 1155 for details on these processes.

All comments should indicate the proceeding designation Docket No. FD ____ (Sub-No. ____). Initial comments must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR part 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. *See* 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR part 1155.

A copy of the application will be available for public inspection on or after (insert date the land-use-exemption-permit application is to be filed with Board) and will be available on the Board's Web site at *http://www.stb.dot.gov*. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Appendix B to Part 1155—Form Federal Register Notice

Docket No. FD ____ (Sub-No. ____)

Notice of Application for a land-use-exemption permit for a solid waste rail transfer facility.

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility. The solid waste rail transfer facility, owned by (name of owner), and operated by (name of operator), is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of (name of rail carrier) railroad known as _____ at milepost _____ between (station name) at milepost _____ and (station name) at milepost _____. The application explains why applicant believes its request for a land-use-exemption permit should be granted.

(Include this paragraph for facilities not in existence on October 16, 2008). The facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. The facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108–421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Public Law 108–421, placed on its proposed location). Any relevant documentation in the railroad's possession will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

Any interested person may file with the Surface Transportation Board initial comments concerning the application within 45 days of the filing of the application. Persons seeking information concerning the filing of initial comments should refer to 49 CFR 1155.23.

All comments should indicate the proceeding designation Finance Docket No. ____ (Sub-No. ____). Initial comments must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR part 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, 10910, and the Board's implementing land-use-exemption-permit regulations at 49 CFR part 1155.

A copy of the application is available for public inspection. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning the environmental review process or potential environmental issues may be directed to the Board's Office of Environmental Analysis (OEA). After the close of the environmental review, interested parties may file final comments on how the information developed during the environmental review should be weighed by the Board in determining whether to grant the requested land-use-exemption permit. *See* 49 CFR part 1155 for details on these processes.

[FR Doc. 2012–28196 Filed 11–20–12; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 77, No. 225
Wednesday, November 21, 2012

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 152

[Docket No. RM13–1–000]

Enhanced Natural Gas Market Transparency

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on what changes, if any, should be made to its regulations under the natural gas market transparency provisions of section 23 of the Natural Gas Act (NGA), as adopted in the Energy Policy Act of 2005 (EPAct 2005). In particular, the Commission is considering the extent to which quarterly reporting of every natural gas transaction within the Commission's NGA jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas) would provide useful information for improving natural gas market transparency.

DATES: Comments are due January 22, 2013.

ADDRESSES: You may submit comments, identified by docket number an in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov*. Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov/docs-filings/efiling.asp*.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT: Jamie Marcos (Legal Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6628, *Jamie.Marcos@ferc.gov*.

Kamaria Martin (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8015, *Kamaria.Martin@ferc.gov*.

Issued November 15, 2012.

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on what changes, if any, should be made to its regulations under the natural gas market transparency provisions of section 23 of the Natural Gas Act (NGA), as adopted in the Energy Policy Act of 2005 (EPAct 2005).[1] In particular, the Commission is considering the extent to which quarterly reporting of every natural gas transaction within the Commission's NGA jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas) [2] would provide useful information for improving natural gas market transparency.

2. The Commission is considering amending its regulations pursuant to the natural gas market transparency provisions added to the NGA by EPAct 2005.[3] Section 23 of the NGA directs the Commission ''to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce'' and states that the Commission may obtain ''information about the availability and prices of natural gas sold at wholesale and in interstate commerce'' from ''any market participant.'' [4] Thus, section 23 grants the Commission the authority to require submission of information regarding the availability and prices of wholesale physical natural gas in interstate commerce as it is considering in this Notice of Inquiry. In addition, section 4A of the NGA states that ''[i]t shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas * * * subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance * * * in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers.'' [5]

3. This Notice of Inquiry will assist the Commission in determining whether additional changes should be made to its regulations under the natural gas market transparency provisions of section 23 of the NGA, as adopted in the EPAct 2005,[6] and the appropriate scope and particulars of any such changes.

[1] Energy Policy Act of 2005, Public Law 109–5, § 316, 119 Stat. 594 (2005) (EPAct 2005) (*codified as* 15 U.S.C. 717t–2).

[2] Under section 1(b) of the NGA, the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in such transportation or sale. 15 U.S.C. 717(b). The Commission's jurisdiction, however, does not extend to ''first sales'' removed from the Commission's NGA section 1(b) jurisdiction by the Wellhead Decontrol Act of 1989, sales of imported natural gas, sales of imported liquefied natural gas, and sales and transportation by NGA section 1(b)–(d) entities. *See infra* n.25.

[3] EPAct 2005 § 316 (*codified as* 15 U.S.C. 717t–2).

[4] Natural Gas Act § 23, 15 U.S.C. 717t–2 (2006) (NGA § 23). Section 23 of the NGA states: ''[(a)](2) The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.

[(a)](3) The Commission may—(A) obtain the information described in paragraph (2) from any market participant; and (B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b). * * *

(b)(1) Rules described in subsection (a)(2), if adopted, shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

[(b)](2) In determining the information to be made available under this section and the time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.'' NGA § 23.

[5] Natural Gas Act § 4A, 15 U.S.C. 717C–1 (2006) (NGA § 4A).

[6] EPAct 2005, Public Law 109–58, 119 Stat. 594.

I. Background

A. Commission Authority

4. EPAct 2005 amended the NGA by adding the natural gas market transparency provisions at section 23.[7] Section 23 of the NGA directs the Commission ''to facilitate price transparency'' and grants it the authority to ''prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section [23]'' and to obtain ''information about the availability and prices'' from ''any market participant,'' except for natural gas producers, processors, or users with a *de minimis* market presence of natural gas sold at wholesale in interstate commerce.[8] In so doing, NGA section 23 requires that the Commission consider the degree of price transparency provided by existing price publishers and trade processing services, and rely on such publishers and services to the maximum extent possible. In addition, any rules issued pursuant to NGA section 23 must provide for ''the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public.'' [9] However, NGA section 23 also directs the Commission to exempt from disclosure information that, if disclosed, would be ''detrimental to the operation of an effective market or [that would] jeopardize system security,'' and ''to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of proprietary trading information.'' [10]

5. In 2006 after EPAct 2005 added section 23 to the NGA, Commission staff conducted an extensive outreach effort to formulate options for implementing EPAct 2005's transparency provisions for wholesale natural gas and electric markets. As a result, the Commission used its new transparency authority to adopt additional filing and posting requirements for the sale or transportation of physical natural gas in interstate commerce in Order Nos. 704, 720, and 720–A.[11]

6. Specifically, Order No. 704 requires that ''any buyer or seller of more than a *de minimis* volume of natural gas report volumes of relevant transactions in an annual filing using a new Form No. 552.'' [12] In issuing Order No. 704, the Commission explained that the ''final rule will facilitate transparency of the price formation process in natural gas markets by collecting information to understand in broad terms the size of the natural gas market and the use of fixed prices and of index prices.'' [13]

7. In Order No. 720, the Commission required, pursuant to NGA section 23, major non-interstate pipelines to post scheduled flow information and information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day.[14] Order No. 720 also requires interstate pipelines to post information regarding no-notice service.[15] The Commission also issued Order No. 720–A, which broadly affirmed Order No. 720, but granted certain requests for rehearing and clarification, including a finding that major non-interstate pipelines must post scheduled flow data for virtual or pooling points, subject to certain conditions. On appeal in *Texas Pipeline Association* v. *FERC,* the Fifth Circuit Court of Appeals vacated Order Nos. 720 and 720–A as the reporting requirements contained therein applied to major non-interstate pipelines.[16] However, the court's decision did not disrupt the reporting and posting obligations of interstate pipelines.[17]

8. In addition to adding the natural gas market transparency provisions to the NGA, EPAct 2005 also added section 4A, which prohibits market manipulation in the natural gas markets and authorized the Commission to prescribe rules ''as necessary in the public interest or for the protection of natural gas ratepayers.'' [18] Pursuant to section 4A, the Commission issued Order No. 670, which added Part 1c to the Commission's regulations [19] setting forth rules that prohibit market manipulation in the natural gas market.[20] Since issuing Order No. 670, the Commission has increased its efforts to prevent and detect market manipulation. As part of that effort, the Commission has sought to increase price transparency in the natural gas and electric markets to deter manipulative activities [21] and to obtain additional market information to be able to better detect potential manipulative activities.[22]

9. While Order Nos. 704 and 720 began the Commission's effort to facilitate price transparency in the natural gas markets as directed by Congress in EPAct 2005, the Commission has identified additional areas of the natural gas market in which it believes increased transparency may be necessary for market participants to better understand the market activities that produce the prices that are reported to indices. The additional information that may be necessary to facilitate price transparency may also assist the Commission in detecting, and ultimately deterring, market manipulation in the natural gas markets. As a result, the Commission is now seeking comments on whether it should amend its regulations to further facilitate price transparency in the natural gas markets. In particular, the

[7] *See* EPAct 2005 § 316 (*codified as* 15 U.S.C. 717t–2). EPAct 2005 similarly amended the Federal Power Act. *See* EPAct 2005 § 1281 (*codified as* 16 U.S.C. 824t) (amending the FPA to add the Electricity Market Transparency Rules in section 220).

[8] NGA § 23.

[9] *Id.* § 23(a)(2).

[10] *Id.* § 23(b).

[11] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, FERC Stats. & Regs. ¶ 31,260 (2007), *order on reh'g,* Order No. 704–A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), *order dismissing reh'g and clarification,* Order No. 704–B, 125 FERC ¶ 61,302 (2008) (Order No. 704) (''Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are 'just and reasonable.'''); *see also Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720, 73 FR 73494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283, at P 3 (2008), *order on reh'g,* Order No. 720–A, 130 FERC ¶ 61,040 (2010) (Order No. 720). The Commission has also exercised its authority to issue rules pursuant the Electric Market Transparency Rules in section 220 of the Federal Power Act. *See Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Order No. 768, 77 FR 61896 (Oct. 11, 2012), FERC Stats. & Regs. ¶ 31,336 (2012) (Order No. 768) (extending Electric Quarterly Report filing requirements additional market participants that are exempt from the Commission jurisdiction under section 205 of the Federal Power Act).

[12] Order No. 704, FERC Stats. & Regs. ¶ 31,260 at PP 2–3.

[13] *Id.* P 7.

[14] Order No. 720, FERC Stats. & Regs. ¶ 31,283 at P 1.

[15] *Id.*

[16] *Texas Pipeline Ass'n* v. *FERC,* 661 F.3d 258 (5th Cir. 2011).

[17] Order Granting Motion to Clarify Opinion, *Texas Pipelines Ass'n* v. *FERC,* 661 F.3d 258 (Dec. 20. 2011).

[18] EPAct 2005 § 315 (*codified as* 15 U.S.C. 717c).

[19] 18 CFR Part 1c (2012).

[20] *Prohibition of Energy Market Manipulation,* Order No. 670, FERC Stats. & Regs. ¶ 31,202 (2006).

[21] *See, e.g.,* Order No. 704, FERC Stats. & Regs. ¶ 31,260, Order No. 720, FERC Stats. & Regs. ¶ 31,283, Order No. 768, FERC Stats. & Regs. ¶ 31,336.

[22] *See, e.g.,* Order No. 768; *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators,* Order No. 760, 77 FR 26674, FERC Stats. & Regs. ¶ 31,330 (2012) (requiring each regional transmission organization and independent system operator to electronically deliver to the Commission, on an ongoing basis, data related to the markets that it administers.)

Commission is considering proposing to require all market participants engaged in sales of wholesale physical natural gas in interstate commerce to report quarterly to the Commission every natural gas transaction within the Commission's NGA jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas).

B. Areas Identified To Increase Price Transparency in the Natural Gas Markets

10. The Commission recognizes that some data are currently available to assess the validity of price signals to the market and the incentives for natural gas market manipulation. In particular, under Order No. 704, natural gas market participants that buy or sell above 2.2 Bcf annually of wholesale natural gas for next day delivery or next month delivery are required to report annually through Form No. 552 their annual sales and purchase volumes, by product (i.e., gas for next day vs. next month delivery) and by transaction type (e.g., fixed and index priced), and whether the specific transaction was reported to natural gas index price publishers. These data may be reported either by individual company affiliates as their traded volumes or by their parent company as rolled-up aggregate volumes. The data reported through Form No. 552 are publicly available.[23] In addition to the Form No. 552 data, the Commission receives tick data from the Intercontinental Exchange (ICE) for physical and financial natural gas transactions and natural gas futures tick data from NYMEX.[24] These tick data are also available to market participants. The Commission and market participants also have access to some information about the transactions that contribute to the formation of the daily and monthly indices reported by *Platts* and the daily indices reported by *Natural Gas Intelligence.* Additionally, the Commission surveys publicly available scheduled flows on natural gas pipelines to discern fundamental activities underpinning regional prices.

11. However, the information that is currently available does not provide full market visibility or price transparency. Much of the data that is currently available is aggregated and does not provide transaction-specific details. For example, the transactional details of off-exchange transactions of physical natural gas are unavailable. Similarly, the data available through Form No. 552 reporting do not include information on price, date, location, or counterparty. The buyers and sellers who report through Form No. 552 are only required to report those monthly transactions that are conducted during bid week for next calendar month delivery. And, while buyers and sellers report whether a transaction was reported to an index publisher, they do not identify the index publisher to whom the transaction was reported. Moreover, the publicly available information on scheduled natural gas pipeline flows is also only available in an aggregated format.

12. The Commission is considering amending its regulations to provide greater natural gas market transparency and to assist the Commission in detecting potential manipulation. Specifically, the Commission is considering whether requiring all market participants engaged in sales of wholesale physical natural gas in interstate commerce to report quarterly to the Commission every natural gas transaction within the Commission's NGA jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas) will improve natural gas market transparency.[25] In particular, the Commission is considering requiring market participants to report the following data elements for all jurisdictional transactions that entail physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas), in a standardized, electronic format and on a quarterly basis: Name, address, and contact information of the trading company, name and location of its holding company, product traded (i.e., next day-delivery natural gas and next month-delivery natural gas), trade execution method (i.e., exchange or off-exchange, and name of exchange or broker) and settlement type (e.g., fixed or index priced), volume (in MMBtu) of natural gas traded, location (hub), price, and date and time of the transaction, name of the counterparty, and the name(s) of the Index publisher(s) to which each transaction was reported.

13. As the Commission is considering whether it should amend its regulations pursuant to NGA section 23, it is also considering whether it should disseminate any transactional data that it would collect publicly to comply with section 23's requirement that any rules issued pursuant to section 23 provide for timely public dissemination of information about the availability and prices of natural gas.[26] Specifically, the Commission is considering releasing the transactional information to the public on a quarterly basis, one month after it is reported to the Commission.

14. The Commission believes such regular reporting of every natural gas transaction within the Commission's NGA jurisdiction that entails physical delivery for the next day or for the next month would facilitate price transparency in the natural gas market by enabling buyers and sellers of natural gas to better understand the trading and prices that contribute to the daily and monthly indices. Market participants lack a complete understanding of the actions that produce the prices that are reported to the indices. Increased confidence in these indices requires greater transparency to assure prices are a result of fundamental supply and demand forces and not the result of manipulation or other abusive market conduct.

15. Furthermore, obtaining such information would significantly increase the information available to the Commission concerning transactions in the natural gas markets thereby enhancing its ability to identify the potential for manipulation in the natural gas markets, to examine more efficiently the manipulative behavior, and to assess the effects of manipulation.

II. Questions

16. The Commission invites all comments on the best approaches to enhance the Commission's surveillance of natural gas markets and transparency. In particular, the Commission requests

[23] Order No. 704, FERC Stats. & Regs. ¶ 31,260.

[24] ''Tick data'' refers to market data that shows the price and volume of every consummated trade.

[25] As noted above, *supra* n.2, the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in such transportation or sale. 15 U.S.C. 717(b). The Commission's jurisdiction, however, does not extend to ''first sales'' removed from the Commission's NGA section 1(b) jurisdiction by the Wellhead Decontrol Act of 1989, and sales and transportation by NGA sections 1(c) and (d) entities. The term ''first sale'' is defined in section 2(21) of the Natural Gas Policy Act of 1978. Section 2(21) sets forth a general rule that all sales in the chain from the producer to the ultimate consumer are ''first sales'' until the gas is purchased by an interstate pipeline, an intrastate pipeline, or an LDC. If an interstate pipeline, intrastate pipeline, or LDC purchases the gas, no subsequent sale of that gas is a ''first sale.'' In addition, sales by an interstate pipeline, intrastate pipeline, LDC, or their affiliates are not ''first sales,'' unless the sale is attributable to volumes produced by the pipeline, LDC or any affiliate. *See In the Matter of Amendments to Blanket Sales Certificates,* 107 FERC ¶ 61,174, at PP 19–28 (2004). NGA section 3(b)(1) also provides that the importation of natural gas from a nation with which there is in effect a free trade agreement and the importation of liquefied natural gas shall be treated as a first sale within the meaning of NGPA section 2(21). 15 U.S.C. 717b(b)(1). The Commission is not currently considering requiring reporting of those sales of natural gas that have been excluded from its NGA section 1(b) jurisdiction.

[26] NGA § 23(a)(2).

comment as to what extent market transparency would be enhanced by requiring market participants to report the transactional data it is considering. The Commission also asks commenters to respond to the following questions.

(A) Questions Related to the Type of Transactional Information the Commission Should Consider Requiring Market Participants To Report

17. Data received through exchanges and collected through other Commission reports neither provide full market visibility necessary for surveillance purposes nor facilitate price transparency, because much of it is only available in an aggregate format without transaction-specific details. Thus, the Commission is considering requiring market participants to report key data elements for all jurisdictional sales of wholesale physical natural gas in interstate commerce that entail physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas), in a standardized, electronic format and on a quarterly basis. Such key elements could include name, address and contact information of the trading company, name and location of its holding company, product traded (i.e., next day-delivery natural gas and next month-delivery natural gas), trade execution method (i.e., exchange or off-exchange, and name of exchange or broker) and settlement type (e.g., fixed or index priced), volume (in MMBtu) of natural gas traded, location (hub), price, and date and time of the transaction, name of the counterparty, and the name(s) of the Index publisher(s) to which each transaction was reported. With this context, the Commission requests comments on the following questions:

(1) What specific data elements should the Commission require to be filed? Should the key data elements noted above be required to be included in such submission or are there additional data elements the Commission should require? Explain why or why not. Are there data elements that the Commission should not require to be reported for commercial or burden reasons? If so, explain why.

(2) Should the Commission collect this data on a quarterly basis? If not, which other reporting frequency should be considered by the Commission and why (i.e. monthly, semi-annually, annually)?

(3) Should the Commission limit the transactional reporting requirements being considered to near-term delivery (i.e., next-day and next-month delivery physical natural gas products) or should the Commission consider reporting requirements for other products as well (i.e., intra-day, balance of month, other non-next day delivery strips, exercised next-month gas options, and/or futures that have delivery obligations beyond prompt month)? Explain why or why not.

(B) Questions Related to Possible Public Dissemination

18. In order to satisfy section 23's requirement that the information obtained through rules issued pursuant to section 23 be publicly disseminated on a timely basis,[27] the Commission is considering whether and how to publicly disseminate any transactional data collected. In particular, the Commission is considering releasing all of the information submitted quarterly, one month after it is submitted to the Commission. For example, transactions completed from January 1 through March 31 would be reported by May 1. Data collected through this process would provide a timely retrospective view of the trading activities. Thus, the Commission requests comment on the following questions:

(1) Which of the key data elements mentioned above in paragraph 17, if any, should be made public? Explain why the Commission should or should not make certain data elements public.

(2) Should the Commission mask, aggregate, or modify the reported data in any manner prior to public dissemination? Explain why the collected data should or should not be masked, aggregated, or modified.

(3) If commercial sensitivity is an issue, is there an appropriate time lag for making information available (i.e., one month, two months)? What are the competitive impacts of publicly disseminating the transactional data being considered by the Commission on a lagged basis? Would public disclosure of transactional data negatively affect the competitiveness of market participants? Provide a detailed explanation as to why public disclosure of transactional data would or would not negatively affect the competitiveness of market participants.

(C) Questions Related to the Scope of the Transactional Reporting Requirement Being Considered by the Commission

19. As noted above, the Commission is considering limiting the scope of the reporting requirement to only natural gas sales within the Commission's NGA section 1(b) jurisdiction that entail physical delivery for the next day or next month. Under section 1(b) of the NGA, the Commission has jurisdiction to regulate the transportation and sale for resale of natural gas in interstate commerce and any natural gas company engaged in such transportation or sale.[28] The Commission's jurisdiction, however, does not extend to ''first sales,'' which were removed from the Commission's NGA section 1(b) jurisdiction by the Wellhead Decontrol Act, and sales and transportation by NGA section 1(c)–(d) entities.[29] Thus, the Commission is considering not requiring reporting of information relating to transactions that are outside of the Commission's NGA section 1(b) jurisdiction. The Commission, therefore, requests comment on the following questions:

(1) Should the Commission consider including all sales ''at wholesale and in interstate commerce'' [30] in the reporting requirement being considered by the Commission, including any such sales removed from the Commission's NGA section 1(b) jurisdiction by the Wellhead Decontrol Act of 1989? Explain why or why not.

(2) How could the Commission minimize any difficulties in determining whether a sale is subject to the Commission's NGA section 1(b) jurisdiction?

(3) What would be the commercial impacts, if any, of limiting the reporting requirement to sales subject to the Commission's NGA section 1(b) jurisdiction? Would the benefits of increased market transparency from requiring the reporting of jurisdictional sales outweigh any disadvantages of limiting the reporting requirement to such sales?

(D) Questions Regarding the Burden to Market Participants

20. The Commission recognizes that there would be some burden to market participants in instituting this requirement to report transactional data as discussed in this Notice of Inquiry. As such, the Commission is considering several conditions to the reporting requirements that would help to

[27] NGA § 23(a)(2). Section 23 also requires the Commission to consider whether public dissemination of this information could be detrimental to the operation of an effective market or jeopardize system security. *Id.* § 23(b)(1). Moreover, the Commission must also seek to ensure that consumers and competitive markets are protected from the adverse effects of anticompetitive behavior that could be facilitated by untimely disclosure of transactional information. *Id.* § 23(b)(2).

[28] 15 U.S.C. 717(b).

[29] *See supra* n.25.

[30] NGA § 23(a)(2).

alleviate some of the burden. For example, the Commission recognizes that companies already gather data and report in Form No. 552, the Annual Report of Natural Gas Transactions, which requires reporting of information on an annual, aggregated basis that is similar to the information that the Commission is now, in this Notice of Inquiry, considering to require be reported on a quarterly, transaction-specific basis. However, after several years of receiving and analyzing annual, aggregated information through Form No. 552, the Commission believes that it may be necessary for market participants to report more granular transaction-specific information on a more frequent basis to increase natural gas price transparency and to assist in the Commission's surveillance efforts. Therefore, in order to alleviate any additional burden to market participants, the Commission is considering discontinuing the existing public data reporting requirements through Form No. 552, after a full year of individual transactions data are reported to the Commission. Additionally, the Commission is considering instituting a *de minimis* volume for which market participants are required to report to the Commission.

(1) What would the burden be on market participants to adapt their existing systems to be able to provide the information in compliance with new reporting requirements for market participants engaged in sales of wholesale physical natural gas in interstate commerce above a *de minimis* volume to report to the Commission every natural gas trade within the Commission's NGA jurisdiction that entails physical delivery for the next day (i.e., next day gas) or for the next month (i.e., next month gas)? Estimate the incremental burden of reporting such transactional data on a quarterly basis given that much of the same information is currently gathered for and reported annually through Form No. 552. Estimate the initial reporting burdens (start up time and resources) as well as the ongoing reporting burden that would be necessary for market participants to comply with the reporting requirement being considered, the percentage of those additional costs compared with normal business operation costs, and provide an explanation and support for any estimate. Is there an additional burden for those market participants who do not report to index publishers versus those who do?

(2) If the Commission decides to require transaction-specific reporting as it is considering in this Notice of Inquiry, should the Commission discontinue the existing public data reporting requirements through Form No. 552, initiated by Order No. 704, after a full year of individual transaction data are reported to the Commission? What would be the benefits and drawbacks with regard to market transparency of collecting only one or both data sets?

(3) Should the Commission establish a threshold up to which market participants with a *de minimis* market presence would not be subject to the reporting requirements? The Annual Report of Natural Gas Transactions, Form No. 552, collects information from market participants that sold and purchased 2.2 Bcf or more of physical gas in the reporting year. Should the Commission establish a similar threshold for the reporting requirements being considered in this NOI? If so, what is a reasonable threshold and on what basis should it be established (i.e., by total quarterly sales and purchases, prior year's annual sales and purchases)?

III. Comment Procedures

21. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 22, 2013. Comments must refer to Docket No. RM13–1–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

22. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

23. Commenters that are not able to file comments electronically must mail or hand deliver an original and copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

24. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

25. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

26. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

27. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28228 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

THE PRESIDIO TRUST

36 CFR Part 1002

Public Use Limit on Commercial Dog Walking; Revised Disposal Conditions

AGENCY: The Presidio Trust.

ACTION: Proposed rule and request for comments.

SUMMARY: The Presidio Trust (Trust) is proposing a public use limit on persons who are walking four or more dogs at one time in Area B of the Presidio of San Francisco (Presidio) for consideration (Commercial Dog Walkers). The limit will require any person walking four or more dogs at one time for consideration in Area B to possess a valid Commercial Dog Walking permit obtained from the City and County of San Francisco (City). Commercial Dog Walkers with four or more dogs at one time in Area B will be required to comply with the terms and

conditions of the City permit as well as those rules and regulations otherwise applicable to Area B of the Presidio. The Trust is also proposing that throughout Area B, all pet walkers, whether or not for consideration, shall remove pet excrement and deposit it in refuse containers. The Trust invites comments on the proposals.

DATES: Public comment will be accepted through January 25, 2013.

ADDRESSES: Electronic comments may be sent to *jpelka@presidiotrust.gov.* Written comments may be mailed or hand delivered to John Pelka, The Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, CA 94129. All written comments submitted to the Trust will be considered, and these proposals may be modified accordingly. The final decision of the Trust will be published in the **Federal Register**.

Public Availability of Comments: If individuals submitting comments request that their address or other contact information be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. The Trust will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses.

Anonymous comments may not be considered.

FOR FURTHER INFORMATION CONTACT: Joshua Steinberger, 415.561.5300.

SUPPLEMENTARY INFORMATION: In addition to a community of 8,000 people who live, work, or attend school in the Presidio, many visitors use the park daily for an array of recreational, educational, cultural and stewardship activities. The Trust's responsibilities for Area B include the avoidance of conflicts among the many different users of the Presidio, equitable allocation and use of facilities, ensuring public safety, and protecting resources. A public use limit in Area B that is based upon the possession of a valid City permit, which sets basic insurance, training, and safety standards and limits the number of dogs a Commercial Dog Walker may walk at once in City parks and other designated areas, will assist in implementing these responsibilities, as will a requirement throughout Area B that pet excrement be removed and deposited in refuse containers.

1. Limitation on Walking Dogs for Consideration

Administrative jurisdiction over the former U.S. Army base known as the Presidio of San Francisco is divided between the Trust and the National Park Service (NPS). The Trust oversees the interior 1100 acres, Area B, and the NPS oversees 300 acres along the waterfront, Area A, of the national park site. Under 36 CFR 1001.5, the Presidio Trust Board of Directors (Board) may impose reasonable public use limits in Area B, given a determination that such action is necessary to maintain public health and safety, to protect environmental or scenic values, to protect natural or cultural resources, or to avoid conflict among visitor use activities.

According to the City, approximately 110,000 households in San Francisco own dogs, and an estimated one-third of these households employ the services of dog walkers to care for and exercise their dogs. There are 70 dog walkers or dog walking services on the City Animal Care and Control Department's dog walking and professional services referral list, and there also may be dog walkers who provide their services for consideration but do not have a business license and are unlisted. Although the Trust does not maintain official statistics on the use of the Presidio by dog walking businesses, Trust staff frequently observe and receive reports of dog walkers with four or more dogs in a number of areas in Area B, in particular along the corridor adjoining West Pacific Avenue from the Broadway Gate to the 14th Avenue Gate, as well as the areas east of the Ecology Trail in the Tennessee Hollow Watershed. By both direct observation and through reports from the public, the Trust is aware that dogs brought into the Presidio in these numbers have been responsible for damage to resources, threats to public safety, and visitor conflict.

The City recently adopted an ordinance to license and to regulate dog walkers who conduct their business in a multitude of areas within the boundaries of the City and may begin enforcing the ordinance as early as January 1, 2013. *San Francisco Health Code Article 39: Commercial Dog Walking.* The City permit requirement applies to any person walking four or more dogs at any one time, for some sort of payment on City park property (broadly defined to include, among other areas, all grounds and other property under the management of the Recreation and Park Commission) as well as certain open spaces, certain properties under the jurisdiction of the San Francisco Port Commission, and designated properties under control of the Public Utilities Commission (PUC). Under Article 39, among other requirements Commercial Dog Walkers must be trained or meet minimum experience requirements, be free of convictions related to animal cruelty within the previous five years, carry $1 million in general liability insurance, provide sufficient drinking water for the dogs in their charge, transport dogs in a safe manner, and have proper dog walking safety equipment as specified by the City's Director of Public Works.

The Trust currently does not impose restrictions specific to Commercial Dog Walkers in Area B. Given the extremely broad geographical reach (parks, open spaces, Port lands, and PUC properties) of the City's ordinance, the Trust reasonably anticipates a certain number of Commercial Dog Walkers who would otherwise fall under the City's ordinance will walk their dogs in Area B in order to avoid the permit fees, requirements, and limit on the number of dogs they may walk on City lands covered by the ordinance. This is particularly to be expected because the NPS is also considering restrictions on commercial dog walking in Area A of the Presidio. This increase in dogs in Area B will inevitably affect the use and enjoyment of the Presidio by other users, will increase damages to resources, and will increase the cost of park maintenance and operations. The Trust must provide for the safe enjoyment of all park users, protect resources, and control its operations and maintenance costs, and is therefore undertaking this public use limit in response to the changing circumstances in the surrounding area.

The Trust believes that no less restrictive measures are reasonably available to the Trust that would achieve the same results—that is, appropriate behavior to the benefit of other dog walkers and other park users, the protection of natural and cultural resources, and the reduction of expenditures for maintenance that would otherwise be necessitated by unlimited use by Commercial Dog Walkers. Nor could any such less restrictive measures, even if they were to exist, take advantage of the substantial amount of feedback from diverse constituencies that went into drafting and refining the City's ordinance. Honoring the City's existing permitting system is less restrictive than creating a new system because it avoids imposing additional administrative and financial burdens on Commercial Dog Walkers.

Commercial Dog Walkers with four or more dogs at one time in Area B will be subject to the terms and conditions of the City permits, including the maximum number of dogs allowed at one time. A Commercial Dog Walker will be obliged to carry his or her permit while walking four or more dogs at one time and to produce the permit for inspection upon request by an officer with law enforcement authority in Area B. Anyone violating the limitation could face punishment as provided by law.

The limitation would go into effect following the operative date of the City's Commercial Dog Walking ordinance. Prior to implementation, the Trust will conduct a public outreach and education campaign to alert Commercial Dog Walkers and others about the use limitation. The Trust will also post signs and provide handouts to notify park users of the restriction in areas where dog walking is a high-use activity.

In its draft Dog Management Plan/Environmental Impact Statement (EIS), which is currently being supplemented, the NPS has proposed a permitting system for commercial and private dog walkers who walk four or more dogs at one time in the Golden Gate National Recreation Area (GGNRA). *Draft EIS Appendix F: Special Use Permit.* The NPS permitting system will not be implemented until a rulemaking process is completed and a comprehensive special regulation for dog walking at GGNRA is adopted. Upon the completion of the NPS rulemaking, the Trust may amend its own use limitation for Commercial Dog Walkers to recognize GGNRA permits as valid within Area B among other permits, to accept GGNRA permits exclusively, or otherwise in response to new circumstances.

In fulfilling its responsibilities and exercising its independent jurisdiction under the Presidio Trust Act, 16 U.S.C. 460bb appendix, the Trust intends to monitor closely the City's implementation of its ordinance and permit system. The Trust intends to evaluate periodically whether honoring Commercial Dog Walker permits issued by the City continues to serve the purpose of avoiding conflict among visitor uses and enhancing health and safety and resource protection, and the Trust will take action to revise its regulations in this regard should changes be appropriate. Although the Trust will honor City-issued permits, the Trust retains its independent authority to define the requirements for Commercial Dog Walkers within Area B of the Presidio.

2. Requirement To Remove Pet Excrement

Under 36 CFR 1002.15(a)(5), the Board may establish pet excrement disposal conditions. The Trust is proposing a rule amendment that will require all persons controlling pets to remove pet excrement and deposit it in a refuse container. This rule will apply to all individuals whether or not they are engaged in commercial activities or meet the definition of Commercial Dog Walker under the City ordinance and permit system.

The Trust's Interim Compendium currently requires pet excrement to be removed only in areas designated by appropriate signage. Pet excrement is a recognized health hazard, may deface or damage cultural and natural resources, and is widely considered to be a deterrent to use of park facilities. The Trust sees no benefit in limiting the removal requirement to specific areas in which signs are posted and believes that its stewardship responsibilities would be best served by extending the removal requirement to the entirety of Area B. Accordingly, in order to avoid conflict among visitor uses, and enhance health and safety and resource protection, the Trust is proposing this rule.

Regulatory Impact: The proposed amendments will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. The proposed rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of the proposed rule. Because the proposed rule is not ''economically significant,'' they are not subject to review by the Office of Management and Budget under Executive Order 12866 or Executive Order 13536. The proposed rule is not a ''major rule'' under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq*.

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that the proposed rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

Environmental Impact: The Trust's National Environmental Policy Act (NEPA) Regulations contain categories of actions that do not require an environmental assessment or environmental impact statement. 36 CFR part 1010. 36 CFR 1010.7(a)(31) provides that ''minor changes in programs and regulations pertaining to visitor activities'' may be categorically excluded under the NEPA. The proposed rule will improve visitor and dog safety and protect resources in Area B. However, dog walking use in Area A could slightly increase as those who walk dogs for consideration, despite the additional travel time and fees for parking, may take their dogs to walk in Crissy Field or other areas where permits are not currently required by the NPS. Any environmental impact will be short-term, however, until such time as the NPS permit provisions for dog walkers in Area A are in place. No extraordinary circumstances as listed in § 1010.7(b) are involved that may have a significant environmental effect. Therefore, the regulatory actions are categorically excluded from further NEPA review. The Trust has prepared a Project Screening Form to determine that the regulatory actions will have no significant effect on the environment, which is part of the administrative record on this matter. The Project Screening Form is available for public inspection at the offices of the Presidio Trust, 103 Montgomery Street, The Presidio, San Francisco, CA 94129, between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Other Authorities: The Trust has drafted and reviewed the proposed rule in light of *Executive Order 12988* and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that Order.

List of Subjects in 36 CFR Part 1002

National parks, Natural resources, Public lands, Recreation and recreation areas.

For the reasons set forth in the preamble, part 1002 of Title 36 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

1. The authority citation for part 1002 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

2. In § 1002.15, revise paragraph (a)(5) and add paragraph (f) to read as follows:

§ 1002.15 Pets.

(a) * * *

(5) In all areas of the Presidio administered by the Presidio Trust, pet excrement shall be removed and deposited in a refuse container by the person(s) controlling the pet(s).

* * * * *

(f) The walking of four or more dogs at one time by any one person for consideration is prohibited within the area administered by the Presidio Trust unless:

(1) That person has been issued a currently valid permit under Article 39 of the San Francisco Health Code.

(2) The walking of four or more dogs is done pursuant to the terms and conditions of that permit as well as in compliance with all laws and regulations in effect in the area administered by the Presidio Trust; and

(3) The permit is produced for inspection upon request by an officer with law enforcement authority in the area administered by the Presidio Trust.

Dated: November 13, 2012.

Karen A. Cook,

General Counsel.

[FR Doc. 2012–28018 Filed 11–20–12; 8:45 am]

BILLING CODE 4310–4R–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2012–0396; FRL–9753–5]

Colorado: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The state of Colorado has applied to the EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA proposes to grant final authorization to the hazardous waste program changes submitted by the state of Colorado. In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is authorizing the changes in a final rule. The EPA did not propose the rule prior to issuing the final rule because the Agency believes this action is not controversial and does not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the final rule. Unless we receive written comments that oppose this authorization during the comment period, the final rule will become effective on the date it establishes, and the EPA will not take further action on this proposal. If the Agency receives comments that oppose this action, the EPA will publish a document in the **Federal Register** withdrawing this rule before it takes effect. The EPA will then address public comments in a later, final rule, based on this proposal. Any parties interested in commenting on this action must do so at this time. The EPA may not provide further opportunity for comment.

DATES: Comments must be received on or before December 21, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2012–0396, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: lin.moye@epa.gov.*
- *Fax:* (303) 312–6341.
- *Mail:* Send written comments to Moye Lin, Resource Conservation and Recovery Program, EPA Region 8, Mailcode 8P–R 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone number: (303) 312–6667.
- *Hand Delivery or Courier:* Deliver your comments to Moye Lin, Resource Conservation and Recovery Program, EPA Region 8, Mailcode 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Deliveries are accepted only during the Regional Office's normal hours of operation, 9:00 a.m. to 3:00 p.m. Special arrangements should be made for deliveries of boxed information. The public is welcome to view Docket ID No. EPA–R08–RCRA–2012–0396 at the Region 8 EPA Library, 1595 Wynkoop Street, Denver, Colorado 80202–1129 during the Library's normal hours of operation, Monday through Thursday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2012–0396. The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, the disclosure of which 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 federal web site *http://www.regulations.gov* 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 email your comment directly to the EPA rather than 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 or 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 may not be 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 through *http://www.regulations.gov* or in hard copy from 8:00 a.m. to 4:00 p.m., Monday through Thursday at the EPA Region 8 Library at the address listed above, or the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, contact: Randy Perila, phone number (303) 692–3364.

FOR FURTHER INFORMATION CONTACT: Moye Lin, (303) 312–6667, *Lin.Moye@epa.gov* or Randy Perila, (303) 692–3364, *randy.perila@state.co.us.*

SUPPLEMENTARY INFORMATION: For additional information, please see the final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 21, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–28337 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 77, No. 225
Wednesday, November 21, 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 COMMERCE

Foreign-Trade Zones Board

[B–85–2012]

Foreign-Trade Zone 171—Liberty County, TX; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Liberty County Economic Development Corporation, grantee of FTZ 171, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 15, 2012.

FTZ 171 was approved by the Board on January 4, 1991 (Board Order 501, 56 FR 1166, 1/1/91), and expanded on August 9, 1999 (Board Order 1049, 64 FR 46181, 8/24/99), on April 15, 2002 (Board Order 1225, 67 FR 20087, 4/24/02), and on July 22, 2004 (Board Order 1343, 69 FR 45673–45674, 7/30/04). The current zone includes the following sites: *Site 1* (150 acres)—City of Cleveland's International Industrial Park on Highway FM 2025 west of U.S. Highway 59, Cleveland; *Site 2* (45 acres)—Port of Liberty County Industrial Park located on Trinity River, Liberty; *Site 3* (27 acres)—Port of Liberty County Industrial Park located on the Trinity River some 2 miles south of U.S. Highway 90, Liberty; *Site 4* (24 acres)—within the Cleveland Municipal Airport facility, Highway FM 787, Liberty; *Site 5* (583.081 acres)—Sjolander Plastics Storage Railyard facility, adjacent to Highway 146, approximately 2 miles south of Dayton; *Site 6* (200 acres, 3 parcels)—within the western portion of the 15,000-acre Cedar Crossing Industrial Park, located between West Bay Road and FM 1405, Baytown; *Site 7* (199.55 acres)—75 South Industrial Park, adjacent to Highway 75 and Interstate 45, Huntsville (Walker County); *Site 8* (103.15 acres)—75 North Industrial Park, adjacent to Highway 75 and Interstate 45, Huntsville (Walker County); and, *Site 9* (2.77 acres)—M&M Designs Industrial Park, 1981 Quality Boulevard, Hunstville (Walker County).

The grantee's proposed service area under the ASF would be the Counties of Liberty and Chambers, Texas, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Houston Customs and Border Protection port of entry. The grantee proposes to retain its existing sites located in Walker County.

The applicant is requesting authority to reorganize its existing zone project to include existing Sites 4, 5, 6, 7 and 8 as ''magnet'' sites. The applicant is also requesting approval of a new magnet site: *Proposed Site 10* (745.959 acres)—AmeriPort Industrial Park located at South FM 565 between FM 1405 and Grand Parkway 99 in Baytown (Chambers County). The applicant is also requesting that Sites 1, 2, 3 and 9 be removed from the zone.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

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 January 22, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 4, 2013.

A copy of the application 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 Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 15, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–28318 Filed 11–20–12; 8:45 am]
BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on December 7, 2012, 1:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

Closed Session

1. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

Open Session

2. Opening remarks by the Chairman and Vice Chairman.
3. President's Export Council Update.
4. Export Control Reform Update.
5. Briefing by Small Business Administration.

6. Presentation of Papers or Comments by the Public.

7. Working Group Updates.

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 30, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 31, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 16, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–28335 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 5, 2012, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.

2. Opening remarks by Bureau of Industry and Security.

3. Export Enforcement update.

4. Regulations update.

5. Working group reports.

6. Automated Export System (AES) update.

7. Presentation of papers or comments by the Public.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 28, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 19, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 16, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–28334 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Final Results and Final No Shipments Determination of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2012, the Department of Commerce (the ''Department'') published the *Preliminary Results* of the 2010–2011 administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (''hot-rolled steel'') from the People's Republic of China (''PRC''). The period of review (''POR'') is November 1, 2010, through October 31, 2011. We gave interested parties an opportunity to comment on the *Preliminary Results,* but none were received. The final weighted-average dumping margin for the PRC-wide entity is listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* November 21, 2012.

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2012, the Department published the *Preliminary Results* of the administrative review of the antidumping duty order on hot-rolled steel from the PRC.[1] We invited interested parties to comment on the *Preliminary Results,* but none were received. The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The merchandise subject to the order is certain hot-rolled carbon steel flat products. The product is currently

[1] *See Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Preliminary Results of 2010–2011 Antidumping Duty Administrative Review and Intent To Rescind in Part,* 77 FR 45576 (August 1, 2012) (''*Preliminary Results*'').

classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by the order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although these HTSUS subheadings are provided for convenience and customs purposes, the written product description available in *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China,* 66 FR 59561 (November 29, 2001), remains dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* the Department preliminarily determined to rescind the review with respect to Baosteel [2] because it had reported and submitted timely-filed certifications that it had no sales of subject merchandise to the United States during the POR.[3] We stated, consistent with the recently announced refinement to its assessment practice in non-market economy (''NME'') cases, that the Department would not rescind the review in these circumstances but, rather, would complete the review with respect to Baosteel and issue appropriate instructions to U.S. Customs and Border Protection (''CBP'') based on the final results of the review. As stated above, we did not receive any comments on our *Preliminary Results* nor did we receive information from CBP indicating that there were reviewable transactions from Baosteel during the POR. Therefore, we continue to determine that Baosteel had no reviewable transactions of subject merchandise during the POR. Consistent with our ''automatic assessment'' clarification, the Department will issue appropriate instructions to CBP based on our final results.[4]

PRC-Wide Entity

In the *Preliminary Results,* the Department noted that Hunan Valin Xiangtan Iron & Steel (''Hunan Valin'') does not have a separate rate, and that it is therefore under review as part of the PRC-wide entity.[5] Although Hunan Valin reported that it had no sales of subject merchandise to the United States during the POR, the Department does not find that the PRC-wide entity, of which Hunan Valin is part, had no shipments during the POR. After issuing the *Preliminary Results,* the Department did not receive any comments from interested parties. Therefore, for these final results, in accordance with section 776(a) and (b) of the Act, and as explained in more detail in the *Preliminary Results,* the Department continues to find that because Angang Group International (''Angang''), as part of the PRC-wide entity, failed to submit any response to the Department's questionnaire it is appropriate to rely on the facts otherwise available to determine a margin for the PRC-wide entity and to assign to the PRC-wide entity the highest-rate and the only rate ever determined for the PRC-wide entity on the record of this proceeding, *i.e.,* 90.83%.[6]

Final Results of Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted-average margin
PRC-wide Entity [7]	90.83%

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The Department recently announced a refinement to its assessment practice in NME cases. *See Assessment Practice Refinement.* Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 90.83 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement

[2] Collectively, Baosteel Group Corporation, Shanghai Baosteel International Economic & Trading Co., Ltd., and Baoshan Iron & Steel Co., Ltd.

[3] *See Preliminary Results,* 77 FR at 45577.

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*''). *See also* the ''Assessment'' section of this notice, below.

[5] *See Preliminary Results,* 77 FR at 45578.

[6] *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 49632 (September 28, 2001).

[7] The PRC-wide entity includes, Angang; Bengang Steel Plates Co., Ltd.; Benxi Iron and Steel Group Co., Ltd.; Daye Special Steel Co., Ltd.; Dongbei Special Steel Group; Dongguang Bo Yunte Metal Co., Ltd.; Dongyang Global Strip Steel Co., Ltd.; Haverer Group Ltd.; Hebei Iron and Steel Int'l; Hunan Valin; Jinan Iron & Steel Co., Ltd.; Shenzhen Zhaoheng Specialty Steel Co.; Union Steel China; Xinyu Iron & Steel Co., Ltd., and Zhejiang Shenghua Steel Co., Ltd.

[8] *See Assessment Practice Refinement,* 76 FR at 65694.

of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 13, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–28313 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review; 2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 3, 2012, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain pasta from Turkey for the period January 1, 2010, through December 31, 2010. We received no comments on those preliminary results and we continue to determine that Marsan Gida Sanayi ve Ticaret A.Ş. (''Marsan''), Birlik Pazarlama Sanayi ve Ticaret A.Ş. (''Birlik''), and Bellini Gida Sanayi A.Ş. (''Bellini'') received *de minimis* countervailable subsidies during the period of review.[1]

DATES: *Effective Date:* November 21, 2012.

FOR FURTHER INFORMATION CONTACT: David Layton or Christopher Siepmann, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–7958, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this administrative review on August 3, 2012. *See Preliminary Results.*

We invited interested parties to file comments following the release of the *Preliminary Results.* No comments were received.

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 2010, through December 31, 2010.[2]

Scope of Order

The merchandise subject to the order is pasta. The product is currently classified under the Harmonized Tariff Schedule of the United States (''HTS'') item numbers 1902.19.20. Although the HTS numbers are provided for convenience and customs purposes, the written product description, available in *Notice of Countervailing Duty Order: Certain Pasta from Turkey,* 61 FR 38546 (July 24, 1996), remains dispositive.

Final Results of Review

We have made no changes to our findings announced in the *Preliminary Results. See Preliminary Results; see also* Memorandum from Christopher Siepmann, International Trade Compliance Analyst to Susan Kuhbach, Office Director, ''Preliminary Results Calculation Memorandum for Marsan Gida Sanayi ve Ticaret A.Ş. (''Marsan''), Birlik Pazarlama Sanayi ve Ticaret A.Ş. (''Birlik''), Bellini Gida Sanayi A.Ş. (''Bellini''), and Marsa Yag Sanayi ve Ticaret A.Ş. (''Marsa Yag'')'' (July 27, 2012).

For the period January 1, 2010, through December 31, 2010, we find the following *ad valorem* subsidy rates:

Exporter/manufacturer	Net subsidy rate
Marsan Gida Sanayi ve Ticaret A.Ş.	0.15 (*de minimis*).
Istanbul Gida Dis Ticaret A.Ş./Birlik Pazarlama Sanayi ve Ticaret A.Scedil;./Bellini Gida Sanayi A.Ş.	0.28 (*de minimis*).

Marsan's final cash deposit rate is a ''combination rate'' pursuant to 19 CFR 351.107(b). It applies only to subject merchandise exported by Marsan and produced by Birlik and/or Bellini.

Assessment Rates

Because Marsan, Birlik, Bellini and Istanbul Gida received *de minimis* countervailable subsidies during the POR, the Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate without regard to countervailing duties shipments of subject merchandise (a) exported by Marsan and produced by Birlik and/or Bellini, or (b) exported by Istanbul Gida, Birlik or Bellini, and entered, or withdrawn from warehouse, for consumption from January 1, 2010, through December 31, 2010.

For all other combinations or companies, as appropriate, that were not reviewed, the Department will direct CBP to assess countervailing duties on all entries between January 1, 2010, and December 31, 2010, at the rates in effect at the time of entry.

Cash Deposit Instructions

Because Marsan, Birlik, Bellini and Istanbul Gida have *de minimis* countervailable subsidy rates, the Department will instruct CBP to continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for the combination and companies described above on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Also, for all other combinations or companies, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

[1] We have also assigned a rate to Istanbul Gida Dis Ticaret A.Ş. (''Istanbul Gida''), which is cross-owned with Birlik and Bellini and produced the subject merchandise during the period of review. *See Certain Pasta From Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 77 FR 46386 (August 3, 2012) (''*Preliminary Results*'') at 46387.

[2] While the initiation notice correctly identified the period of review as January 1, 2010 through December 31, 2010, we note that our extension of the time limit for the preliminary results incorrectly identified the period of review as January 1, 2011 through December 31, 2011. *See Certain Pasta From Turkey: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review,* 77 FR 11065 (February 24, 2012).

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 14, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–28304 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy; Final Results of Countervailing Duty Administrative Review; 2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2012, the Department of Commerce (the ''Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2010, through December 31, 2010. We received no comments on those preliminary results and we continue to determine that Molino e Pastificio Tomasello S.p.A. (''Tomasello'') received countervailable subsidies during the period of review.

DATES: *Effective Date:* November 21, 2012.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1293.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this administrative review on August 1, 2012. *See Certain Pasta From Italy: Preliminary Results of the 15th (2010) Countervailing Duty Administrative Review and Rescission, In Part,* 77 FR 45582 (August 1, 2012) (''*Preliminary Results*''). We invited interested parties to file comments following the release of the *Preliminary Results.* No comments were received.

Period of Review

The period for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Certification of Organic Pasta

As discussed further under ''Scope of the Order,'' pasta from Italy that is certified as organic by European Union authorized agents and accompanied by a U.S. Department of Agriculture's National Organic Program import certificate is excluded from the order.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union authorized body and accompanied by a National Organic Program import certificate for organic products. *See* Memorandum from Yasmin Nair to Susan Kuhbach, entitled ''Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy,'' dated October 10, 2012, which is on file in the Department's CRU. Pursuant to the Department's May 12, 2011 changed circumstances review, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the countervailing duty order. *See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011).

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (''the Act''), provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As explained in our *Preliminary Results,* we find that the Government of Italy (''GOI'') failed to respond to our request for usage information regarding Measure 3.14 of the POR Sicilia 2000/2006. Therefore, consistent with section 776(a)(2)(B) of the Act, we have relied on facts otherwise available. Furthermore, because the GOI failed to provide this information, which was in its possession, we determine that the GOI did not act to the best of its ability. Consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As adverse facts available, we determine that the assistance received by Tomasello under Measure 3.14 of the POR Sicilia 2000/2006 is specific within the meaning of section 771(5A) of the Act. *See Preliminary Results,* 77 FR at 45585.

Final Results of Review

We have made no changes to our findings announced in the *Preliminary Results. See Preliminary Results,* 77 FR at 45586; *see also* Memorandum from Joseph Shuler, International Trade Analyst, to the File, ''2010 Preliminary Results Calculation Memorandum for Molino e Pastificio Tomasello, S.p.A.,'' dated July 24, 2012.

For the period January 1, 2010, through December 31, 2010, we find that the *ad valorem* net subsidy rate for Tomasello to be:

Producer/Exporter	Net subsidy rate (percent)
Molino e Pastificio Tomasello S.p.A.	2.49

Assessment Rates

Consistent with 19 CFR 351.212(b), the Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') fifteen days after the date of publication of these final results. For Tomasello, the Department will instruct CBP to assess countervailing duties at the net subsidy rate listed above.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l., which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2010, and December 31, 2010, at the rates in effect at the time of entry.

Cash Deposit Instructions

For Tomasello, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above.

For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 13, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–28219 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Extension of the Application Period for Membership on the Manufacturing Council.

SUMMARY: On September 14, 2012, the Department of Commerce's International Trade Administration (ITA) published a notice in the **Federal Register** (77 FR 56811) soliciting applications for appointment of 25 members of the Manufacturing Council (Council) for a two-year term to begin in fall 2012. The September 14, 2012 notice provided that all applications must be received by the Office of Advisory Committees of the Department of Commerce by close of business on November 2, 2012. This notice extends the application period in order to provide the public with an additional opportunity to submit applications. The eligibility and evaluation criteria contained in the September 14, 2012 notice shall continue to apply. The purpose of the Council is to advise the Secretary of Commerce on matters relating to the competitiveness of the U.S. manufacturing sector and to provide a forum for regular communication between Government and the manufacturing sector.

ADDRESSES: Please submit application information via email to *oacie@trade.gov* or by mail to Jennifer Pilat, Office of Advisory Committees, Manufacturing Council Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230.

DATES: All applications for immediate consideration for appointment must be received by the Office of Advisory Committees by close of business on Tuesday, November 27, 2012. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, Manufacturing Council Executive Secretariat, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *jennifer.pilat@trade.gov.*

Please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council/index.asp?dName=council.*

SUPPLEMENTARY INFORMATION: The Office of Advisory Committees is extending the application deadline for the appointment of 25 members of the Council for a two-year term to begin fall 2012. The Council was rechartered most recently on April 5, 2012.

The criteria and procedures for selecting the members contained in the September 14, 2012 notice continue to apply and are republished herein for convenience.

Members will be selected in accordance with applicable Department of Commerce guidelines based on his or her ability to advise the Secretary of Commerce on matters relating to the U.S. manufacturing sector, to act as a liaison among the stakeholders represented by the membership, and to provide a forum for those stakeholders on current and emerging issues in the manufacturing sector. In assessing this ability, the Department will consider such factors as, but not limited to, the candidate's proven experience in promoting, developing and marketing programs in support of manufacturing industries, job creation in the manufacturing sector, or the candidate's proven abilities to manage manufacturing organizations. Given the duties and objectives of the Council, the Department particularly seeks applicants who are active manufacturing executives (Chief Executive Officer, President, or a comparable level of responsibility) that are leaders within their local manufacturing communities and industry sectors. The Council's membership shall reflect the diversity of American manufacturing by representing a balanced cross-section of the U.S. manufacturing industry in terms of industry sectors, geographic locations, demographics, and company size, particularly seeking the representation of small- and medium-sized enterprises.

During the 2012–2014 charter term of the Manufacturing Council, the Assistant Secretary of Commerce for Manufacturing and Services intends to establish a new Economic Security Commission Subcommittee. The purpose of this subcommittee will be to examine factors that impact the long-term strategic challenges faced by the manufacturing sector in the United

States. As indicated below, applicants are encouraged to highlight in their submissions any interest in and experience relevant to the work of this subcommittee.

The Secretary of Commerce appoints all Council members. All Council members serve at the discretion of the Secretary of Commerce. Council members shall serve in a representative capacity, representing the views and interests of a U.S. entity in the manufacturing industry and its particular sector. For the purposes of eligibility, a U.S. entity is defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

As noted above, Council members serve in a representative capacity, expressing the views and interests of a U.S. entity; they are, therefore, not Special Government Employees. Council members receive no compensation for their participation in Council activities. Members participating in Council meetings and events are responsible for their travel, living and other personal expenses. Meetings are held regularly and not less than annually, usually in Washington, DC. Members are required to attend a majority of the Council's meetings.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration.

2. A sponsor letter from the applicant on his or her entity's letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's manufacturing-related experience, including any manufacturing trade policy experience.

3. The applicant's personal resume.

4. An affirmative statement that the applicant meets all eligibility criteria.

5. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

6. An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that, if appointed, the applicant will not be allowed to continue to serve as a Council member if the applicant becomes a federally registered lobbyist.

7. Information regarding the control of the entity to be represented, including the governing structure and stock holdings, as appropriate, demonstrating compliance with the criteria set forth above.

8. The entity's size, place of incorporation or principal place of business, ownership, product or service line and major markets in which the entity operates.

9. Please include all relevant contact information such as mailing address, fax, email, phone number, and support staff information where relevant.

10. Please indicate if the applicant has an interest in serving on the Economic Security Commission subcommittee, if appointed, and highlight any experience relevant to the work of the subcommittee.

Dated: November 15, 2012.

Elizabeth Emanuel,

Executive Secretary, Manufacturing Council.

[FR Doc. 2012–28235 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Board of Overseers of the Malcolm Baldrige National Quality Award (Board of Overseers) will meet in open session on Wednesday, December 12, 2012. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges' Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel, Baldrige Performance Excellence Program (BPEP) Update, Baldrige Program Business Plan Status Report, Baldrige Performance Excellence Criteria Changes for 2013, and Recommendations for the NIST Director.

DATES: The meeting will convene Wednesday, December 12, 2012, at 8:30 a.m. Eastern Time and adjourn at 3:00 p.m. Eastern Time on Wednesday, December 12, 2012.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, telephone number (301) 975–2361, or by email at: *harry.hertz@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(2)(B) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., the Board of Overseers will meet in open session on Wednesday, December 12, 2012. The Board of Overseers is composed of 12 members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel, Baldrige Performance Excellence Program Update, Baldrige Program Business Plan Status Report, Baldrige Performance Excellence Criteria Changes for 2013, and Recommendations for the NIST Director.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's affairs are invited to request a place on the agenda. On December 12, 2012 approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-served 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. The exact time for public comments will be included in the final agenda that will be posted on the Baldrige Web site at *http://www.nist.gov/baldrige/community/overseers.cfm.* 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 Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, via

fax at 301–975–4967 or electronically by email to *nancy.young@nist.gov*

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Nancy Young no later than Wednesday, December 5, 2012, and she will provide you with instructions for admittance. Non-U.S. citizens must also submit their passport number, country of citizenship, title, employer/sponsor, address and telephone. Ms. Young's email address is *nancy.young@nist.gov* and her phone number is (301) 975–2361.

Dated: November 15, 2012.

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–28293 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC309

Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; public comment on an application for exempted fishing permit.

SUMMARY: This notice announces receipt of an application and the public comment period for an exempted fishing permit (EFP) from Mr. John Gauvin of Gauvin and Associates, LLC. If granted, this permit would allow the applicant to develop and test a salmon excluder device for the Central Gulf of Alaska pollock trawl fishery. This activity is intended to promote the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) by reducing salmon bycatch in the Central Gulf of Alaska pollock trawl fishery.

DATES: Comments must be received by 5 p.m., Alaska local time (A.l.t.), December 14, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0208, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0208 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

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

Electronic copies of the EFP application and the environmental assessment (EA) may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Gulf of Alaska (GOA) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 600.745(b) and 679.6 authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an application for an EFP from Mr. Gauvin in September 2012. The purposes of the EFP research would be to improve the performance of the salmon excluder device developed under EFP 11–01, from 2011 to 2012, and to validate the performance of this device for pollock trawl gear used in the Central GOA. The goal is to develop a device for pollock trawl gear that reduces salmon bycatch without significantly lowering catch rates of pollock. Previous EFP applications, permits and final reports for salmon excluder experiments conducted in Alaska are available at: *https://alaskafisheries.noaa.gov/ram/efp.htm.*

The EFP would allow for development and testing of the salmon excluder device for two years from January 2013 through December 2014, during the pollock A through D seasons. Testing in each season would allow the device to be used under salmon occurrence and pollock fishing practices specific to each season. Testing in the A season would catch primarily Chinook salmon and roe-bearing pollock, while testing in the B through D seasons would catch Chinook salmon and pollock that are not likely to be roe-bearing. EFP fishing would be conducted by one to two vessels in each season.

To test the salmon excluder device, exemptions would be necessary from regulations for Central GOA Chinook salmon prohibited species catch (PSC) limits, retention requirements and trip limits for pollock, halibut PSC limits, selected observer requirements, closures for the pollock directed fishery, and specified total allowable catch amounts (TACs) for pollock. The taking of Chinook salmon during the experiment is crucial for determining the effectiveness of the salmon excluder device to allow Chinook salmon to escape from a pelagic trawl cod end. Chinook salmon taken during the experiment would not be counted toward the Chinook salmon PSC limits under § 679.21(h)(2)(i). The amount of Chinook salmon bycatch by the pollock trawl fishery during the EFP period could potentially approach the Central GOA Chinook salmon PSC limits of 18,316 Chinook salmon. If the EFP Chinook salmon were counted toward the Chinook salmon PSC limits, those

limits would impede the ability of the participating trawl vessels from obtaining a sufficient sample size of Chinook salmon required for testing the salmon excluder device and may cause the closure of the Central GOA pollock fishery. Information regarding the Chinook salmon PSC limits for Central and Western GOA established under Amendment 93 was published in the **Federal Register** on July 20, 2012 (77FR 42629).

Up to 2,400 Chinook would be required for each year (2013 and 2014) in the A through D seasons, for a total of 4,800 Chinook salmon over the two-year EFP. The experimental design requires this quantity of salmon to ensure statistically valid results. The applicant also has requested an exemption from inseason pollock closures (§ 679.7(a)(2)), maximum retainable amounts for pollock (§ 679.20(d)(1)(iii)(B)), halibut PSC limits (§ 679.21(d)(3)), daily pollock trip landing and retention limits (§ 679.7(b)(2)(i) and (b)(2)(ii)), selected observer requirements (§ 679.50), and proposed observer requirements. Additional exemptions from 50 CFR part 679 are anticipated for amendments to observer regulations, following the publication of the final rule to restructure the North Pacific Groundfish Observer Program (Observer Program). The proposed rule was published in the **Federal Register** on April 18, 2012 (77 FR 23326). Implementation of the restructured Observer Program is scheduled for January 2013.

EFP fishing would be conducted by one or two pelagic trawl catcher vessels. These vessels would be exempted from selected observer requirements at § 679.50. The applicants would use ''sea samplers'' who are NMFS-trained observers. They would not be deployed as NMFS observers, however, at the time of the EFP fishing. The ''sea samplers'' would conduct the EFP data collection, collect tissue samples for genetic assessment of stock of origin, and perform other observer duties that normally would be required for vessels directed fishing for pollock.

Groundfish taken under the EFP would be exempt from the TACs specified in the annual harvest specifications (§ 679.20). A total of 2,400 metric tons (mt) of groundfish (primarily pollock) would be taken during each of the two years (2013 through 2014) for a total of 4,800 mt over the duration of the EFP. Approximately 2,304 mt of the groundfish harvested each year from the EFP is expected to be pollock. The experimental design requires this quantity of pollock to ensure a statistically adequate sample size for measuring pollock escapement through the salmon excluder device.

Because very little groundfish incidental catch occurs in the pollock fishery, the harvest of other groundfish species during the EFP fishing is expected to be no greater than approximately 4 percent of the groundfish taken during the fishery (96 mt per year). The majority of these other groundfish species harvested under the EFP likely would be only small amounts of arrowtooth flounder, Pacific cod, shallow-water flatfish, deep-water flatfish, and rex sole.

The applicant reports that EFP fishing under this permit is likely to incidentally harvest up to approximately 4.0 mt of halibut each year. If the permit is issued, NMFS would exempt the vessels participating in the EFP from halibut PSC limits at § 679.21, and as specified in the GOA 2013 and 2014 annual harvest specifications. A catch of 4.0 mt of halibut for this EFP would represent approximately 0.2% of the annual GOA trawl apportionment.

The experiment will not be conducted in Steller sea lion critical habitat, but will be in locations that historically produce high concentrations of Chinook salmon during pollock fishing, to ensure a statistically adequate sample size. In particular, some of the locations north, west, and east of Kodiak are ideal for conducting the experiment by ensuring that the vessel encounters sufficient concentrations of salmon and pollock for addressing experimental design criteria.

The activities under the EFP are not expected to have a significant impact on the human environment as analyzed in the EA for this action (see **ADDRESSES**). The EFP would be subject to modifications pending any new relevant information regarding the 2013 or 2014 fishery, including pollock harvest specifications.

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Director of the Alaska Fisheries Science Center reviewed the EFP, determined that the research proposal represents a valid scientific study, and has expressed support for continuing this trawl bycatch research in the GOA. The Council will consider the EFP application during its meeting held December 3 through 12, 2012, at the Hilton Hotel in Anchorage, AK. The applicant has been invited to appear in support of the application.

Public Comments

Public comments are being solicited on the application and the EA through the end of the comment period stated in this notice. To be considered, comments must be received by 5 p.m. A.l.t. on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date. Copies of the application and EA are available for review from NMFS (see **ADDRESSES**). Interested persons also may comment on the application and on the EA at the December 2012 Council meeting during public testimony.

Information regarding the meeting is available at the Council's Web site at *http://www.alaskafisheries.noaa.gov/npfmc/*.

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

Dated: November 16, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–28323 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB041

Small Takes of Marine Mammals Incidental to Specified Activities; Pile Driving in Port Townsend Bay, WA

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA) as amended, NMFS provides notice that we have issued an Incidental Harassment Authorization (IHA) to the Washington State Department of Transportation Ferries Division (WDF) to incidentally harass, by Level B harassment only, 11 species of marine mammals during the transfer span replacement project at the Port Townsend ferry terminal in Port Townsend Bay, Washington.

DATES: This authorization is effective from November 12, 2012, through February 15, 2013.

ADDRESSES: An electronic copy of the IHA and related documents are available by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315

East-West Highway, Silver Spring, MD 20910–3225.

An electronic copy of the application containing a list of the references used in this document may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* For members of the public who are unable to view these documents on the Internet, a copy may be obtained by writing to the address specified above or telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**). Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, 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 specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

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) further established 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

In August 2011, NMFS received an application from WSF, requesting an IHA for the take, by Level B harassment, of small numbers of harbor porpoises (*Phocoena phocoena*), Dall's porpoises (*Phocoenoides dalli*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), killer whales (*Orcinus orca*), gray whales (*Eschrichtius robustus*), humpback whales (*Megaptera novaeangliae*), minke whales (*Balaenoptera acutorostrata*), Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*) and Steller sea lions (*Eumatopius jubatus*) incidental to pile driving activities conducted during the replacement of a transfer span at the Port Townsend ferry terminal, which is located inside Port Townsend Bay in northern Puget Sound (see Figure 1–9 in the WSF IHA application). Upon receipt of additional information and a revised application (submitted October 2011), NMFS determined the application complete and adequate on January 5, 2012.

The applicant's project will replace the current cable-lift transfer span at Slip 1 of the Port Townsend ferry terminal with a hydraulic lift H span (see Figure 1–3 in the WSF IHA application). The project will include removal of the existing transfer span, lift towers, tower foundations, and a portion of the bridge seat and replace them with a new transfer span, bridge seat, and lift cylinder shafts. During the project, up to 56 piles will be removed (40 timber and 16 steel), and require installation of up to 26 piles (16 steel, 8 temporary H-piles, and 2 cylinder shaft casings). Because elevated sound levels from pile driving have the potential to result in marine mammal harassment, NMFS issued an IHA for take incidental to the specified activity.

Description of the Specified Activity

The project will replace an aging cable-lift transfer span with a new hydraulic lift span at the Port Townsend ferry terminal in northern Puget Sound, Washington. Transfer spans are moveable traffic bridges that connect ferries with the terminal dock, allowing the transfer span to be raised or lowered depending on the daily tide levels (see Figure 1–2 in WSF's IHA application). The new hydraulic lifts, or H-spans, will be operated vertically by two hydraulic cylinders located under the offshore ends of the transfer span. The proposed project will involve the removal of the existing transfer span, lift towers, tower foundations, and a portion of the bridge seat. Once the old structures are removed, they will be replaced with a new transfer span, bridge seat, and lift cylinder shafts (see Appendix A of the IHA application).

To replace the aging transfer span, 40 timber piles and 16 steel piles (four 30-inch and four 24-inch wingwall steel piles, and eight temporary piles) will be removed using a vibratory hammer. The vibratory hammer will then be used to install up to 8 steel piles (five 30-inch and up to three 24-inch), up to 8 temporary steel piles, up to 8 piles for the new wingwall fender panels and reaction frames (up to four 24-inch and up to four 30-inch), and two 80-inch cylinder shafts that will house the hydraulic lifts. The use of an impact hammer will be limited to the ''proofing'' of five 30-inch piles and three 24-inch piles in order to drive them the last two feet into the substrate. A breakdown of pile types and associated activity are shown in Table 1.

TABLE 1—SUMMARY OF TOTAL PILE REMOVAL AND INSTALLATION ACTIVITIES

Activity	Number of piles (maximum)	Total time to remove/install	Days to complete
Removal of timber piles	40	10 hrs.	2
Removal of steel wingwall piles	16	4 hrs.	4
Install steel piles	8 (5 30-inch and up to 3 24-inch)	2 hrs. 40 min.	3
Install temporary piles	8	2 hrs.	2

TABLE 1—SUMMARY OF TOTAL PILE REMOVAL AND INSTALLATION ACTIVITIES—Continued

Activity	Number of piles (maximum)	Total time to remove/install	Days to complete
Install wingwall piles	8	2 hrs. 40 min.	3
Install cylinder shaft casing	2 (80-inch)	40 min.	2
Proofing of steel piles	8	1 hr. 20 min.	2

Of the eight 24- and 30-inch steel piles, three 24-inch piles will be installed to support the platform for the new Hydraulic Power Unit (HPU) and five 30-inch piles would be installed for the new bridge seat. Up to eight temporary steel piles will be installed using a vibratory hammer to support a template for construction of the cylinder shafts. The vibratory hammer will then be used to install the two 80-inch hollow steel cylinder shafts. The final eight 24- and 30-inch steel piles will be installed using a vibratory hammer for the new wingwall reaction frames and wingwall fender panels at the terminus of the transfer span.

Although the exact duration of pile driving will vary depending on the installation procedures and geotechnical conditions, the applicant estimates that the 16 24- to 30-inch permanent piles will each require 20 minutes of vibratory installation. Five 30-inch piles and up to three 24-inch piles will each require 10 minutes of impact driving or ''proofing'' to verify capacity. The vibratory driving of eight temporary piles that support the template for the hydraulic cylinder shafts will each require 15 minutes to install because it will not be necessary to drive these piles as deep as the permanent piles. The two 80-inch cylinder shaft casing will take approximately 20 minutes each to install using a vibratory hammer. All piles will be installed with an APE Model 400 (or equivalent) vibratory hammer; however, it will be necessary to proof the five 30-inch bridge seat piles and three 24-inch HPU support piles using an impact hammer. Proofing will require 10 minutes of impact pile driving for each of these eight piles to verify load-bearing capacity. Sound attenuation devices, such as a bubble curtain, will be used during impact hammering. The wingwall temporary piles and the 80-inch cylinder shafts will be driven solely with a vibratory hammer.

In addition to pile installation, a total of 56 piles will be removed using vibratory extraction or a crane. These consist of the 16 steel piles and 40 old timber piles. If a timber pile breaks below the mudline—something older timber piles are prone to do—pile stubs will be removed with a clamshell bucket, but noise associated with this activity is expected to be negligible. Once piles and fragments of piles are removed, they will be loaded onto a barge or container and disposed of at an approved offsite location. There could be barges in the water to support these pile removal activities; however, these will be concentrated in the direct vicinity of the ferry terminal. Because direct pull and clamshell pile removal, and use of barges do not release loud sounds into the environment, marine mammal harassment from these activities is not anticipated.

Region of Activity

The activity will occur at the Port Townsend ferry terminal located in northern Puget Sound inside Port Townsend Bay.

Dates and Duration of Activity

The Washington Department of Fish and Wildlife's recommended in-water work window for this area is July 16 through February 15. Timing restrictions such as this are used to avoid in-water work when ESA-listed salmonid species are most likely to be present. Proposed pile installation and removal activities are scheduled to occur between November 12, 2012, and February 15, 2013, in agreement with the state's recommendation. The on-site work will last approximately 16 weeks with actual pile removal and driving activities taking place approximately 25 percent of that time (approximately 4 weeks).

Sound Propagation

Detailed descriptions of sound propagation and sound sources were provided in the **Federal Register** notice (77 FR 39471, July 3, 2012). Significant sound sources during in-water construction activities associated with the project include vibratory pile removal and pile installation using both vibratory and impact pile driving.

Since 1997, NMFS has used generic sound exposure thresholds as guidelines to estimate when harassment may occur. Current practice regarding exposure of marine mammals to sound defines thresholds as follows: Cetaceans and pinnipeds exposed to sound levels of 180 and 190 dB root mean square (rms; note that all underwater sound levels in this document are referenced to a pressure of 1 μPa) or above, respectively, are considered to have been taken by Level A (i.e., injurious) harassment, while behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 120 dB rms for continuous sound (such as will be produced by the WSF activities) and 160 dB rms for pulsed sound, but below injurious thresholds. For airborne sound, pinniped disturbance has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals (note that all airborne sound levels in this document are referenced to a pressure of 20 μPa).

Data from other Washington State Ferries projects were used for the noise analysis of vibratory removal of 12-inch timber piles as well as the vibratory removal and driving of 30-inch and 24-inch hollow steel piles (Laughlin, 2005; Laughlin, 2010; Laughlin, 2011). Due to the lack of information related to the vibratory driving of 80-inch hollow steel cylinder shafts, noise levels recorded for a project using similar equipment in Richmond, California were used to estimate sound levels (CalTrans, 2007). For impact pile driving, WSF relied on measurements for steel piles at other Puget Sound ferry terminal locations (Laughlin, 2005). Sound levels for impact and vibratory pile driving are shown in Table 2. Ambient underwater sound levels in the vicinity of Port Townsend were measured in April 2010 (Stockham *et al.,* 2010). These data show that local background levels are below 120 dB (50th percentile between 100 and 104 dB), at least during April; therefore, the Level B harassment threshold for continuous sound sources (120 dB) was not adjusted for this location. WSF conducted a site specific vibratory test pile project in coordination with NMFS at the Port Townsend Ferry Terminal to determine the distances at which vibratory pile removal or driving attenuate down to the 120 dB threshold (i.e., the threshold level used to measure Level B harassment for continuous sounds). The site specific test allowed physical factors in Port Townsend Bay that can

influence sound attenuation rates to be taken into account, such as absorption in seawater, absorption in the sub-bottom, scattering from inhomogeneities (lack of uniformity) in the water column and from surface and bottom roughness and water depth (bathymetry). During the test, two hollow steel piles, one 36-inch and one 30-inch, were driven and removed using a vibratory hammer. An array of hydrophones measured in-water noise during the test project. Vibratory driving of the 36-inch steel pile generated 159 to 177 dB rms at 10 m, and vibratory driving of the 30-inch steel pile generated 164 to 174 dB rms at 10 m. Vibratory removal of the 30-inch steel pile generated 171 dB rms at 10 m. Based on these results, the sound generated from vibratory installation and removal of 30-inch piles may take up to 4.2 miles (6.8 km) to attenuate to below 120 dB. Because of the project area's location in a semi-enclosed bay, sound transmission will be stopped by land masses much earlier in certain directions.

In-air sound from pile driving also has the potential to affect marine mammals (specifically, pinnipeds) that are hauled out or at the water's surface. As a result, WSF analyzed the potential for pinnipeds hauled out or swimming at the surface near the ferry terminal to be exposed to airborne SPLs that could result in Level B behavioral harassment. The distance to the 90 dB Level B threshold for airborne sound was estimated to be 81 m, which is less than the distance to the nearest known haul out site 3 km away (Kilisut Harbor spit). Although there are no pinniped haul-out sites near the project area, animals could be exposed when swimming at the surface with their heads above the water; however, the airborne sound harassment zone is smaller than and encompassed by the underwater sound harassment zones for both vibratory and impact pile driving.

TABLE 2—DISTANCES TO HARASSMENT THRESHOLDS (VIBRATORY HAMMER)

Pile type and size	Hammer type	Sound levels (rms)			
		190 dB	180 dB	160 dB	120 dB
Timber (removal)	Vibratory	n/a	n/a	n/a	2.2 km (1.4 miles).
24-inch steel (removal)	Vibratory	n/a	n/a	n/a	4 km (2.4 miles).
24-inch steel (install)	Vibratory	n/a	n/a	n/a	6.3 km (3.9 miles).
30-inch steel (removal)	Vibratory	n/a	n/a	n/a	18.5 km (15.6 miles).
30-inch steel (install)	Vibratory	n/a	n/a	n/a	39.8 km (24.7 miles).
80-inch steel (install)	Vibratory	n/a	n/a	n/a	50 km (31 miles).

TABLE 3—DISTANCES TO HARASSMENT THRESHOLDS WITHOUT MITIGATION (IMPACT HAMMER)

Pile type and size	Hammer type	Sound levels (rms)		
		190 dB	180 dB	160 dB
30-inch steel	Impact	5 m	22 m	465 m

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on July 3, 2012 (77 FR 39471). During the 30-day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) and a letter from a member of the public. The letter from a member of the public did not contain substantive comments. The comments from the Commission, and our responses, are provided here. All measures proposed in the initial **Federal Register** notice are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Comment 1: The Commission recommends that we require WSF to implement ramp-up procedures after 15 minutes if pile-driving or -removal activities were delayed or shut down because of the presence of a marine mammal within or approaching the exclusion zone and observers did not see that marine mammal leave the zone.

Response: We disagree with this recommendation. The Commission cites several reasons why marine mammals may remain in the exclusion zone after shutdown and yet be undetected by observers during the 15 minute clearance period (e.g., perception and availability bias). While this is possible in theory, we find it extremely unlikely that an animal could remain undetected in such a small zone and under typical conditions in Port Townsend Bay. The exclusion zone has a 22 m radial distance, and typical observation conditions in Port Townsend Bay are excellent. We believe the possibility of a marine mammal remaining undetected in the exclusion zone, in relatively shallow water, for greater than 15 minutes is discountable. A requirement to implement ramp-up after every shutdown or delay less than 30 minutes in duration would be impracticable, resulting in significant construction delays and therefore extending the overall time required for the project, and thus the number of days during which disturbance of marine mammals could occur.

Comment 2: The Commission recommends that we require WSF to monitor before, during, and after all ramp-ups of vibratory and impact pile driving to gather the data needed to determine the effectiveness of this technique as a mitigation measure.

Response: We disagree that WSF needs to monitor for marine mammals before, during, and after all ramp-ups. Protected species observers will be on-site and monitoring for marine mammals at least 30 minutes prior to, during, and after all impact driving (including during ramp-ups) and at least two full days per week during all vibratory pile driving. We believe that monitoring for all impact driving and at least two days per week of vibratory pile driving days per week will allow for adequate data collection and interpretation of how marine mammals are behaving in response to pile driving, including during ramp-ups.

Comment 3: The Commission recommends that we require WSF to monitor the Level A and B harassment zones to detect the presence and characterize the behavior of marine mammals during all pile-driving and

removal activities that use a vibratory or impact hammer.

Response: As stated in the proposed IHA, marine mammal monitoring will occur 30 minutes before, during, and 30 minutes after all impact pile driving activities. In addition, at least two NMFS-approved protected species observers will conduct behavioral monitoring out to 1,900 m during all vibratory pile driving for the first two weeks of activity to validate take estimates and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleth. NMFS believes this is an adequate effort of monitoring because sounds from vibratory pile driving will not exceed the Level A harassment threshold and sounds from impact pile driving only exceed the Level A harassment threshold 22 m from the source.

Description of Marine Mammals in the Area of the Specified Activity

Due to Port Townsend's location on the boundary between two inland water regions, 11 marine mammal species may occur at some time of year in the vicinity of the ferry terminal: Harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, killer whale, gray, whale, humpback whale, minke whale, Pacific harbor seal, California sea lion, northern elephant seal, and Steller sea lion. The Steller sea lion, Southern Resident killer whale, and humpback whale are the only marine mammals that may occur in the vicinity of the ferry terminal that are listed under the ESA; the Southern Resident killer whale and humpback whale are listed as endangered and the eastern distinct population segment (DPS) of Steller sea lion is listed as threatened. All marine mammal species are protected under the MMPA. The **Federal Register** notice (77 FR 39471, July 3, 2012) summarizes the population status and abundance of these species and provides detailed life history information.

Potential Effects of the Specified Activity on Marine Mammals

Impact and vibratory pile driving are the construction activities associated with the proposed action with the potential to take marine mammals. Elevated in-water sound levels from pile driving in the proposed project area may temporarily impact marine mammal behavior. However, elevated in-air sound levels are not expected to affect marine mammals because the nearest pinniped haul-out is approximately 3 km away and the zone of harassment for airborne sound is encompassed within the zones of harassment for underwater sound. The **Federal Register** notice (77 FR 39471, July 3, 2012) provides a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

Anticipated Effects on Habitat

The proposed activities at the Port Townsend ferry terminal would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 3 km, foraging hotspots, or other bottom features of significant biological importance to marine mammals that may be present in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from the effects of pile removal and installation on likely marine mammal prey (i.e., fish) near the ferry terminal and minor impacts to the immediate substrate during removal and installation of piles during the transfer span replacement project. In addition, removal of the 40 creosote-treated wood piles from the marine environment will have long-term benefits due to improvements in water and sediment quality. The **Federal Register** notice (77 FR 39471, July 3, 2012) describes these potential impacts in greater detail.

Mitigation

In order to issue an IHA 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 adverse 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).

The applicant will implement the following mitigation measures to minimize adverse impacts to marine mammals:

Temporal Restrictions

The Washington Department of Fish and Wildlife recommends an in-water work window of July 16 through February 15, annually. This work window was designed to avoid in-water work when ESA-listed salmonids are most likely to be present, but may also be beneficial to marine mammals that prey on salmon. Actual construction activities will take place from November 12, 2012, through February 15, 2013, which ensures that these activities do not coincide with salmonid use of the action area. The daily construction work window for in-water work will begin no sooner than 30 minutes after sunrise and will end at sunset (or shortly after sunset) when visibility decreases to the point where effective marine mammal monitoring is no longer possible.

Use of Noise Attenuation During Pile Driving With Impact Hammer

To the extent possible, a vibratory hammer would be used to drive all piles. It is anticipated that an impact hammer will be necessary to ''proof'' five 30-inch hollow steel piles. During impact pile driving, a bubble curtain will be used as an attenuation device to reduce hydroacoustic sound levels and avoid the potential for injury. In the event that hydroacoustic monitoring during in-water construction activities involving impact pile driving indicates that the proper attenuation is not being achieved, the proposed harassment and exclusion zones (described next) will be modified to account for the reduced attenuation.

Establishment of an Exclusion Zone

During impact pile driving, WSF will establish a marine mammal exclusion zone of 22 m around each pile to avoid exposure to sounds at or above 180 dB. The 190 dB (pinniped) injury isopleth is contained within the 22 m exclusion zone. The exclusion zone will be monitored during all impact pile driving to ensure that no marine mammals enter the 22 m radius. The purpose of this area is to prevent Level A harassment (injury) of any marine mammal species. Typically, an exclusion zone for vibratory pile driving is unnecessary to prevent Level A harassment, as source levels would not exceed the Level A harassment threshold; however, in response to a recommendation from the Marine Mammal Commission, a 5 m exclusion zone will be established during vibratory pile driving of the two 80-inch piles.

Pile Driving Shut Down and Delay Procedures

Monitoring will be initiated 30 minutes prior to the commencement of pile driving activities. If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer will notify the on-site construction manager (or other

authorized individual), who will then be required to delay pile driving until the marine mammal has moved outside of the exclusion zone or if the animal has not been resighted within 15 minutes. If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving will cease until that animal has cleared and is on a path away from the exclusion zone or 15 minutes has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique will be used at the beginning of each day's pile installation or removal, or if installation or removal has ceased for more than one hour, to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times before full energy may be achieved. For impact hammering, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets.

In-Water Pile Driving Weather Delays

Should environmental conditions (e.g., fog, high sea state, poor lighting) obscure the harassment zone, pile driving will be suspended until visibility returns.

NMFS has carefully evaluated the applicant'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 adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA 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 IHAs 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.

WSF has developed a monitoring plan that includes monitoring the harassment and exclusion zones during pile driving and collecting sighting data for each marine mammal species observed during in-water construction activities. To implement this plan, qualified marine mammals observers will be on-site at all times during pile removal and installation. WSF must designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 30 minutes before, during, and 20 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the designated exclusion zone (preliminarily set at 22 m for impact pile driving and 5 m for vibratory installation of the 80-inch piles). In addition, at least two NMFS-approved protected species observers would conduct behavioral monitoring at least two days per week to estimate take and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleths. Note that for impact hammering, this distance is about 465 m. For vibratory hammering, this estimated distance is about 6.8 km. Protected species observers will be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, and range-finder) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving.

WSF will also conduct acoustic monitoring during vibratory pile installation of 24-inch and 80-inch steel piles. Acoustic monitoring during timber pile removal and installation and removal of 30-inch steel piles will not be conducted because data from these activities was collected in 2010 during the Port Townsend test pile driving project (Laughlin, 2010; Stockham *et al.,* 2010) and during a 2010 dolphin replacement project in Port Townsend.

Protected species observers will be required to submit a report to NMFS within 120 days of expiration of the IHA or completion of pile driving, whichever comes first. The report would include data from marine mammal sightings (such as species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

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 will be by Level B harassment, involving temporary, short-term modifications of behavior by small numbers of marine mammals within the action area. Marine mammals may also temporarily avoid the area during construction. The planned mitigation and monitoring measures are expected to avoid injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote.

If a marine mammal responds to an underwater sound by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is typically unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder, 2007; Weilgart, 2007).

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate take based on how many animals are likely to be present within a particular distance of a given activity, or exposed

to a particular level of sound. Typically, potential takes are estimated by multiplying the ensonified area by the local marine mammal densities of the species that may occur within that zone. There are no density estimates for any Puget Sound population of marine mammals. As a result, for this IHA, takes were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and incidental observations from WSF biologists. For example, between 1990 and 2005, an average of 1.75 killer whale groups were reported in the quadrant that includes Port Townsend, with most sightings occurring between September and December, and March. On the basis of that information, an estimated amount of potential takes for killer whales is presented here. However, while a pod of killer whales could potentially visit again during the project timeframe, and thus be taken, it is more likely that they would not.

The project area is not believed to be particularly important habitat for marine mammals, although harbor seals are year-round residents and have a known haul-out site within 3 km of Port Townsend (haul-out sites for other pinniped species are located at a distance of 7 km or greater from the project site). Therefore, behavioral disturbances that could result from anthropogenic sound associated with the proposed activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring if the same individuals remain in the project vicinity.

WSF requested authorization for the potential taking of small numbers of Steller sea lions, California sea lions, harbor seals, northern elephant seals, killer whales, Dall's porpoises, harbor porpoises, Pacific white-sided dolphins, gray whales, humpback whales, and minke whales in Port Townsend Bay and Admiralty Inlet that may result from pile removal and installation during construction activities associated with the transfer span replacement project described previously in this document. Based on comments received from the Marine Mammal Commission, the takes requested for harbor seals, California sea lions, Steller sea lions, and harbor porpoise have been corrected to account for the number of days during which the activity will occur instead of the number of hours extrapolated to days. The corrected numbers are reflected in the following paragraphs. The takes requested are expected to have no more than a minor effect on individual animals and no effect at the population level for these species. Any effects experienced by individual marine mammals are anticipated to be limited to short-term disturbance of normal behavior or temporary displacement of animals near the source of the sound.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving), but below the aforementioned thresholds. These levels are also considered precautionary.

Based on empirical measurements taken by WSDOT and Caltrans (which are presented in the *Description of Specified Activities* section above), estimated distances to NMFS' current harassment threshold sound levels from pile driving during the proposed construction activities are presented in Table 4. The 22 m distance to the Level A harassment threshold and the establishment of a 5 m exclusion zone for vibratory installation of the 80-inch piles provides protected species observers a reasonably sized area to monitor during impact pile driving. Monitoring these zones and implementing mitigation measures will prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold.

TABLE 4—DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLDS (WITHOUT ATTENUATION)

	Level A (190/180 dB)	Level B harassment (160 dB)	Level B harassment (120 dB)
Impact hammering	22 m	465 m	n/a
Vibratory hammering	5 m (80-inch piles only)	n/a	6.8 km

For each of the 11 marine mammal species that may occur within the proposed action area, incidental take was determined by estimating the likelihood of a marine mammal being present with the Zone of Influence (ZOI) during pile driving activities (Table 5). Typically, incidental take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any time; however, there are no density estimates for marine mammal populations in Puget Sound. Therefore, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and incidental observations from WSF biologists. Expected marine mammal presence was determined by past observation and general abundance near the Port Townsend ferry terminal during the construction work window. Distances to the applicable NMFS thresholds for Level A and Level B harassment take for each type of pile (vibratory and impact) were presented in Section 1.6.6 in the IHA application. These distances were used to calculate the various ZOIs or area ensonified by sounds at or greater than threshold. For example, for the Level A threshold, the estimated distance to the 180 dB isopleth was 22 m for impact pile driving, which equates to a 1,520 square meter ZOI. The distance to the 160 dB isopleths during impact pile driving was estimated at 465 m, which equates to a 0.45 square km (only half the area is water). The distance to the 120 dB threshold for vibratory pile driving was estimated at 6.8 km, which equates to a ZOI of approximately 42 square km in water. Both of these areas will be monitored during construction to report actual marine mammal takes by Level B harassment.

TABLE 5—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED TAKE, AND THE PERCENTAGE OF THE POPULATION OR STOCK THAT MAY BE EXPOSED TO SOUNDS RESULTING IN LEVEL B HARASSMENT DURING THE PROPOSED FERRY TERMINAL REPLACEMENT PROJECT

Species	Abundance	Take authorization	Percentage of population or stock
Gray Whale	20,000	2	0.01
Humpback Whale	1,100	2	0.18
Minke Whale	1,000	2	0.2
Killer Whale (Transient)	314	3	1
Killer Whale (Southern Resident)	86	27	31
Harbor Porpoise	10,682	306	2.8
Dall's Porpoise	57,000	9	0.02
Pacific White-sided Dolphin	25,233	10	0.04
Harbor Seal	14,612	180	1.2
California Sea Lion	238,000	108	0.04
Northern Elephant Seal	101,000	5	0.005
Steller Sea Lion (eastern DPS)	48,500	90	0.19

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 81 m, and the airborne 100 dB Level B threshold for other pinnipeds was estimated at 17 m. No haulout sites are within the disturbance threshold distances; the nearest harbor seal haulout is approximately 3 km from the ferry terminal. In addition, the airborne noise harassment ZOI is smaller than both the impact and vibratory hammer underwater noise harassment ZOIs, and therefore is encompassed in the underwater noise take estimates.

Surveys conducted during the fall/winter of 2009/2010 by biologists contracted by the Snohomish Public Utility District recorded about 10 harbor seals per day (Tollit *et al.,* 2010). The applicant estimates that the total number of pile driving and removal hours would not exceed 18 eight-hour work days; therefore, the estimated number of seals that could be harassed would be 180. The survey conducted by Tollit *et al.* (2010) also recorded sightings of California sea lions passing Admiralty Head (located directly across Admiralty Inlet from Port Townsend) and reported six animals over the course of 88 days between October 2009 and February 2010. Similarly, the Washington Department of Fish and Wildlife recorded eight California sea lions in Admiralty Inlet during vessel-based surveys in Puget Sound between 1992 and 2004. Based on the results from these surveys, WSF estimates that up to six California sea lions could enter the 160 dB harassment zone per day, or a total of 108 during the 18 eight-hour work days that would involve in-water pile installation and removal activities. These surveys did not, however, report any sightings of northern elephant seals in Admiralty Inlet. Wintering elephant seals haul out on Protection Island, which is 12 km to the west of Port Townsend, and Smith and Minor Islands 24 km to the north, but may forage as far south as Admiralty Inlet. Therefore, it is possible that elephant seals could enter Port Townsend Bay during the proposed activity at the ferry terminal, and WSF believes that a couple northern elephant seals could be exposed to sound from pile driving and removal activities each day, especially since they are capable of spending prolonged periods below the water where they cannot be detected. Based on these considerations, WSF requests a total of 5 northern elephant seal takes by Level B harassment during the three eight-hour work days that involve pile driving and removal. Among pinnipeds, Steller sea lions are relatively common in Admiralty Inlet during the winter as they move between the Strait of Juan de Fuca and Puget Sound; hauling out at Craven Rock east of Marrowstone Island, or on channel buoys. The survey conducted by Tollit *et al.* (2010) recorded nearly 800 Steller sea lions over 88 days, or about 9 Steller sea lions per day. Considering that pile driving activities are expected to take about 18 work days to complete, WSF estimates that 90 Steller sea lions could be exposed to sound resulting in Level B harassment.

Take estimates for cetaceans also relied on recent survey data because density estimates for the inland waters of Washington are not available. Harbor porpoises are frequently observed in Admiralty Inlet, Tollit *et al.* (2010) recorded over 1,500 harbor porpoises during 88 survey days between October 2009 and February 2010, or approximately 17 per day. WSF estimates that pile driving activities will take about 18 work days to complete; therefore, approximately 306 harbor porpoises may be exposed to sound levels resulting in Level B harassment during this period. The survey by Tollit *et al.* (2010) did not positively identify any Dall's porpoises, and their preference for deeper waters and spatial distribution in Puget Sound make it unlikely that Dall's porpoises transiting through Admiralty Inlet would regularly enter the shallow waters of Port Townsend Bay; however, it is possible for Dall's porpoises to approach close enough to the proposed pile-driving activity to be exposed to sound resulting in Level B harassment. Therefore, based on an average winter group size of three animals (PSAMP data), WSF estimates that three Dall's porpoise may enter the Level B harassment zone three times during pile driving activities, and request a total of nine Dall's porpoise takes by Level B harassment.

The inland distribution of Pacific white-sided dolphins is largely limited to the Strait of Juan de Fuca and Haro Strait on the west side of the San Juan Islands. Because these dolphins appear confined to the deeper channels of the inland waters of Washington State, they may occur in Admiralty Inlet, but are unlikely to enter the shallower waters of Port Townsend Bay. In addition, these animals move to warmer waters in the fall and winter and may be entirely absent from the area during the proposed ferry terminal replacement project. Without better evidence on the reports of Pacific white-sided dolphins sighted in Admiralty Inlet during the winter or on the likelihood of these dolphins occurring in the vicinity of the ferry terminal, WSF requests 10 takes of Pacific white-sided dolphins by Level B harassment, which is based on their average group size exposed to one day of pile driving activity. Similar to Pacific white-sided dolphins, killer

whales are not expected to be present near Port Townsend during the proposed fall/winter activity period. Transient killer whale rarely occur in Puget Sound, and Southern Resident killer whales spend much of the winter in the vicinity of the Fraser River; however, based on the unpredictable nature of transient movements and past records of Southern Resident sightings, it is possible that a pod of killer whales could pass through Admiralty Inlet and be within the Level B harassment zone. For example, Tollit *et al.* (2010) did report three sightings of Southern Resident killer whales passing Admiralty Head in October 2009, and one group of transients passed by in December 2009 (neither group entered Port Townsend Bay). Therefore, WSF requests 30 killer whale takes by Level B harassment, which equates to one group of three transients plus the 27 animals that comprise J pod—the Southern Resident pod most likely to occur in Puget Sound during the proposed activity period.

The IHA application also requests takes of three species of baleen whale—gray whale, humpback whale, and minke whale. Gray whales generally enter the inland waters of Washington from March through May and sightings during the fall and winter are infrequent. However, because gray whales that enter Puget Sound tend to localize around Admiralty Inlet and Possession Sound, the possibility of a gray whale occurring in the vicinity of Port Townsend Bay during the proposed pile driving activity cannot be discounted. Therefore, based on the average gray whale group size, WSF requests two gray whale takes by Level B harassment. Humpback whales are also occasionally observed in Puget Sound, but most sightings occur during the summer months and nearly all recent winter and fall sightings have been confined to the vicinity of the San Juan Islands. Although humpback whales are not expected in the vicinity of Port Townsend Bay during the proposed action, the possibility of a sighting cannot be fully discounted. Based on the average group size, WSF requests two humpback whale takes by Level B harassment. Minke whales are also very rare in Puget Sound during the winter; however, of the few reported sightings in Puget Sound, most have occurred in the vicinity of Admiralty Inlet. Given the rarity of these animals in winter, WSF only anticipates that minke whales would make an occasional transit, if any, of Admiralty Inlet during the proposed activity with the remote possibility of one or two whales entering Port Townsend Bay. Therefore, based on these considerations, WSF requests two minke whale takes by Level B harassment.

To summarize, WSF requests, and NMFS authorizes, takes of 180 harbor seals, 108 California sea lions, 5 northern elephant seals, 90 Steller sea lions, 306 harbor porpoises, 9 Dall's porpoises, 10 Pacific white-sided dolphins, 3 transient killer whales, 27 Southern Resident killer whales, 2 gray whales, 2 humpback whales, and 2 minke whales. These numbers do not take the required mitigation measures into consideration, and are likely overestimates because they represent the maximum number of animals expected to occur within the Level B harassment isopleth. The actual number of animals that may be harassed is likely to be less.

Negligible Impact 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 number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

Marine mammals would not be exposed to activities or sound levels which would result in injury (PTS), serious injury, or mortality. Pile driving would occur in shallow coastal waters of Port Townsend Bay. The action area (waters around the ferry terminal) is not considered significant feeding or reproductive habitat for pinnipeds. The closest haul-out is 3 km away, which is outside the project area's largest harassment zone for airborne noise. Any marine mammals—most likely pinnipeds—approaching the action area would likely be traveling or opportunistically foraging.

Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area to some degree, thereby potentially reducing exposure and impacts. Pile driving activities are expected to occur for approximately 4 weeks. Although marine mammal prey species may be affected by pile driving activities, any impacts would be short in duration and limited to the immediate vicinity of the ferry terminal. NMFS expects that any fish that exhibit behavioral responses (i.e., avoidance) while in-water construction activities occur would resume normal behavior following the cessation of the activity. Furthermore, Puget Sound is a highly populated and industrialized area, so animals are likely tolerant or habituated to anthropogenic disturbance, including low level vibratory pile driving operations, and noise from other anthropogenic sources (such as vessels) may mask construction related sounds. There are no known areas within Port Townsend Bay where any of these species concentrate specifically for breeding or feeding. Based on all the information considered, there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals. Accordingly, the activity will have a negligible impact on the affected species or stocks of marine mammals.

Small Numbers Determination

The amount of take WSF requested for each species, and NMFS authorizes, is considered small (less than five percent) relative to the estimated populations or stocks of 14,612 Pacific harbor seals, 238,000 California sea lions, 101,000 northern elephant seals, 48,500 Steller sea lions, 10,632 harbor porpoises, 57,000 Dall's porpoises, 25,233 Pacific white-sided dolphins, 314 transient killer whales, 20,000 gray whales, 1,100 humpback whales, and 1,000 minke whales.

The request of up to 27 takes of Southern Resident killer whales by Level B harassment represents a larger percentage (31%) of the population; this number was estimated because Southern Resident killer whales travel in large groups. Although killer whales are unlikely to occur in the vicinity of the ferry terminal during pile driving, if they were to appear, it may be as a full group or pod, which necessitates the need for a larger number of takes requested.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS determines that the proposed pile removal and installation would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Southern Resident killer whale and humpback whale are listed as endangered under the ESA and the eastern distinct population segment (DPS) of Steller sea lion is currently listed as threatened, but NMFS has proposed delisting of the eastern DPS (77 FR 23209, April 18, 2012). These species may occur within the action area. NMFS' Office of Protected Resources initiated formal consultation on the issuance of an IHA under section 101(a)(5)(A) of the MMPA for the takes of Southern Resident killer whales, humpback whales, and the eastern DPS of Steller sea lions. This consultation is complete, with the determination in a Biological Opinion that the activity is not likely to jeopardize the continued existence of the eastern DPS of Steller sea lions, Southern Resident killer whales, and humpback whales. In addition, the activity will not destroy or adversely modify designated critical habitat for Southern Resident killer whales.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorizations for incidental harassment for the ongoing project. NMFS has made a Finding of No Significant Impact (FONSI) and, therefore, it is not necessary to prepare an environmental impact statement for the issuance of an IHA to WSF for this activity.

As a result of these determinations, NMFS has issued an IHA to the WSF to incidentally take marine mammals during in-water construction activities associated with the Port Townsend ferry terminal transfer span replacement project in Port Townsend, WA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 9, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–28345 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection, Procurement Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice

SUMMARY: The Commodity Futures Trading Commission (''the Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), *44 U.S.C. 3501 et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on the extension of requirements relating to information collected to assist the Commission in soliciting and awarding contracts, OMB Control No. 3038–0031.

DATES: Comments must be submitted on or before January 22, 2013.

ADDRESSES: Comments may be mailed to Sonda Owens, Financial Management Branch, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Sonda Owens, (202) 418–5182; FAX (202) 418–54149; email: *sowens@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. 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. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Procurement Contracts, OMB Control No. 3038–0031—Extension

The information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Annual number of respondents	Frequency or response	Total annual responses	Hours per response	Total hours
364	Annually	364	2	728

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: November 15, 2012.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28234 Filed 11–20–12; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

This notice that an emergency meeting was held is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETINGS: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission held an emergency closed meeting on November 14, 2011 at 2:15 p.m. The Commission, by a recorded unanimous vote of those members attending, determined that agency business required that business of the agency required that the meeting be held at that time. Commissioner Chilton did not participate.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS CONSIDERED: Litigation matters

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, Assistant Secretary of the Commission, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–28382 Filed 11–19–12; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Federal Advisory Committee Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (hereafter referred to as ''the Committee'').

DATES: Thursday, December 6, from 8:30 a.m. to 5:00 p.m. and Friday, December 7, 2012, 8:30 a.m. to 4:00 p.m.

ADDRESSES: Conference Room 3A912A, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil*. Phone: (703) 767–4453. Fax: (703) 767–4206.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (C–WMD), counter terrorism and counter proliferation.

Agenda: Beginning at 8:30 a.m., December 6, and through the end of the meeting on December 7, the committee will receive classified Combating Weapons of Mass Destruction (C–WMD) briefings from the Department of Defense and the Intelligence Community. The committee will also hold classified discussions on Middle East WMD concerns, Addressing C–WMD Capabilities Needs and Gaps for 2020, the Cooperative Threat Reduction Program and the Way Forward, the Global C–WMD Awareness System, and Securing Special Nuclear Materials.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that the public interest requires all sessions of this meeting be closed to the public because the discussions will be concerned with classified information and matters covered by Title 5, United States Code, Section 552b(c)(1) and are inextricably intertwined with the unclassified material which cannot reasonably be segregated into separate discussions without disclosing secret material.

Committee's Designated Federal Officer or Point of Contact: Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J/2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil*. Phone: (703) 767–4453. Fax: (703) 767–4206.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer. The Designated Federal Officer's contact information is listed in the paragraph immediately above or it can be obtained from the General Services Administration's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: November 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28241 Filed 11–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0143]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on December 24, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 21, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 15, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Recording System (DEERS), (August 3, 2011, 76 FR 46757).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Defense Enrollment Eligibility Reporting System (DEERS).''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Members, former members, retirees, civilian employees (includes non-appropriated fund) and contractor employees of the DoD and all of the Uniformed Services; Presidential appointees of all Federal Government agencies; Medal of Honor recipients; U.S. Military Academy students; non-Federal agency civilian associates (e.g., American Red Cross paid employees, non-DoD contract employees); DoD local national hires; DoD beneficiaries; dependents; prior military eligible for Department of Veterans Affairs (VA) benefits; VA beneficiaries; beneficiaries of Servicemembers' Group Life Insurance (SGLI)/Family SGLI (FSGLI); members of the public treated for a medical emergency in a DoD or joint DoD/VA medical facility; and individuals who require a Common Access Card to access DoD applications (i.e., Department of Homeland Security employees, and state National Guard Employees).''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name; Service or Social Security Number (SSN); DoD ID number; enrollment number; relationship of beneficiary to sponsor; residence address; date of birth; gender; mother's maiden name, branch of Service; dates of beginning and ending eligibility; number of family members of sponsor; multiple birth code/birth order; primary unit duty location of sponsor; race and ethnic origin; occupation; rank/pay grade; character of service; reenlistment eligibility; entitlement conditions; activations and deployments; disability documentation; wounded, ill and injured identification information; other health information, i.e., tumor/reportable disease registry; Medicare eligibility and enrollment data; primary and secondary fingerprints and photographs; blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays; and Foreign National Identification Numbers.

Patient registration data for shared DoD/VA beneficiary populations, including VA Integration Control Number (ICN), VA patient type, patient category code and patient category name of sponsor and beneficiary, patient location Defense Medical Information System, patient location date, identity and relationship data, command interest code and name, command security code and name, medical fly status code. Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as, cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; third party health insurance information on dependents; SGLI/FSGLI beneficiaries information and amounts of coverage; demographic data (kept on others beyond beneficiaries) date of birth, home of record state, sex, race, education level; VA disability payment records; digital signatures where appropriate to assert validity of data; email (home/work); emergency contact person information; care giver information; immunization data; Information Assurance (IA) Work Force information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proofing identity and association; workforces information (e.g., acquisition, first responders); Privacy Act audit logs.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. App. 3, Inspector General Act of 1978; 5 U.S.C. Chapter 90, Federal Long-Term Care Insurance; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Chapter 53, Miscellaneous Rights and Benefits; 10 U.S.C. Chapter 54, Commissary and Exchange Benefits; 10 U.S.C. Chapter 55 Medical and Dental Care; 10 U.S.C. Chapter 58, Benefits and Services for Members being Separated or Recently Separated; 10 U.S.C. Chapter 75, Deceased Personnel; 10 U.S.C. 2358, Research and Development Projects; 20 U.S.C. 1070a(f)(4), Higher Education Opportunity Act; 31 U.S.C. 3512(c), Executive Agency Accounting and Other Financial Management; 42 U.S.C. 18001 note, Patient Protection and Affordable Care Act (Public Law

111–148); 42 U.S.C. 1973ff, Federal Responsibilities; 50 U.S.C. Chapter 23, Internal Security; DoD Directive 1000.04, Federal Voting Assistance Program (FVAP); DoD Instruction 1100.13, Surveys of DoD Personnel; DoD Instruction 1341.2, DEERS Procedures; DoD Instruction 3001.02, Personnel Accountability in Conjunction with Natural or Manmade Disasters; Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors; 38 CFR part 9.20, Traumatic injury protection; 38 U.S.C. Chapter 19, Subchapter III, Service members' Group Life Insurance; 42 U.S.C. 18001 note, Patient Protection and Affordable Care Act (Pub. L. 111–148); and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To provide a database for determining eligibility for DoD entitlements and privileges; to support DoD health care management programs, to include research and analytical projects, through TRICARE Management Activity; to provide identification of deceased members; to record the issuance of DoD badges and identification cards, i.e., Common Access Cards (CAC) or beneficiary identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

To authenticate and identify DoD affiliated personnel (e.g., contractors); to grant physical and logical access to DoD facilities; to assess manpower, support personnel and readiness functions; to perform statistical analyses; identify current DoD civilian and military personnel for purposes of detecting fraud and abuse of benefit programs; to register current DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are entitled; to ensure benefit eligibility is retained after separation from the military; information will be used by agency officials and employees, or authorized contractors, and other DoD Components for personnel and manpower studies; to assist in recruiting prior-service personnel; and to notify military members eligible to vote about information for registration and voting procedures.

To provide appropriate contact information of DoD Personnel and beneficiaries for the purpose of conducting surveys authorized by the Department of Defense. Authorized surveys are used as a management tool for statistical analysis, policy planning, reporting, evaluation of program effectiveness, conducting research, to provide direct feedback on key strategic indicators, and for other policy planning purposes.

To maintain the Servicemembers' Group Life Insurance (SGLI) and Family SGLI (FSGLI) coverage elections and beneficiaries' information. To provide rosters of DoD affiliated persons at the time of an official declared natural or man-made disaster.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

2. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

3. To each of the fifty states and the District of Columbia for the purpose of determining the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

4. To provide dental care providers assurance of treatment.

5. To Federal agencies and/or their contractors, the Transportation Security Administration and other federal transportation agencies, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or other valid identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, systems, or programs.

6. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. NOTE: Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

7. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether the children of such individuals are or were eligible for DoD healthcare coverage and for what period of time they were eligible. **Note:** Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow state child support enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and Medicaid Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

8. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

9. To the Department of Veterans Affairs (DVA):

a. To provide uniformed service personnel, pay and wounded, ill and injured identification data for present and former uniformed service personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well-being of veterans and their family members.

b. To provide identifying uniformed service personnel data to the DVA and its insurance program contractor for the purpose of conducting outreach and administration of benefits to qualified Service Members, Veterans and their dependents (38 U.S.C. 1977), notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. To provide former uniformed service personnel and survivor's financial benefit data to DVA for the purpose of identifying retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying uniformed service personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

f. Providing to the Veterans Benefits Administration, DVA uniformed service personnel and financial data for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (10 U.S.C., Chapter 1606—Selected Reserve and 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C., Chapter 1607), and the National Call to Service enlistment educational benefit (10 U.S.C., Chapter 510), the Post 9/11 GI Bill (38 U.S.C., Chapter 33) and The Transferability of Education Assistance to Family Members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

10. To Federally Funded Research Centers and grantees for the purpose of performing research on manpower problems for statistical analyses.

11. To consumer reporting agencies to obtain current addresses of separated uniformed services personnel to notify them of potential benefits eligibility.

12. To Defense contractors to monitor the employment of former DoD employees and uniformed service personnel subject to the provisions of 41 U.S.C. 423.

13. To Federal and quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior uniformed service personnel credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, SSN, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

14. To Federal and quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well-being of active duty, reserve, and retired uniformed service personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

15. To Federal and State agencies for purposes of obtaining socioeconomic information on uniformed service personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

16. To Federal and State agencies to validate demographic data (e.g., SSN, citizenship status, date and place of birth, etc.) for individuals in DMDC personnel and pay files so that accurate information is available in support of DoD requirements.

17. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

18. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

19. To Coast Guard recruiters in the performance of their assigned duties.

20. To Federal Agencies, to include OPM, United States Postal Service, Executive Office of the President and Administrative Office of the Courts; Department of Health and Human Services; Department of Education; Department of Veterans Affairs to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

a. Providing all members of the Reserve Component of the Armed Forces to be matched against the Federal agencies for identifying those Reserve Component Service members that are also Federal civil service employees with eligibility for the Federal Employees Health Benefits (FEHB) program. This disclosure by the Federal

agencies will provide the DoD with the FEHB program eligibility and Federal employment information necessary to determine initial and continuing eligibility for the TRICARE Reserve Select (TRS) program and the TRICARE Retired Reserve (TRR) program (collectively referred to as purchased TRICARE programs). Reserve Component members who are not eligible for FEHB program are eligible for TRS (section 1076d of title 10) or TRR (section 1076e of title 10).

b. Providing all members of the Reserve Component of the Armed Forces to be matched against the Federal agencies for the purpose of identifying the Ready Reserve Component Service members who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

c. Providing to the Department of Education for the purpose of identifying dependent children of those Armed Forces members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF), Iraq and Afghanistan Only, for possible benefits.

d. Providing to the Centers for Medicaid and Medicare Services, Department of Health and Human Service, for the purpose of identifying DoD eligible beneficiaries both over and under the age of 65 who are Medicare eligible. Current law requires TMA to discontinue military health care benefits to Military Heath Services beneficiaries who are Medicare eligible unless they are enrolled in Medicare Part B.

e. Providing to the Veterans Benefits Administration, DVA uniformed service data for the purpose of determining eligibility and any changes in eligibility status to insure proper administration of benefits for GI Bill education and training benefits under the Montgomery GI Bill (10 U.S.C., Chapter 1606—Selected Reserve and 38 U.S.C., Chapter 30—Active Duty), the Post 9/11 GI Bill (38 U.S.C., Chapter 33).

f. Providing to the Centers for Medicaid and Medicare Services, Department of Health and Human Services, for the purpose of verifying individual's healthcare eligibility status, in accordance with the Affordable Care Act. Data provided to CMS will be used to make eligibility determinations for insurance affordability programs, administered by Medicaid, the Children's Health Insurance Program (CHIP), the Basic Health Program (BHP) and the American Health Benefit Exchange.

21. To Federal and contractor medical personnel at joint DoD/VA health care clinics, for purposes of authenticating the identity of individuals who are registered as patients at the clinic and maintaining, through the correlation of DoD ID number and Integration Control Number (ICN), a shared population of DoD and VA beneficiaries who are users of the clinic.

The DoD Blanket Routine Uses published at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system.''

* * * * *

[FR Doc. 2012–28240 Filed 11–20–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors; Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting Notice.

SUMMARY: In accordance with 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting in the Capitol Building, Senate Visitor Center, Conference Rooms 208–209 Washington, DC on December 7, 2012. The meeting will begin at 9:30 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include the Superintendent's Update; a Character Update; a Development of a USAFA Second Lieutenant brief; the Subcommittee Out-briefs; and an Admissions brief. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires one session of this meeting shall be closed to the public because they will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Capt Bobby Hale, Accessions and Training Division, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695–4066.

Bao-Anh ''Anh'' Trinh,

Air Force Federal Register Officer.

[FR Doc. 2012–28290 Filed 11–20–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Jinga-hi, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to Jinga-hi, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 7,420,366: Coupled Nonlinear Sensor System.// U.S. Patent No. 7,714,671: Wideband Nonlinear ''Channelizer'' for Rapid Processing of Static and Time-varying Signals.//U.S. Patent No. 7,777,535: Coupled Nonlinear Elements for Frequency Down-conversion Systems and Methods.//U.S. Patent No. 7,902,931: Wideband Nonlinear Circuits for Implementation in Frequency Channel.//U.S. Patent No. 8,165,557: Frequency Down-conversion System Using Arrays of Coupled Non-linear Elements.//U.S. Patent No. 8,174,325: Adaptive Injection-locked Oscillator Array for Broad Spectrum RF Analysis.//U.S. Patent No. and 8207763: Non-linear Channelizer Device with Wideband, High-frequency Operation and Channel Reconfigurability.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, no later than December 6, 2012.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, Email: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 14, 2012,

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–28281 Filed 11–20–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0055]

Agency Information Collection Activities; Comment Request; DC Choice Evaluation

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 22, 2013.

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–ICCD–0055 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.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. 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: DC Choice Evaluation.

OMB Control Number: Pending.

Type of Review: New collection; request for a new OMB Control Number.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 3,059.

Total Estimated Number of Annual Burden Hours: 984.

Abstract: The Institute of Education Sciences at the U.S. Department of Education is conducting a congressionally mandated evaluation of the newly re-authorized program providing private school scholarships to low-income residents of Washington, DC. As was the case for the prior evaluation of the program, the foundation of the new evaluation will be a randomized control trial comparing outcomes of eligible applicants (students and their parents) assigned by lottery to receive or not receive a scholarship. This design is consistent with the requirement for a rigorous evaluation as well as the need to fairly allocate the scholarships if the program is oversubscribed. The study will include the administration of annual academic assessments and surveys of students, parents, and principals.

Dated: November 15, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–28317 Filed 11–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0054]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Plan for Independent Living (SPIL) for the State Independent Living Services and Center for Independent Living Programs

AGENCY: Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 21, 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–ICCD–0054 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.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. 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: State Plan for Independent Living (SPIL) for the State Independent Living Services and Center for Independent Living Programs.

OMB Control Number: 1820–0527 .

Type of Review: Extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 3,360.

Abstract: States wishing to receive funding under the State Independent Living Services and Centers for Independent Living programs must submit an approvable three-year State Plan for Independent Living (SPIL) to the Rehabilitation Services Administration. The purpose of these programs is to promote the independent living philosophy based on consumer control, peer support, self-help, self-determination, equal access and individual and systems advocacy to maximize the leadership, empowerment, independence and productivity of individuals with significant disabilities and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society. The SPIL encompasses the activities planned by the state to achieve its specified independent living objectives and reflects the state's commitment to comply with all applicable statutory and regulatory requirements during the three years covered by the plan.

Dated: November 15, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–28316 Filed 11–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0056]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Needs Assessment and Workplan Guide for the Technical Assistance and Continuing Education Program

AGENCY: Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS)

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new FRSS generic clearance.

DATES: Interested persons are invited to submit comments on or before December 21, 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–ICCD–0056 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.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Needs Assessment and Workplan Guide for the Technical Assistance and Continuing Education Program.

OMB Control Number: 1820–0690.

Type of Review: Revision of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 817.

Abstract: Technical Assistance and Continuing Education Centers are required to conduct needs assessments of state vocational rehabilitation agencies and their partners in their regions, create workplans to address the needs they identify, and evaluate the technical assistance and continuing education provided to address those needs. This guide establishes the requirements for, and information to be reported about, those activities.

Dated: November 16, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–28331 Filed 11–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0057]

Agency Information Collection Activities; Comment Request; National Assessment of Educational Progress (NAEP) 2014–16 System Clearance

AGENCY: Department of Education (ED), Institute of Education Sciences (IES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 22, 2013.

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–ICCD–0057 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.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. 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: National Assessment of Educational Progress (NAEP) 2014–16 System Clearance.

OMB Control Number: 1850–0790.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 1,609,126.

Total Estimated Number of Annual Burden Hours: 758,329.

Abstract: The National Center for Education Statistics is requesting a three year generic system clearance for the National Assessment of Education Progress (NAEP) to be administered in the 2014–2016 timeframe. The primary reason for the system clearance request is that it enables NAEP to meet its large and complex assessment reporting schedules and deliverables through a more efficient clearance process. NAEP is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy, and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. The nature of NAEP is that burden alternates from a relatively low burden in national-level administration years to a substantial burden increase in state-level administration years when the sample has to allow for estimates for individual states and some of the large urban districts. Consequently, the estimated respondent burden is substantially lower for the 2014 and 2016 versus the 2015 administration of NAEP. The NAEP results will be reported to the public through the Nations Report Card as well as other online NAEP tools.

Dated: November 16, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–28332 Filed 11–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: U.S. Department of Education, National Assessment Governing Board.

ACTION: Notice of open and closed meeting sessions.

SUMMARY: This notice sets forth the schedule and proposed agenda for the upcoming meeting of the National Assessment Governing Board (Board) and also describes the specific functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This notice is issued to provide members of the general public with an opportunity to attend and/or provide comments. Individuals who will need special accommodations in order to attend the meeting (e.g. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 19, 2012. We will attempt to meet requests after this date but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 29–December 1, 2012.

Times:

November 29: Committee Meetings:

Ad Hoc Committee on NAEP Background Information: 2:00 p.m.–4:00 p.m.

Executive Committee: Open Session: 4:30 p.m.–5:30 p.m.; Closed Session: 5:30 p.m.–6:00 p.m.

November 30: Full Board and Committee Meetings:

Full Board: Open Session: 8:30 a.m.–9:20 a.m.; Closed Session: 12:15 p.m.–1:45 p.m.; Open Session: 2:00 p.m.–4:15 p.m.

Committee Meetings:

Assessment Development Committee (ADC): Open Session: 9:30 a.m.–10:40 a.m.; Closed Session: 10:40 a.m.–12:00 p.m.

Reporting and Dissemination Committee (R&D): Open Session: 9:30 a.m.–12:00 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 9:30 a.m. –10:45 a.m.; Closed Session: 10:45 a.m.–11:50 p.m.; Open Session: 11:50 a.m.–12:00 p.m.

December 1: Full Board and Committee Meetings:

Nominations Committee: Closed Session: 7:15 a.m.–8:15 a.m.

Full Board: Closed Session: 8:30 a.m.–10:00 a.m.; Open Session: 10:15 a.m.–12:00 p.m.

Location: St. Regis Hotel, 923 16th and K Streets NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer, National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (Board) is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On November 29, 2012, the Ad Hoc Committee on Background Information will meet in open session from 2:00 p.m. to 4:00 p.m. The Executive Committee will convene in open session from 4:30 p.m. to 5:30 p.m. and thereafter in closed session from 5:30 p.m. to 6:00 p.m.

During the closed session, the Executive Committee will receive and discuss the current procurement plans and independent government cost estimates from the National Center for Education Statistics (NCES) staff for proposed item development, data collection, scoring and analysis, and reporting of National Assessment of Educational Progress (NAEP) results for 2013–2017, and their implications on future NAEP activities. The discussion of independent government cost estimates for the NAEP 2013–2017 contracts is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP Assessments available at *www.nagb.org/policies.html*. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing contractors attending an unfair advantage in procurement and contract negotiations for NAEP. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 30, 2012, the full Board will meet in open session from 8:30 a.m. to 9:20 a.m., followed by a closed session from 12:15 p.m. to 1:45 p.m., and an open session from 2:00 p.m. to 4:15 p.m.

From 8:30 a.m. to 9:20 a.m. on November 30, the Board will review and approve the November 29–December 1, 2012 meeting agenda and meeting minutes from the August 2012 Board meeting. Thereafter, the Chairman will introduce new Board members followed by remarks from the new members and the Chairman.

On November 30, 2012 from 8:50 a.m. to 9:20 a.m., the Executive Director of the Governing Board will provide a report to the Board, followed by updates from the Commissioner of the National Center for Education Statistics (NCES) and the Director of the Institute of Education Sciences (IES). Following these sessions, the Board will recess for Committee meetings from 9:30 a.m. to 12:00 p.m. The Reporting and Dissemination Committee will meet in open session and the Assessment Development Committee and the Committee on Standards, Design and Methodology will meet in open and closed sessions as described below.

On November 30, 2012, the Assessment Development Committee will meet in open session from 9:30 a.m. to 10:40 a.m. and in closed session from 10:40 a.m. to 12:00 p.m. During the closed session, ADC members will review secure science interactive computer tasks (ICTs) and test items for the 2014 pilot test in preparation for the 2015 NAEP science assessment. The review of secure ICTs for grades 4, 8, and 12 must be conducted in closed session because the ADC members will be provided with secure items and materials which are not yet available for release to the general public. Premature disclosure of the secure test items and materials would compromise the integrity and substantially impede implementation of the secure NAEP assessments and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code.

The Committee on Standards, Design and Methodology (COSDAM) will meet in open session from 9:30 a.m. to 10:45 a.m. and thereafter in closed session from 10:45 a.m. to 11:50 a.m., followed by an open session from 11:50 a.m. to 12:00 p.m. During the closed session, COSDAM members will receive an embargoed technical briefing on preliminary results of the linking study at grade 8 in mathematics and science. The linking study was conducted in 2012 between NAEP and the Trends in International Mathematics and Science (TIMSS) assessments. These data have not yet been released and therefore cannot be disclosed to the general public at this time. Premature disclosure of these secure data would significantly impede implementation of the NAEP and TIMSS assessments and reporting, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Following the Committee meetings, on November 30, 2012 from 12:15 p.m. to 1:45 p.m. the full Board will meet in closed session to receive two briefings—a linking study of NAEP and TIMSS, and results of the Mathematics Curriculum Study. For the NAEP/TIMSS linking study, the Board will receive an embargoed briefing on preliminary results. For the mathematics curriculum study, the Board will receive an embargoed briefing on the results from the 2005 High School Transcript Mathematics Curriculum Study of 12th graders. The briefings will include secure test items, embargoed assessment data, and results that cannot be discussed in an open meeting prior to their official release. Premature disclosure of these results would significantly impede implementation of the NAEP and TIMSS assessment program, and is

therefore protected by exemption 9(B) of section 552b(c) of Title 5 United States Code.

After the November 30 closed general session, the Board will meet in open session. From 2:00 p.m. to 2:45 p.m., the Board will receive the annual briefing on the Governing Board and Council of Chief State School Officers (CCSSO) Policy Task Force. From 2:45 p.m. to 3:30 p.m., the Board will receive a demonstration of the online Grade 12 Preparedness Technical Report and a briefing on plans for future research studies. Thereafter, from 3:45 p.m. to 4:15 p.m., Board members will receive their annual ethics briefing from the Office of General Counsel. The November 30, 2012 Board meeting is scheduled to adjourn at 4:15 p.m.

On December 1, 2012, the Nominations Committee will meet in closed session from 7:15 a.m. to 8:15 a.m. to discuss potential candidates for Board terms beginning October 1, 2013. The Committee discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 of the United States Code.

On December 1, 2012 from 8:30 a.m. to 10:00 a.m. the full Board will receive a demonstration of computer-based tasks and test materials for the NAEP 2014 Technology and Engineering Literacy (TEL) Assessment at grade 8. During this closed session, Board members will be provided with specific test materials for review which are not yet available for release to the general public. Premature disclosure of these secure test items and materials would compromise the integrity and substantially impede implementation of the NAEP assessment and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code.

Following this closed session, the full Board will meet in open session to discuss its ongoing work on Making a Difference Initiatives which includes plans for the 2013 Education Summit for Parent Leaders. From 10:45 a.m. to 12:00 p.m. the Board will receive Committee reports and take action on Committee recommendations. The December 1, 2012 meeting is scheduled to adjourn at 12:00 p.m.

A verbatim transcript of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street NW., Washington, DC, from 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC, area at (202) 512–0000. Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: November 16, 2012.

Cornelia Orr,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2012–28314 Filed 11–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–275–000.

Applicants: Rockies Express Pipeline LLC.

Description: Neg Rate 2012–11–13 ConocoPhillips to be effective 11/13/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5248.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: RP13–276–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Negotiated Rate Agreement—Barclays to be effective 12/1/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5253.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: RP13–277–000.

Applicants: DCP Midstream, LP, DCP South Central Texas LLC.

Description: Joint Petition of DCP Midstream, LP and DCP South Central Texas LLC for Temporary Waiver of Capacity Release Regulations and Policies.

Filed Date: 11/13/12.

Accession Number: 20121113–5319.

Comments Due: 5 p.m. ET 11/26/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–254–001.

Applicants: Millennium Pipeline Company, LLC.

Description: Negotiated Rate Service Agmts No. 5582, 135770—Amendment to be effective 11/1/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5377.

Comments Due: 5 p.m. ET 11/26/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR § 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28229 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–37–000.

Applicants: Montana Alberta Tie Ltd.
Description: Application for Approval of Internal Reorganization under Section 203 of the FPA of Montana Alberta Tie Ltd.
Filed Date: 11/13/12.
Accession Number: 20121113–5479.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: EC13–38–000.
Applicants: Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Grand Ridge Energy LLC, et. al.
Filed Date: 11/13/12.
Accession Number: 20121113–5480.
Comments Due: 5 p.m. e.t. 12/4/12.

Take notice that the Commission received the following exempt wholesale generator filings:
Docket Numbers: EG13–10–000.
Applicants: Grand Ridge Energy IV LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Grand Ridge Energy IV LLC.
Filed Date: 11/13/12.
Accession Number: 20121113–5461.
Comments Due: 5 p.m. e.t. 12/4/12.

Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Eastlake generating unit number 1.
Filed Date: 7/10/12.
Accession Number: 20120710–5162.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Eastlake generating unit number 2.
Filed Date: 7/10/12.
Accession Number: 20120710–5163.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Eastlake generating unit number 3.
Filed Date: 7/10/12.
Accession Number: 20120710–5164.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Ashtabula generating unit number 5.
Filed Date: 7/10/12.
Accession Number: 20120710–5165.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Lake Shore generating Unit Number 18.
Filed Date: 7/10/12
Accession Number: 20120710–5166.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Correction to July 10, 2012 Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Lake Shore generating unit number 18.
Filed Date: 10/31/12.
Accession Number: 20121031–5399.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Correction to July 10, 2012 Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Eastlake generating unit number 2.
Filed Date: 10/31/12.
Accession Number: 20121031–5402.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Correction to July 10, 2012 Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Eastlake generating unit number 1.
Filed Date: 10/31/12.
Accession Number: 20121031–5403.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Correction to July 10, 2012 Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Eastlake generating unit number 3.
Filed Date: 10/31/12.
Accession Number: 20121031–5404.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER12–2710–000.
Applicants: FirstEnergy Generation Corporation.
Description: Correction to July 10, 2012 Informational Filing of FirstEnergy Generation Corporation regarding Deactivation Avoidable Cost Rate of Ashtabula generating unit number 5.
Filed Date: 10/31/12.
Accession Number: 20121031–5405.
Comments Due: 5 p.m. e.t. 12/5/12.
Docket Numbers: ER13–353–000.
Applicants: Alcoa Power Generating Inc.
Description: APGI–SMT Interconnection Agreement to be effective 11/14/2012.
Filed Date: 11/13/12.
Accession Number: 20121113–5228.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: ER13–354–000.
Applicants: QC Power Strategies Fund LLC.
Description: QCP Initial Tariff to be effective 11/15/2012.
Filed Date: 11/13/12.
Accession Number: 20121113–5232.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: ER13–355–000.
Applicants: Alcoa Power Generating Inc.
Description: APGI–TVA Interconnection Agreement to be effective 11/14/2012.
Filed Date: 11/13/12.
Accession Number: 20121113–5237.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: ER13–356–000.
Applicants: ISO New England Inc.
Description: Gas Pipeline Information Sharing to be effective 12/7/2012.
Filed Date: 11/13/12.
Accession Number: 20121113–5290.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: ER13–357–000.
Applicants: Cirrus Wind 1, LLC.
Description: MBR Tariff to be effective 12/6/2012.
Filed Date: 11/13/12.
Accession Number: 20121113–5335.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: ER13–358–000.
Applicants: Smoky Mountain Transmission LLC.
Description: Baseline New to be effective 12/31/9998.
Filed Date: 11/13/12.
Accession Number: 20121113–5391.
Comments Due: 5 p.m. e.t. 12/4/12.
Docket Numbers: ER13–359–000.
Applicants: Dominion Energy Brayton Point, LLC.
Description: New Baseline Refile to be effective 11/14/2012.
Filed Date: 11/13/12.
Accession Number: 20121113–5421.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–360–000.

Applicants: Grand Ridge Energy LLC.

Description: Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5435.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–361–000.

Applicants: Grand Ridge Energy II LLC.

Description: Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5444.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–362–000.

Applicants: Grand Ridge Energy III LLC.

Description: Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5446.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–363–000.

Applicants: Grand Ridge Energy IV LLC.

Description: Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5459.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–365–000.

Applicants: Constellation Energy Commodities Group, Inc.

Description: Reassignment Tariff to be effective 11/14/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5471.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–366–000.

Applicants: Southwest Power Pool, Inc.

Description: Order No. 1000 Compliance Filing—Part 1 of 2—OATT to be effective 12/31/9998.

Filed Date: 11/13/12.

Accession Number: 20121113–5472.

Comments Due: 5 p.m. e.t. 12/27/12.

Docket Numbers: ER13–367–000.

Applicants: Southwest Power Pool, Inc.

Description: Order No. 1000 Compliance Filing—Part 2 of 2—Membership Agreement to be effective 12/31/9998.

Filed Date: 11/13/12.

Accession Number: 20121113–5473.

Comments Due: 5 p.m. e.t. 12/27/12.

Docket Numbers: ER13–368–000.

Applicants: The Procter & Gamble Paper Products Company.

Description: MBRA Tariff to be effective 1/14/2013.

Filed Date: 11/13/12.

Accession Number: 20121113–5474.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–369–000.

Applicants: Smoky Mountain Transmission LLC.

Description: Normal filing to be effective 12/31/9998.

Filed Date: 11/13/12.

Accession Number: 20121113–5475.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–370–000.

Applicants: Kansas City Power & Light Company.

Description: KCP&L Rate Schedule 132 to be effective 11/13/2012.

Filed Date: 11/14/12.

Accession Number: 20121114–5002.

Comments Due: 5 p.m. e.t. 12/5/12.

Docket Numbers: ER13–371–000.

Applicants: Southern California Edison Company.

Description: SGIA and Distribution Service Agreement with Central Antelope Dry Ranch B to be effective 11/15/2012.

Filed Date: 11/14/12.

Accession Number: 20121114–5004.

Comments Due: 5 p.m. e.t. 12/5/12.

Docket Numbers: ER13–372–000.

Applicants: Southern California Edison Company.

Description: SGIA and Distribution Service Agreement with Lancaster Dry Farm Ranch B to be effective 11/15/2012.

Filed Date: 11/14/12.

Accession Number: 20121114–5005.

Comments Due: 5 p.m. e.t. 12/5/12.

Docket Numbers: ER13–373–000.

Applicants: Dynegy Marketing and Trade, LLC.

Description: Dynegy Marketing and Trade, LLC submits Request for Additional Cost Recovery under Section III.A.15, Appendix A to the ISO New England Inc. Tariff.

Filed Date: 11/13/12.

Accession Number: 20121113–5477.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–374–000.

Applicants: Grand Ridge Energy V LLC.

Description: Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 11/13/12.

Accession Number: 20121113–5498.

Comments Due: 5 p.m. e.t. 12/4/12.

Docket Numbers: ER13–375–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits tariff filing per 35.13(a)(2)(iii): Southwest Reserve Sharing Group Operating Procedures 4 and 12 to be effective 1/16/2013.

Filed Date: 11/14/12.

Accession Number: 20121114–5075.

Comments Due: 5 p.m. e.t. 12/5/12.

Docket Numbers: ER13–376–000.

Applicants: Arizona Public Service Company.

Description: Cancellation of APS Service Agreement No. 312—Perrin Ranch LGIA to be effective 1/14/2013.

Filed Date: 11/14/12.

Accession Number: 20121114–5096.

Comments Due: 5 p.m. e.t. 12/5/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–9–000.

Applicants: Montana Alberta Tie Ltd, MATL LLP.

Description: Application Under Section 204 of the Federal Power Act of Montana Alberta Tie Ltd, et al.

Filed Date: 11/13/12.

Accession Number: 20121113–5482.

Comments Due: 5 p.m. e.t. 12/4/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–84–000.

Applicants: Brigham Young University—Idaho.

Description: Brigham Young University—Idaho submits FERC Form 556 Notice of Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility.

Filed Date: 11/13/12.

Accession Number: 20121113–5488.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 14, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28269 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–354–000]

QC Power Strategies Fund LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of QC Power Strategies Fund LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is December 5, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28271 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–357–000]

Cirrus Wind 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Cirrus Wind 1, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is December 5, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28270 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–368–000]

The Proctor & Gamble Paper Products Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of The Proctor & Gamble Paper Products Company's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is December 5, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 15, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28268 Filed 11–20–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9367–1]

Access to Confidential Business Information by Electronic Consulting Services, Inc., and Its Identified Subcontractors, Cherokee Services Group and Dell Services Federal Government

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Electronic Consulting Services, Inc. (ECS) of Fairfax, VA and its identified subcontractors, Cherokee Services Group of Catoosa, OK and Dell Services Federal Government of Fairfax, VA to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than November 28, 2012.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Holly Fenderson, Enterprise Desktop Solution Division (2832T), Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–1793; fax number: (202) 566–1790; email address: *fenderson.holly@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–35F–0601K, Order Number EP–G12H–00442, contractor ECS of 2750 Prosperity Ave., Suite 600, Fairfax, VA; and its identified subcontractors: Cherokee Services Group of 777 W. Cherokee Street, Catoosa, OK and Dell Services Federal Government of 8270 Willow Oaks Corporate Drive, Fairfax, VA will assist the Office of Pollution Prevention and Toxics (OPPT) by providing services and support to meet the needs of all EPA users. EPA users include standard, power, high computing, and shared computer as well as remote users and users at alternate work locations. The service providers (SP) will provide support for EPA hardware endpoints including but not limited to desktops, laptops, thin clients and scientific computers, PCs used as laboratory instrument controllers and software will be included in the scope of support only, if the High Computing Users Optional Contract Line Item (CLIN) is exercised; access to EPA server resources, data, systems, printers, and peripherals.

SPs will also provide support for EPA operating systems (OSs), Commercial Off the Shelf (COTS) software and custom developed software; access to the EPA wide area network (WAN) and the Internet; technical refresh of EPAs computing endpoints; Assistive Technology Center Support; and Training and Conference Room Support. The SPs will also provide services to complete installation, implementation, provisioning, maintenance, deprovisioning, decommission, removal and disposal of IT infrastructure through EPA's Office of Administration and Resources Management (OARM).

The Federal disposal requirements as described herein on a continuing basis are in response to EPA user requirements. SPs will also maintain an awareness of the quality, efficiency and cost-effectiveness of all services provided, with a continuing emphasis on devising and developing better methods and/or procedures to provide the IT infrastructure required by the EPA user community to meet present and future needs in support of EPA's mission. Furthermore, the SPs will provide services for coordination of procurement by EPA Federal staff through EPA's Program Offices and the EPA designated hardware provider. Finally, the SP will be required to coordinate and collaborate with other

EPA infrastructure IT service providers (e.g. VoIP, PBX, switches, routers, hubs, Wireless LANs, network wiring, mobile telephone services, landline telephones, audio/video equipment and services). In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–0601K, Order Number EP–G12H–00442, ECS and its identified subcontractors will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ECS and its identified subcontractors' personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ECS and its identified subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and the Research Triangle Park facilities in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until September 30, 2016. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

ECS and its identified subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: November 14, 2012.

Matthew G. Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–28096 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9365–2]

Agency Information Collection Activities; Proposed Renewal of Several Currently Approved Collections; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit requests to renew several currently approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICRs are identified in this document by their corresponding titles, EPA ICR numbers, OMB Control numbers, and related docket identification (ID) numbers. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection activities that are summarized in this document. The ICRs and accompanying material are available for public review and comment in the relevant dockets identified in this document for the ICR.

DATES: Comments must be received on or before January 22, 2013.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the corresponding ICR as identified in this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Scott Drewes, Field and External Affairs (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0107; fax number: (703) 308–5884; email address: *drewes.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Submit your comments by the deadline identified under **DATES**.

6. Identify the docket ID number assigned to the ICR action in the subject line on the first page of your response. You may also provide the ICR title and related EPA and OMB numbers.

III. What do I need to know about PRA?

An Agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

As used in the PRA context, burden is defined in 5 CFR 1320.3(b).

IV. Which ICRs are being renewed?

EPA is planning to submit a number of currently approved ICRs to OMB for review and approval under PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The Supporting Statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

A. Docket ID Number EPA–HQ–OPP–2012–0544

Title: Notice of Supplemental Distribution of a Registered Pesticide Product.

ICR number: EPA ICR No. 0278.11.

OMB control number: OMB Control No. 2070–0044.

ICR status: The approval for this ICR is scheduled to expire on July 31, 2013.

Abstract: This information collection activity provides EPA with notification of supplemental registration of distributors of pesticide products. EPA is responsible for the regulation of pesticides as mandated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Section 3(e) of FIFRA (see 7 U.S.C. 136a(e)), allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to the name under the original registration. Such distribution and sale is termed ''supplemental distribution'' and the product is termed a ''distributor product.'' EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5, Notice of Supplemental Distribution of a Registered Pesticide Product) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.32 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include those identified in the North American Industrial Classification System (NAICS) code 325320 as businesses participating in this program as pesticide and other agricultural chemical manufacturing.

Estimated total number of potential respondents: 1,451.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 387 hours.

Estimated total annual costs: $34,505. This includes an estimated burden cost of $34,505 and an estimated cost of $0 for non-burden hour paperwork costs, e.g., investment or maintenance and operational costs.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall decrease of 68 hours in the total estimated respondent burden identified in the currently approved ICR. This decrease reflects the decrease in the number of applications the Agency expects to receive in the next 3 years. This change is an adjustment.

B. Docket ID Number EPA–HQ–OPP–2012–0737

Title: Standards for Pesticide Containers and Containment.

ICR number: EPA ICR No. 1632.04.

OMB control number: OMB Control No. 2070–0133.

ICR status: The approval for this ICR is scheduled to expire on July 31, 2013.

Abstract: This information collection request covers the information collection activities associated with the container design and residue removal requirements and containment structure requirements. With respect to the container design and residue removal requirements, the information collection activities are associated with the requirement that businesses subject to the container regulations (pesticide registrants) and repackaging regulations (pesticide registrants and refillers) maintain records of test data, cleaning procedures, certain data when a container is refilled, and other supporting information. These records are subject to both call-in by EPA and on-site inspection by EPA and its representatives. EPA has not established a regular schedule for the collection of these records, and there is no reporting.

With respect to the containment structure requirements, the information collection activities are associated with the requirement that businesses subject to the containment structure regulations maintain records of the: (1) Monthly inspection and maintenance of each containment structure and all stationary bulk containers; (2) duration over which non-stationary bulk containers holding pesticide and not protected by a secondary containment unit remain at the same location; and (3) construction date of the containment structure.

The businesses subject to the containment structure regulations include agrichemical retailers and refilling establishments, custom blenders, and commercial applicators of agricultural pesticides. The records have to be maintained by the owners and operators of such businesses. There is no regular schedule for the collection of either of these records, nor does EPA anticipate a call-in of records at some future date. Instead, the records would be available to inspectors to ensure that businesses are in compliance with containment requirements. These inspections are generally conducted by the states, which enforce FIFRA regulations through cooperative agreements with EPA.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average from 2 to 7.5 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include pesticide registrants and businesses which formulate pesticide products or pesticide formulation intermediates (NAICS code 325320), farm supply wholesalers (NAICS code 422910), swimming pool applicators (classified under NAICS codes 561790, 453998, and 235990), and agricultural (aerial and ground) commercial applicators (classified under NAICS code 115112).

Estimated total number of potential respondents: 23,586.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 169,660 hours.

Estimated total annual costs: $6,248,079. This includes an estimated burden cost of $5,561,578 for container regulations and an estimated cost of $686,501 for containment regulations.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall decrease of 4,890.5 hours in the total estimated respondent burden identified in the currently approved ICR. This decrease reflects three revisions to the estimated annual burden. First, EPA received very few waiver requests for complying with the non-refillable container regulations, so the estimated rate of registrants requesting waivers decreased from 5% to 1%. The decrease in waiver requests resulted in a corresponding decrease in the associated burden. Second, since registrant repackaging activities are similar to the repackaging activities conducted by refillers and swimming pool supply companies, EPA increased

the average annual burden per registrant respondent from 1 hour to 7.5 hours per respondent to be consistent with the average burden per refiller or swimming pool supply company. Third, for entities subject to the containment requirements, some activities in the previous ICR were completed by the compliance date of August 16, 2009. This ICR is focusing only on the ongoing annual information collection activities for the containment requirements, resulting in a corresponding decrease in the estimated annual burden per respondent from the previous ICR. This change is an adjustment.

C. Docket ID Number EPA–HQ–OPP–2012–0744

Title: Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients.

ICR number: EPA ICR No. 0597.11.

OMB control number: OMB Control No. 2070–0024.

ICR status: The approval for this ICR is scheduled to expire on July 31, 2013.

Abstract: The use of pesticides to increase crop production often results in pesticide residues in or on the crop. To protect the public health from unsafe pesticide residues, EPA sets limits on the nature and level of residues permitted pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). A pesticide may not be used on food or feed crops unless the Agency has established a tolerance (maximum residue limit) for the pesticide residues on that crop or established an exemption from the requirement to have a tolerance.

Under the law, EPA is responsible for ensuring that the maximum residue levels likely to be found in or on food/feed are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, EPA must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. If the data are adequate for EPA to determine that there is a reasonable certainty that no harm will result from aggregate exposure, the Agency will establish the tolerance or grant an exemption from the requirement of a tolerance.

This ICR only applies to the information collection activities associated with the submission of a petition for a tolerance action. While EPA is authorized to set pesticide tolerances, the Food and Drug Administration (FDA) is responsible for their enforcement. Food or feed commodities found to contain pesticide residues in excess of established tolerances are considered adulterated, and are subject to seizure by FDA, and may result in civil penalties.

Trade secret or CBI is frequently submitted to EPA in support of a tolerance petition because submissions usually include the manufacturing process, product formulation, and supporting data. When such information is provided to the Agency, the information is protected from disclosure under FIFRA section 10. CBI data submitted to the EPA is handled strictly in accordance with the provisions of the FIFRA Confidential Business Information Security Manual.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average from 1,726 hours for each petitioner response and 1,739 hours for each IR–4 response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include anyone who files a petition asking EPA to take a specific tolerance action. While any entity can file a petition with EPA, petitions typically come from those businesses engaged in the manufacturing of pesticides and the Interregional Research Project No. 4 (IR–4). The NAICS codes for the most frequent type of respondent are 325320 (pesticide and other agricultural chemical manufacturing) and 541600 (management, scientific, and technical consulting services).

Estimated total number of potential respondents: 137.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 236,800 hours.

Estimated total annual costs: $21,280,921. This is the estimated burden cost; there is no cost for capital investment or maintenance and operational costs in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall increase of 58,515 hours in the total estimated respondent burden identified in the currently approved ICR. This increase reflects EPA's updating of burden estimate to account for an increase from 103 to 137 in the estimated average number of tolerance petitions submitted annually, which resulted in a change to the annual burden hours for respondents from 178,285 in the previous renewal to 236,800 in the current renewal. This change is an adjustment.

V. What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the individual ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of these ICRs to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about any of these ICRs or the approval process in general, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 15, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–28315 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0631; FRL–9361–9]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is entitled: ''Pesticide Spray Drift Reduction Technologies,'' and identified by EPA ICR No. 2472.01 and OMB Control No. 2070–NEW. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before January 22, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0631 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Field and External Affairs Division, (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–5884; email address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by the voluntary collection activities under this ICR include pesticide application equipment manufacturers, chemical manufacturers, pesticide registrants, university researchers, and others who have an interest in reducing spray drift. The North American Industrial Classification System (NAICS) code for the principal respondents is:

Producers of pesticide products	32532
Crop Production	111
Research and Development in the Physical, Engineering, Life Sciences	541710
Colleges, universities, and professional schools	611310

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action.

Title: Pesticide Spray Drift Reduction Technologies.

ICR number: EPA ICR No. 2472.01.

OMB control number: OMB Control No. 2070–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA intends to initiate a voluntary information collection for research to verify the effectiveness of application technologies for agricultural pesticide sprays that have the potential to significantly reduce pesticide spray drift. The focus of this research is on technologies, including spray nozzles, shrouds and shields, and drift reducing adjuvant chemicals used for aerial or groundboom applications to row and field crops. Collectively these technologies are referred to as drift reduction technologies (DRTs). The voluntary program would encourage the identification and use of DRTs that can substantially reduce drift of pesticide spray droplets from the target application site (e.g., a corn field) downwind to non-target areas. Exposures and adverse effects to humans, wildlife, and crops and other vegetation from pesticide spray drift are well recognized. Published research suggests 1–10% or more of applied agricultural pesticide sprays drift from the target field. EPA believes there are application technologies that have the potential to significantly reduce the amount of spray drift. As these technologies are identified, their drift-reducing potential needs to be verified.

Burden statement: The average cost per response is $10,476. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Estimated total number of potential respondents: 12 companies.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1 or 2 submissions by each company.

Estimated total annual costs: $73,000. There are no costs for capital investment or maintenance and operational costs.

III. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 5, 2012.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–28208 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0805; FRL–9367–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. In addition under TSCA, EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from October 1, 2012 to October 12, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before December 21, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0805, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the 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 regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from October 1, 2012 to October 12, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—20 PMNS RECEIVED FROM OCTOBER 1, 2012 TO OCTOBER 12, 2012

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–13–0001	10/1/2012	12/29/2012	CBI	(G) Pigment dispersant	(G) Vegetable-oil fatty acids, conjugated, polymers with substituted propanoic acid, polyol, anhydride, polyethylene glycol, propylene glycol and trimethylolpropane.
P–13–0002	10/1/2012	12/29/2012	CBI	(S) Emulsion stabilizer	(G) Substituted polyhydroxy aromatic compound.
P–13–0003	10/1/2012	12/29/2012	CBI	(G) Part of adhesive system	(G) Castor oil, polymer with glycol and phthalic anhydride.
P–13–0004	10/1/2012	12/29/2012	H.B. Fuller Company.	(G) Industrial adhesive	(G) Dicarboxylic acid polymer with aliphatic glycols, and 1,1′-methylenebis[isocyanatobenzene].
P–13–0005	10/2/2012	12/30/2012	H.B. Fuller Company.	(G) Adhesive for flexible film laminating.	(G) Dicarboxylic acid polymer with aliphatic glycols, and 1,1′-methylenebis [isocyanatobenzene].
P–13–0006	10/2/2012	12/30/2012	CBI	(S) Rheology modifier	(G) Rubber epoxy adduct.
P–13–0007	10/3/2012	12/31/2012	DIC International (USA) LLC.	(S) Polymer resin for spray paint/coatings.	(G) Acrylic acids, polymer with methacrylate esters, styrene and tert-bubenzene carboperoxoate-initiated, compounds with amine.
P–13–0008	10/3/2012	12/31/2012	CBI	(S) Flame retardant used in the manufacture of plastics.; flame retardant used in paints and varnishes.	(G) Melamine polyphosphate.
P–13–0009	10/4/2012	1/1/2013	CBI	(G) Photoinitiated resin for ultra violet or electro beams curable clear coatings, overprint varnishes, laminating adhesives and inks.	(G) Acrylate functional aliphatic isocyanate polymer blocked with hydroxy aromatic monomer.
P–13–0010	10/4/2012	1/1/2013	Eastman Chemical Company.	(G) Chemical intermediate	(S) 1,4-cyclohexanedicarboxylic acid, 1,4-dimethyl ester, hydrogenolysis products.
P–13–0011	10/4/2012	1/1/2013	Huntsman Corporation.	(S) Antistatic finish for synthetic fibers	(G) Hydroxy-functional epoxyamine polyglycol ester.
P–13–0012	10/4/2012	1/1/2013	Mane, USA	(S) Fragrance ingredient	(S) 2-octenenitrile,3,5,7-trimethyl-.
P–13–0013	10/5/2012	1/2/2013	Dow Chemical Company.	(G) Open-non dispersive use	(G) Polyurethane polymer.
P–13–0014	10/8/2012	1/5/2013	CBI	(G) Dispersant	(G) Substituted carboxylic acid, compound with hetermonocyclic polymer with substituted carboxylic acid, substituted heteromonocycle and heteromonocycle.

TABLE I—20 PMNS RECEIVED FROM OCTOBER 1, 2012 TO OCTOBER 12, 2012—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–13–0015	10/9/2012	1/6/2013	CBI	(S) Industrial inkjet ink manufacture ...	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane, .alpha.-.omega.-hydroxypoly(oxy-1,4-butanediyl), 1,1′-methylenebis[4-isocyanatocyclohexane] and 2,2'-(methylimino)bis[ethanol], iso-bu alochol.-blocked, phosphate (salts).
P–13–0016	10/9/2012	1/6/2013	CBI	(S) Thermoplastic polyurethane for coatins/mouldings.	(S) 1,4-butanediol, polymer with 1,4-diisocyanatobenzene and -hydro—hydroxypoly(oxy-1,4-butanediyl).
P–13–0017	10/10/2012	1/7/2013	DIC International (USA) LLC.	(S) Polymer resin for spray paint/coatings.	(G) Acrylated silicone polymer.
P–13–0018	10/10/2012	1/7/2013	CBI	(G) Stabilizing agent for polymers	(G) Trisodium diethylene triaminepolycarboxylate.
P–13–0019	10/11/2012	1/8/2013	Henkel Corporation	(S) Crosslinker in moisture cure sealant formulaion.	(G) Acetonoximino silane.
P–13–0020	10/11/2012	1/8/2013	Zeon Chemicals Incorporated.	(S) Polymer for injection molds; polymer modifier; film extrusion.	(G) Polycycloolefin polymer.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—12 NOCS RECEIVED FROM OCTOBER 1, 2012 TO OCTOBER 12, 2012

Case No.	Received date	Commencement notice end date	Chemical
P–09–0111	10/2/2012	12/16/2011	(G) Alkoxysilane functional acrylic resin.
P–11–0087	10/2/2012	9/7/2012	(G) Polyfluoroalkyl phosphoric acid salt, aqueous solution.
P–11–0433	10/9/2012	9/22/2012	(G) Substituted amino polymer, with substituted amine salt and salted acrylate.
P–12–0013	10/2/2012	6/19/2012	(G) Crosslinked polyalkyl methacrylate.
P–12–0094	10/10/2012	9/28/2012	(G) Polyether polyurethane dispersion.
P–12–0104	10/4/2012	9/28/2012	(G) Mixture of isomers of condensation products of substituted diazotized aminoanilines.
P–12–0156	10/4/2012	9/21/2012	(G) Water soluble modified linseed oil.
P–12–0235	10/2/2012	9/20/2012	(G) Polyesterurethane.
P–12–0392	10/5/2012	10/4/2012	(G) Mix of isomers of substituted cyclohexyl carboxaldehyde.
P–12–0426	10/11/2012	9/28/2012	(S) Aluminate(1-), tetrafluoro-, cesium, (t-4)-.
P–12–0442	10/8/2012	10/1/2012	(G) Carboxylic acid, alkenyl ester, polymers with alkyl acrylate, me methacrylate and polyethylene glycol hydrogen sulfate substituted alkyl branched alkoxy methyl substituted (alkoxy)alkyl ethers salts.
P–12–0454	10/9/2012	10/8/2012	(G) Modified lignocellulose.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: October 23, 2012.

Chandler Sirmon,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–28206 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9753–9]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund; Notice of Grant Funding Guidance for State and Tribal Response Programs for FY2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept requests, from December 1, 2012 through January 31, 2013, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant

current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2013, EPA will consider funding requests up to a maximum of $1.1 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 1, 2012. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2013.

ADDRESSES: Mailing addresses for EPA Regional Offices and EPA Headquarters can be located at *www.epa.gov/brownfields* and at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: EPA's Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization, (202) 566–2892 or the applicable EPA Regional Office listed at the end this Notice.

SUPPLEMENTARY INFORMATION:

I. General Information

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $50 million grant program to establish and enhance state [1] and tribal [2] response programs. CERCLA 128(a) response program grants are funded with categorical [3] State and Tribal Assistance Grant (STAG) appropriations. Section 128(a) cooperative agreements are awarded and administered by the EPA regional offices. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. This document provides guidance that will enable states and tribes to apply for and use Fiscal Year 2013 section 128(a) funds.[4]

The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants under 40 CFR part 35 subparts A and B, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

Requests for funding will be accepted from December 1, 2012 through January 31, 2013. Requests EPA receives after January 31, 2013 will not be considered for FY2013 funding. Information that must be submitted with the funding request is listed in Section VIII of this guidance. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds. First time requestors are strongly encouraged to contact their Regional EPA Brownfields contacts, listed at the end of this guidance, prior to submitting their funding request.

Requests submitted by the January 31, 2013 request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final funding allocation determinations are made. As in previous years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions and unexpended balances are subject to 40 CFR 35.118 and 40 CFR35.518 to the extent consistent with this guidance.

States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their cooperative agreement's final package. For more information, please go to *www.grants.gov*.

II. Background

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfields sites across the country. The depth and breadth of state and tribal response programs vary. Some focus on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In enacting CERCLA section 128(a),[5] Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfields sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and tribes.

This funding is intended for those states and tribes with overall management and administrative capacity within their government required to administer a federal grant. The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of an environmental response program and that the response program establishes and maintains a public record of sites addressed.

Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

III. Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

1. Demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program, described in Section V of this guidance; *or* be a party to voluntary response program Memorandum of Agreement (VRP MOA) [6] with EPA;

AND

2. Maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA section 128(b)(1)(C).

IV. Matching Funds/Cost-Share

States and tribes are *not* required to provide matching funds for cooperative agreements awarded under section 128(a), with the exception of the section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA section 104(k)(3).

V. The Four Elements—Section 128(a)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements.

[1] The term ''state'' is defined in this document as defined in CERCLA section 101(27).

[2] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA section 128(a).

[3] Categorical grants are issued by the U.S. Congress to fund state and local governments for narrowly defined purposes.

[4] The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

[5] Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

[6] States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for section 128(a) funding.

Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements, and to establish and maintain the public record requirement.

The four elements of a response program are described below:

1. *Timely survey and inventory of brownfields sites in state or tribal land.* EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands. EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a ''list'' of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands. Inventories should evolve to a prioritization of sites based on community needs, planning priorities, and protection of human health and the environment. Particular attention should focus on those communities with limited capacity to compete for, and manage a competitive brownfield assessment, revolving loan, and cleanup grant.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

2. *Oversight and enforcement authorities or other mechanisms and resources.* EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

a. A response action will protect human health and the environment, and be conducted in accordance with applicable laws; and

b. The state or tribe will complete the necessary response activities if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance and/or long-term monitoring activities).

3. *Mechanisms and resources to provide meaningful opportunities for public participation.*[7] EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, *at a minimum:*

a. Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

b. Prior notice and opportunity for meaningful public comment on cleanup plans and site activities including the input into the prioritization of sites; and

c. A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

4. *Mechanisms for approval of a cleanup plan, and verification and certification that cleanup is complete.* EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

VI. Public Record Requirement

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, described below, in order to receive funds. The public record should be made available to the public in an effort to provide a mechanism for meaningful public participation (refer to Section V. 3 above). Specifically, under section 128(b)(1)(C), states and tribes must:

1. Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;

2. Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and

3. Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy and include relevant information concerning the entity that will be responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls; and how the responsible entity is implementing those activities (see Section VI.C).

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

A. Distinguishing the ''Survey and Inventory'' Element From the ''Public Record''

It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to identifying brownfields sites regardless of planned or completed actions there.

B. Making the Public Record Easily Accessible

EPA's goal is to enable states and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the ''survey and inventory'' element, available to the public via the internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address, and latitude and longitude information for

[7] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://www.epa.gov/superfund/community/policies.htm.*

each site.[8] States and tribes should ensure that all affected communities have appropriate access to the public record including making it available on-line, in print at libraries, or other community gathering places.

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the Internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

C. Long-Term Maintenance of the Public Record

EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls (such as ensuring the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls is implementing those activities) in their work plans.[9]

VII. Use of Funding

A. Overview

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use a cooperative agreement to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfields sites with petroleum contamination. Eligible activities include, but are not limited to, the following:

- Developing legislation, regulations, procedures, ordinances, guidance, etc. that establish or enhance the administrative and legal structure of their response programs;
- Establishing and maintaining the required public record described in Section VI of this guidance;
- Operation, maintenance and long-term monitoring of institutional controls and engineering controls;
- Conducting site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement under CERCLA section 128(a)(2)(C)(ii) to provide for public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site-specific activities must be part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;
- Capitalizing a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match (can be in the form of a contribution of money, labor, material, or services from a non-federal source) on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply; and
- Purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

B. Uses Related to ''Establishing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, and/or guidance. For more developed state or tribal response programs, ''establish'' may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

C. Uses Related to ''Enhancing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''enhance'' is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program.

The exact ''enhancement'' uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, e.g., RCRA or Underground Storage Tanks (USTs). As another example, states and tribal response programs enhancement activities can include outreach to local communities to increase their awareness and knowledge regarding the importance of monitoring engineering and institutional controls. Other ''enhancement'' uses may be allowable as well.

D. Uses Related to Site-Specific Activities

1. Uses for Site-Specific Activities

States and tribes may use section 128(a) funds for site-specific activities that improve state or tribal capacity. The amount grantees may request for site-specific assessments and cleanups may not exceed 50% of the total amount of funding. A grantee may request a waiver to exceed the 50% of annual funding for site specific activities. In order for EPA to consider the waiver, the total amount of the request may not exceed the grantee's prior year's funding level. The funding request must include a brief justification describing the reason(s) for spending more than 50% of an annual allocation on site-specific activities. An applicant must include the following information in the written justification:

[8] For further information on latitude and longitude information, please see EPA's data standards Web site available at *http://iaspub.epa.gov/sor_internet/registry/datastds/findadatastandard/epaapproved/latitudelongitude.*

[9] States and tribes may find useful information on institutional controls on the EPA's institutional controls Web site at *http://www.epa.gov/superfund/policy/ic/index.htm*

• Total amount requested for eligible brownfield site-specific activities;
• Percentage of the eligible brownfield site-specific activities (assuming waiver is approved) in the total budget;
• Site specific activities that will be covered by this funding. If known, provide site specific information and describe the development or enhancement of your state/tribal site specific program. Further explain how the community will be (or has been) involved in prioritization of site work and especially those sites where there is a potential or known significant environmental impact to the community;
• Please explain how this shift in funding will not negatively impact the core programmatic capacity (i.e., the ability to establish/enhance four elements of a response program) and how related activities will be maintained in spite of an increase in site-specific work. Grantees must demonstrate that they have adequate funding from other sources to effectively carry out work on the four elements for EPA to grant a waiver of the 50% limit on using 128(a) funds for site-specific activities;
• Describe how this shift in funding towards site-specific work is more appropriate for your response program rather than a request for an increase in overall funding;
• Please explain whether the sites to be addressed are those for which the affected community(ies) has requested work be conducted (refer to Section VII.A Overview of Funding for more information).

EPA Headquarters will base approval of waivers on the information that is included in the justification along with the request for funding, as well as other information available to the Agency. EPA's Regional Brownfield Coordinators will inform grantees of the Agency's final decision(s).

2. Uses Related to Site-Specific Assessment and Cleanup Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups must comply with all applicable laws and are subject to the following restrictions:

a. Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39). EPA encourages states and tribes to use site-specific funding to perform assessment (e.g., phase II and phase III assessments) and cleanup activities that will lead more quickly to the reuse of sites Furthermore, states and tribes that perform site-specific activities should plan to engage the targeted community in the project. For example, Community Relations Plans (CRP) could be developed to address reasonable notice to the public concerning the cleanup, and provide opportunities for the public to comment on the cleanup. States and tribes should work towards securing additional funding for site-specific activities by leveraging resources from other sources such as businesses, non-profit organizations, education and training providers, and/or federal, state, tribal, and local governments;

b. Absent EPA approval, no more than $200,000 per site assessment can be funded with section 128(a) funds, and no more than $200,000 per site cleanup can be funded with section 128(a) funds;

c. Absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and clean up sites owned or operated by the recipient; and

d. Assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA section 107, except:
• At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
• When the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

1. At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or

2. When the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

3. Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs including addressing petroleum brownfield sites. Specifically, the costs of site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

4. Other Eligible Uses of Funding

Other eligible uses of funds for site-specific related include, but are not limited to, the following activities:
• Technical assistance to federal brownfields cooperative agreement recipients;
• Development and/or review of quality assurance project plans (QAPPs); and
• Entering data into the ACRES database.

E. Uses Related to Activities at ''Non-Brownfields'' Sites

Costs incurred for activities at non-brownfields sites, e.g., oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or tribe. *However, assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA section 101(39).*

VIII. General Programmatic Guidelines for 128(a) Grant Funding Requests

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement [10] between EPA and a state or a tribe. The program is administered under the general EPA grant and cooperative agreement regulations for states, tribes, and local governments found in the Code of Federal Regulations at 40 CFR Part 31 as well as applicable provisions of 40 CFR Part 35 Subparts A and B. Under these regulations, the cooperative agreement recipient for section 128(a) grant program is the government to which a cooperative agreement is awarded and which is accountable for the use of the funds provided. The cooperative agreement recipient is the entire legal

[10] A cooperative agreement is an agreement to a state/tribe that includes substantial involvement by EPA on activities described in the work plan which may include technical assistance, collaboration on program priorities, etc.

entity even if only a particular component of the entity is designated in the cooperative agreement award document. Further, unexpended balances of cooperative agreement funds are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance. EPA allocates funds to state and tribal response programs under 40 CFR 35.420 and 40 CFR 35.737.

A. One Application per State or Tribe

Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested states or tribes. *EPA will accept only one application from each eligible state or tribe.*

B. Define the State or Tribal Response Program

States and tribes must define in their work plan the ''section 128(a) response program(s)'' to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

C. Separate Cooperative Agreements for the Capitalization of RLFs Using Section 128(a) Funds

If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded, i.e., one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

D. Authority To Manage a Revolving Loan Fund Program

If a state or tribe chooses to use its section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the authority to manage the program, *e.g.,* issue loans. If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

E. Section 128(a) Cooperative Agreements Can Be Part of a Performance Partnership Grant (PPG)

States and tribes may include section 128(a) cooperative agreements in their PPG 69 FR 51,756 (2004). Section 128(a) funds used to capitalize an RLF or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

F. Project Period

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan. Pre-award costs are subject to 40 CFR 35.113 and 40 CFR 35.513.

G. Demonstrating the Four Elements

As part of the annual work plan negotiation process, states or tribes that do *not* have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described in Section V. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

H. Establishing and Maintaining the Public Record

Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described in Section VI and below, exists and is being maintained.[11] Specifically for:

- States or tribes that received initial funding prior to FY12: Requests for FY13 funds will not be accepted from states or tribes that fail to demonstrate, by the January 31, 2013 request deadline, that they established and are maintaining a public record. (**Note**, this would potentially impact any state or tribe that had a term and condition placed on their FY12 cooperative agreement that prohibited drawdown of FY12 funds prior to meeting public record requirement). States or tribes in this situation will not be prevented from drawing down their prior year funds once the public record requirement is met; and
- States or tribes that received initial funding in FY12: By the time of the actual FY13 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY13 cooperative agreement that prevents the drawdown of FY13 funds until the public record requirement is met).

I. Demonstration of Significant Utilization of Prior Years' Funding

States and tribes should be aware that EPA and its Congressional appropriations committees place significant emphasis on the utilization of prior years' funding. Unused funds from prior years will be considered in the allocation process. Existing balances of cooperative agreement funds as reflected in EPA's Financial Data Warehouse could support an allocation amount below a grantee's request for funding or, if appropriate deobligation and reallocation by EPA Regions as provided for in 40 CFR 35.118 and 40 CFR 35.518 . Grantees should include a detailed explanation and justification of funds that remain in EPA's Financial Data Warehouse from prior years (that are related to response program activities or brownfield related activities).

EPA Regional staff will review EPA's Financial Database Warehouse to identify the amount of remaining prior year(s) funds. The cooperative agreement recipient should work, as early as possible, with both their own finance department, and with their Regional Project Officer to reconcile any discrepancy between the amount of unspent funds showing in EPA's system, and the amount reflected in the recipient's records. The recipient should obtain concurrence from the Region on the amount of unspent funds requiring justification by the deadline for this request for funding.

J. Optional: Explanation of Overall Program Impacts of Possible Funding Reductions

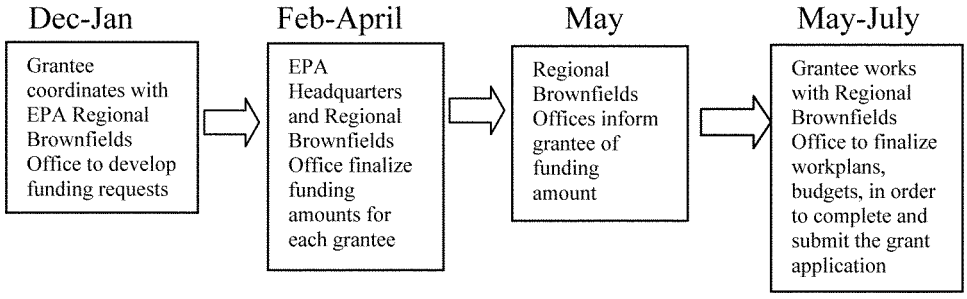
Please explain the programmatic effects of a reduction (to your current funding amount) on significant activities of your response program. Specifically, at what amount (e.g., percentage of your current funding level) would your response program experience core programmatic impacts such as a reduction in staff, a decrease in oversight activities, or other impacts

[11] For purposes of cooperative agreement funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the section 128(a) funding.

to the environment and health of the communities the program serves, etc.? An EPA Region may require that this information be submitted as part of the request for funding in order to fully understand the individual program impacts associated with decreased funding. These impacts will be considered as part of the decision for the final allocation.

K. Allocation System and Process for Distribution of Funds

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made. Please refer to process flow chart below (dates are estimates and subject to change):



For Fiscal Year 2013, EPA will consider funding requests up to a maximum of $1.1 million per state or tribe. Please note the CERCLA 128(a) annual program's budget has remained static while demand for funding continues to increase every year.[12] Therefore, it is likely that the FY13 state and tribal individual funding amounts will be less than the FY12 individual funding amounts.

After the January 31, 2013, request deadline, EPA's Regional Offices will submit summaries of state and tribal requests to EPA Headquarters. Before submitting requests to EPA Headquarters, regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of current year funding, funds remaining from prior years, etc.

After receipt of the regional recommendations, EPA Headquarters will consolidate requests and allocate funds accordingly.

IX. Information To Be Submitted With the Funding Request

A. Demonstration of Significant Utilization of Prior Years' Funding

States and tribes requesting section 128(a) FY13 funds must submit the following information, as applicable, to their regional brownfield contact on or before January 31, 2013. If a grantee wishes to avoid an allocation reduction, when submitting a request for FY13 funds, include a detailed explanation and justification of funds that remain in EPA's financial Data Warehouse from prior years (that are related to response program activities or brownfield related activities).

For those states and tribes that received section 128(a) funds, you must provide the amount of prior years' funding including funds that recipients have not received in payments (i.e., funds EPA has obligated for grants that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process when determining the recipient's programmatic needs under 40 CFR 35.420 and 40 CFR 35.737.

B. Summary of Planned Use of FY12 Funding

All states and tribes requesting FY13 funds must submit a summary of the planned use of the funds with associated dollar amounts. Please provide the request in the chart below. The amount of funding requested should be an amount that can be reasonably spent in one year. It is likely that the FY13 state and tribal individual funding amounts will be less than the FY12 individual funding amounts. The requestor should work, as early as possible, with their EPA Regional Program contact to ensure that the funding amount requested and related activities are reasonable.

Funding use	FY12 Awarded	FY13 Requested	Summary of intended use (example uses)
Establish or enhance the four elements:.	$XX,XXX	$XX,XXX	
1. Timely survey and inventory of brownfields sites;.	.....	.....	1. Examples: • Inventory and prioritize brownfields sites. • Institutional control (IC)/engineering control (EC) tracking.
2. Oversight and enforcement authorities or other mechanisms;.	.....	.....	2. Examples: • Develop/enhance ordinances, regulations, procedures for response programs.

[12] FY12 the EPA received $57.4 Million in requests for funding from States and Tribes under CERCLA 128(a). The FY12 enacted budget was $49.3 Million. The resulting budget shortfall was approximately $8.1 Million.

Funding use	FY12 Awarded	FY13 Requested	Summary of intended use (example uses)
3. Mechanisms and resources to provide meaningful opportunities for public participation;.	.....	.....	3. Examples: • Develop a community involvement process. • Fund an outreach coordinator. • Issue public notices of site activities. • Develop a process to seek public input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies to prioritize sites to be addressed.
4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete.	.....	.....	4. Examples: • Review cleanup plans and verify completed actions.
Establish and maintain the public record.	XX,XXX	XX,XXX	• Maintain public record. • Create Web site for public record. • Disseminate public information on how to access the public record.
Enhance the response program	XX,XXX	XX,XXX	• Provide oversight of site assessments and cleanups. • Attend training and conferences on brownfields cleanup technologies & other brownfields topics. • Update and enhance program management activities. • Negotiate/oversee contracts for response programs. • Enhance program management & tracking systems.
Site-specific activities *(amount requested should be incidental to the workplan, see Section VI.D for more information on what activities should be considered when calculating site specific activities).*	XX,XXX	XX,XXX	• Perform site assessments and cleanups. • Develop QAPPs. • Prepare Property Profile Forms/input data into ACRES database for these sites.
Environmental insurance	XX,XXX	XX,XXX	• Review potential uses of environmental insurance. • Manage an insurance risk pool.
Revolving loan fund	XX,XXX	XX,XXX	• Create a cleanup revolving loan fund.
Total funding	XXX,XXX	XXX,XXX	Performance Partnership Grant? Yes ☐ No ☐

X. Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities. Each of the subsections below summarizes the basic terms and conditions, and related reporting that will be required if a cooperative agreement with EPA is awarded.

A. Progress Reports

In accordance with 40 CFR 31.40, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan, and should provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing or, if already established, maintaining the public record. *Depending upon the activities included in the state's or tribe's work plan,* an EPA regional office may request that a progress report include:

1. Reporting interim and final progress reports. Reports must prominently display the following three relevant Essential Elements as reflected in the current EPA strategic plan: *Strategic Plan Goal 3:* Cleaning Up Communities and Advancing Sustainable Development, *Strategic Plan Objective 3.1:* Promote Sustainable and Livable Communities, and *Work plan Commitments and Timeframes.* EPA's strategic plan on the internet: *http://www.epa.gov/planandbudget/strategicplan.html.*

2. *Reporting environmental insurance.* Recipients with work plans that include funding for *environmental insurance* must report:

• Number and description of insurance policies purchased (*e.g.,* type of coverage provided; dollar limits of coverage; any buffers or deductibles; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.);

• The number of sites covered by the insurance;

• The amount of funds spent on environmental insurance (*e.g.,* amount dedicated to insurance program, or to insurance premiums); and

• The amount of claims paid by insurers to policy holders.

3. *Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfields site assessment or cleanup* must input information required by the OMB-approved Property Profile Form into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database for each site assessment and cleanup. In addition, recipients must report how they provide the affected community with prior notice and opportunity for meaningful participation as per CERCLA section 128(a)(2)(C)(ii) on proposed cleanup plans and site activities. For example, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and

solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies.

4. *Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

- Number and frequency of oversight audits of licensed site professional certified cleanups;
- Number and frequency of state/tribal oversight audits conducted;
- Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities; and
- Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

5. *Reporting required when using funding for an RLF.* Recipients with work plans that include funding for revolving loan fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.

6. *Reporting for Non-MOA states and tribes.* All recipients *without* a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element *may* include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:
  - Legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements); and
  - Policies and procedures to implement legal authorities; and other mechanisms;
- A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;
- A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
  - A response action will protect human health and the environment; and be conducted in accordance with applicable federal and state law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and
- A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

B. Reporting of Program Activity Levels

States and tribes must report, by January 31, 2013, a summary of the *previous federal fiscal year's* work (October 1, 2011 through September 30, 2012). The following information must be submitted to your regional project officer:

- Environmental programs where CERCLA 128(a) funds are used to support capacity building (general program support, non-site-specific work). Indicate as appropriate from the following:

—Brownfields
—Underground Storage Tanks/Leaking Underground Storage Tanks
—Federal Facilities
—Solid Waste
—Superfund
—Hazardous Waste Facilities
—VCP (Voluntary Cleanup Program, Independent Cleanup Program, etc.)
—Other __;

- Number of properties (or sites) enrolled in a response program during FY12;
- Number of properties (or sites) where documentation indicates that cleanup work is complete and all required institutional controls (IC's) are in place, or not required;
- Total number of acres associated with properties (or sites) in the previous bullet; and
- Number of properties where assistance was provided, but the property was not enrolled in the response program (OPTIONAL).

EPA may require states/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

For example:

1. Timely survey and inventory—estimated number of brownfields sites in the state or on tribal land;
2. Oversight and enforcement authorities/mechanisms—number of active cleanups and percentage that received oversight; percentage of active cleanups not in compliance with the cleanup workplan and that received communications from recipient regarding non-compliance;
3. Public participation—percentage of sites in the response program where public meetings/notices were conducted regarding the cleanup plan and/or other site activities; number of requests and responses to site assessment requests; and
4. Cleanup approval/certification mechanisms—total number of ''no further action'' letters or total number of certificate of completions.

Note: This reporting requirement may include activities not funded with CERCLA Section 128(a) funding, because this information may be used by EPA to evaluate whether recipients have met or are taking reasonable steps to meet the four elements of a response program pursuant to CERCLA Section 128(a)(2).

C. Reporting of Public Record

All recipients must report, as specified in the terms and conditions of their cooperative agreement, information related to establishing, or if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, e.g., Web site or other public database to meet the public record requirement. Recipients reporting may only be required to demonstrate that the public record (a) exists and is up-to-date, and (b) is adequate. A public record may include the following information:

A list of sites at which response actions have been completed including:

- Date the response action was completed;
- Site name;
- Name of owner at time of cleanup, if known;
- Location of the site (street address, and latitude and longitude);
- Whether an institutional control is in place;
- Type of institutional control in place (e.g., deed restriction, zoning

restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);

- Nature of the contamination at the site (e.g., hazardous substances, contaminants or pollutants, petroleum contamination, etc.); and
- Size of the site in acres.

A list of sites planned to be addressed by the state or tribal response program including:

- Site name and the name of owner at time of cleanup, if known;
- Location of the site (street address, and latitude and longitude);
- To the extent known, whether an institutional control is in place;
- Type of the institutional control in place (*e.g.,* deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- To the extent known, the nature of the contamination at the site (*e.g.,* hazardous substances, contaminants, or pollutants, petroleum contamination, etc.); and
- Size of the site in acres

D. Award Administration Information

1. Subaward and Executive Compensation Reporting

Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR Part 170, unless they qualify for an exception from the requirements, should they be selected for funding.

2. Central Contractor Registration (CCR)/ System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements

Unless exempt from these requirements under OMB guidance at 2 CFR Part 25 (e.g., individuals), applicants must:

- Register in the CCR/SAM prior to submitting an application or proposal under this announcement. CCR/SAM information can be found at *https://www.sam.gov/portal/public/SAM/;*
- Maintain an active CCR/SAM registration with current information at all times during which it has an active Federal award or an application or proposal under consideration by an agency, and
- Provide its DUNS number in each application or proposal it submits to the agency. Applicants can receive a DUNS number, at no cost, by visiting the D&B Web site at: *https://iupdate.dnb.com/iUpdate/companylookup.htm.*

Failure to comply with these requirements will affect the applicant's ability to receive funding. Please note that the CCR has been replaced by the System for Award Management (SAM). To learn more about SAM, go to SAM.gov or *https://www.sam.gov/portal/public/SAM/.*

3. Use of Funds

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively, and make sufficient progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms/conditions implementing this requirement.

Region	State	Tribal
1—CT, ME, MA, NH, RI, VT	James Byrne, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1389 Fax (617) 918–1291.	AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1248 Fax (617) 918–1291.
2—NJ, NY, PR, VI	Alison Devine, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4158 Fax (212) 637–3083.	Alison Devine, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4158 Fax (212) 637–4158.
3—DE, DC, MD, PA, VA, WV.	Janice Bartel, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–5394 Fax (215) 814–3015.	
4—AL, FL, GA, KY, MS, NC, SC, TN.	Nicole Comick-Bates, 61 Forsyth Street, S.W, 10TH FL (9T25), Atlanta, GA 30303–8909, Phone (404) 562–9966 Fax (404) 562–8788.	Cindy J. Nolan, 61 Forsyth Street SW., 10TH FL (9T25), Atlanta, GA 30303–8909, Phone (404) 562–8425 Fax (404) 562–8788.
5—IL, IN, MI, MN, OH, WI	Jan Pels, 77 West Jackson Boulevard (SE–7J), Chicago, IL 60604–3507, Phone (312) 886–3009 Fax (312) 692–2161.	Jane Neumann, 77 West Jackson Boulevard (SE–7J), Chicago, IL 60604–3507, Phone (312) 353–0123 Fax (312) 697–2649.
6—AR, LA, NM, OK, TX	Amber Perry, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–3172 Fax (214) 665–6660.	Amber Perry, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–3172 Fax (214) 665–6660.
7—IA, KS, MO, NE	Susan Klein, 11201 Renner Boulevard (SUPRSTAR), Lenexa, KS 66219, Phone (913) 551–7786 Fax (913) 551–9786.	Susan Klein, 11201 Renner Boulevard (SUPRSTAR), Lenexa, KS 66219, Phone (913) 551–7786 Fax (913) 551–9798.
8—CO, MT, ND, SD, UT, WY.	Christina Wilson, 1595 Wynkoop Street (EPR–B), Denver, CO 80202–1129, Phone (303) 312–6706 Fax (303) 312–6065.	Barbara Benoy, 1595 Wynkoop Street (8EPR–SA), Denver, CO 80202–1129, Phone (303) 312–6760 Fax (303) 312–6962.
9—AZ, CA, HI, NV, AS, GU	Eugenia Chow, 75 Hawthorne St. (SFD–6–1), San Francisco, CA 94105, Phone (415) 972–3160 Fax (415) 947–3520.	Glenn Kistner, 75 Hawthorne St. (SFD–6–1), San Francisco, CA 94105, Phone (415) 972–3004 Fax (415) 947–3520.
10—AK, ID, OR, WA	Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513, Phone ((907) 271–3414 Fax (907) 271–3424.	Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513, Phone ((907) 271–3414 Fax (907) 271–3424.

XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This

action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

Dated: November 15, 2012.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.

[FR Doc. 2012–28330 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0003; FRL–9368–6]

SFIREG Full Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Full Committee, will hold a 2-day meeting, beginning on December 10, 2012, and ending December 11, 2012. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 10, 2012, from 8:30 a.m. to 5 p.m. and Tuesday, December 11, 2012, from 8:30 a.m. to 12 noon.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA, One Potomac Yard (South Bldg.), 2777 Crystal Dr., Arlington VA, 1st Floor, South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 305–5884; email address: *kendall.ron@epa.gov* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number: (302) 422–8152; fax number: (302) 422–2435; email address: *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decisionmaking process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA) or FIFRA and those who sell, distribute, or use pesticides, as well as any non-government organization.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0003, is available at *http://www.regulations.gov,* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Tentative Agenda Topics

1. Responses to SFIREG Pyrethroid labeling issue letter.

2. Cooperative Agreement Guidance/Grant Template Discussion.

3. EPA Region/State Lead Agency Relationships/Roles.

4. Pollinator Protection Issues.

5. Issue Paper: Methomyl Fly Bait Restricted Use Classification.

6. Issue Paper: Defining Aquatic Habitat on Label.

7. Regional Issues/Responses to pre-SFIREG Questionnaire.

8. ''State Regulator in Residence'' Program.

9. Tribal Certification Policy Implementation.

10. Regulating Effects of Pesticides Outside Control of Applicator.

11. Performance Measures and How They Will be Implemented.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification. If requesting special accommodations, please see **DATES**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 6, 2012.

Robert C. McNally,

Acting Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2012–28085 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0780; FRL–9368–5]

MON 87410 and MON 87411 Pesticide-Incorporated Protectant Corn Events: Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 524–EUP–RNU from Monsanto Company requesting an experimental use permit (EUP) for the plant-incorporated protectants (PIPs) corn events with a double stranded RNA (dsRNA) transcript comprising a Dv49 inverted repeat sequence derived from *Diabrotica virgifera,* and the genetic material necessary for its production (vector PV–ZMIR10871). These events are proposed for experimental use in combination with single and combined traits against lepidoptera and corn rootworm (CRW). The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before December 21, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0780, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; email address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

In accordance with 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Monsanto Company, (524–EUP–RNU).

Pesticide Chemical: Double stranded RNA (dsRNA) transcript comprising a Dv49 inverted repeat sequence derived from *Diabrotica virgifera,* and the genetic material necessary for its production (vector PV–ZMIR10871).

Summary of Request: Monsanto is requesting a EUP for two years to test new PIP technology for control of corn rootworm (CRW), a major pest of corn in the United States (U.S.). Corn Events MON 87410 and 87411 express a double stranded RNA (dsRNA) transcript suppression cassette with an inverted repeat sequence, Dv49, obtained from *Diabrotica virgifera.* When PIP-produced Dv49 dsRNA is consumed by the pest, it down regulates the targeted pest's *Snf7* gene, resulting in pest mortality.

As described in the application documents for 524–EUP–RNU in this docket, the PIP events comprising the single and combined trait products in this request include other registered PIP *Bacillus thuringiensis* (*Bt*) proteins and either of the two new corn events MON 87410 and 87411. The *Bt* proteins to be used in the single or combination traits

in the proposed EUP include Cry1A.105, Cry2Ab2, Cry IF, Vip3Aa20, Cry3Bb1, Cry34Abl/Cry35Abl and eCry3.1Ab. The environmental and human health safety of these proteins has been demonstrated, and they are exempted from the requirement of a tolerance (40 CFR 174.501, 174.502, 174.506, 174.518, 174.519, 174.520, 174.528, 174.532). A permanent tolerance exemption has been established for nucleic acids including the dsRNA that is part of the PIPs (40 CFR 174.507). Other marker proteins PAT, CP4 EPSPS, and PMI are also exempt from the requirement of a tolerance (40 CFR 174.522, 174.523, 174.527).

The tests will be conducted in the U.S. territory of Puerto Rico and in the U.S. in twenty two (22) states as follows: Arkansas (AR), California (CA), Colorado (CO), Georgia (GA), Hawaii (HI), Idaho (ID), Illinois (IL), Indiana (IN), Iowa (IA), Kansas (KS), Michigan (MI), Minnesota (MN), Mississippi (MS), Missouri (MO), Nebraska (NE), North Carolina (NC), Ohio (OH), Pennsylvania (PA), South Carolina (SC), South Dakota (SD), Tennessee (TN), Wisconsin (WI).

The two protocols in the EUP include: (1) Seed development and increase for future testing including nursery observations of traits in various genetic backgrounds; and (2) product characterization work including phenotypic and agronomic observations, efficacy, yield benefit evaluations and regulatory data generation.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: November 8, 2012,

Keith Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2012–28215 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0425; FRL–9368–9]

Tralomethrin and Fenarimol Registration Review Final Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decision for the pesticides tralomethrin and fenarimol. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* Wilhelmena Livingston (tralomethrin), telephone number: (703) 308–8025; fax number: (703) 308–8005; email address: *livingston.wilhelmena@epa.gov,* or Garland Waleko (fenarimol), telephone number: (703) 308–8049; fax number: (703) 308–8005; email address: *waleko.garland@epa.gov.,* Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8005; email address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0425, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's registration review final decisions for tralomethrin, Case Number 7400, and fenarimol, Case Number 7001. Tralomethrin was a broad-spectrum Type II systemic pyrethroid ester insecticide that was registered for use in a variety of residential and commercial settings, and on a small number of agricultural crops including broccoli, cauliflower, cotton, lettuce, peanuts, and sunflowers. Tralomethrin technical was cancelled in a product cancellation order issued in the **Federal Register** of February 25, 2011. The effective date of the cancellation is February 25, 2011 (76 FR 10587, February 25, 2011). Fenarimol is a member of the pyrimidine class of fungicides used for control of such pests as scab, powdery mildew, rusts, and leaf spot. Fenarimol inhibits fungal growth by adversely affecting the formation of the fungal sterol ergosterol, and is currently registered for use on fruit and nut crops such as apples, cherries, filberts (nonbearing), grapes, hops, pears, and pecans, as well as on ornamental plants, trees, and grasses and turf lawns. The fenarimol technical and end use products are voluntarily canceled as of July 31, 2013.

Pursuant to 40 CFR 155.57, a registration review decision is the

Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered tralomethrin and fenarimol in light of the FIFRA standard for registration. The tralomethrin and fenarimol final decision documents in the docket describe the Agency's rationale for issuing a registration review final decision for these pesticides.

In addition to the final registration review decision documents, the registration review docket for tralomethrin and fenarimol also includes other relevant documents related to the registration review of these cases. The proposed registration review decisions were posted to the docket and the public was invited to submit any comments or new information. During the 60-day comment period, no public comments were received. Pursuant to 40 CFR 155.58(c), the registration review case docket for tralomethrin and fenarimol will remain open until all actions required in the final decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of these pesticides are provided at: *http://www.epa.gov/pesticides/chemicalsearch/.*

B. What is the agency's authority for taking this action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Registration review, Pesticides and pests, Tralomethrin and Fenarimol.

Dated: November 9, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–28213 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0252; FRL–9370–2]

Iodomethane; Notice of Receipt of Request to Voluntarily Cancel Iodomethane Pesticide Registrations and Amend a Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel the registrations of products containing the pesticide iodomethane. In addition, the registrant has amended the terms and conditions of registration for their iodomethane technical product so that as of January 1, 2013, Arysta LifeScience North America, LLC (Arysta) will not sell or distribute this product unless it bears a label statement. The registrant's request would terminate the last iodomethane products registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request. If EPA issues a final order granting this request, the sale, distribution, or use of the products listed in this notice will be permitted only in accordance with the terms as described in the final order.

DATES: Comments must be received on or before December 21, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0252, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andrea Mojica, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0122; fax number: (703) 308–8090; email address: *mojica.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background on the Receipt of Requests To Cancel

This notice announces receipt by EPA of a request from Arysta to cancel all of its iodomethane product registrations. Iodomethane is a pre-plant soil fumigant used to control pests in soil where fruits, vegetables, ornamental plants, and turf will be grown. In a Memorandum of Agreement (MOA), Arysta and EPA agreed to cancel and amend the pesticide product registrations identified in Tables 1 and 2 of Unit III. Specifically, the MOA contains Arysta's irrevocable request that its end-use products, EPA Registration Numbers 66330–43, 66330–57, 66330–58, 66330–59, and 66330–60, will be canceled effective December 31, 2012, and that its iodomethane technical product, EPA Registration Number 66330–44 will be canceled effective December 1, 2015. The MOA also adds a condition of registration to the technical product's registration that as of January 1, 2013, Arysta will not sell or distribute this product unless its label bears the following statement:

> It is unlawful to use this product for any purpose in the United States, except for formulation of products intended for export consistent with the requirements of FIFRA section 17.

(The request for amendment is conditioned on the issuance of a cancellation order including the requested effective dates and existing stocks provisions.) Granting the registrant's cancellation request would terminate the last iodomethane products registered in the United States.

III. What action is the agency taking?

This notice announces receipt by EPA of the request to cancel the iodomethane product registrations described in Unit II. The affected products and the registrant making the requests are identified in Tables 1–3 of this unit.

Unless the Agency receives substantive comments in response to this notice that warrant further review of this request, EPA intends to issue an order canceling the affected registrations on the requested effective dates.

TABLE 1—IODOMETHANE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
66330–43	Midas 98:2	Arysta LifeScience North America, LLC.
66330–44	Iodomethane Technical	Arysta LifeScience North America, LLC.
66330–57	Midas 50:50	Arysta LifeScience North America, LLC.
66330–58	Midas EC Bronze	Arysta LifeScience North America, LLC.
66330–59	Midas 33:67	Arysta LifeScience North America, LLC.
66330–60	Midas EC Gold	Arysta LifeScience North America, LLC.

TABLE 2—IODOMETHANE PRODUCT REGISTRATION WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
66330–44	Iodomethane Technical	Arysta LifeScience North America, LLC.

Table 3 of this unit includes the name and address of record for the registrant of the products listed in Table 1 and Table 2 of this unit. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANT REQUESTING VOLUNTARY CANCELLATION AND AMENDMENTS

EPA Company No.	Company name and address
66330	Arysta LifeScience North America, 15401 Weston Parkway, Suite 150, Cary, NC 27513.

IV. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The iodomethane registrant has requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the request for voluntary cancellation is granted, the Agency intends to publish the cancellation order in the **Federal Register**. EPA intends to include in any such final order the following provisions for the treatment of any existing stocks of the product(s) listed in Tables 1 and 2 of Unit III.

In any final order granting Arysta's request for voluntary cancellation of its iodomethane technical/manufacturing-use product registration, as of the effective date of the cancellation order, all sale and distribution of existing stocks of Arysta's iodomethane technical/manufacturing-use product by Arysta shall be prohibited unless the sale or distribution is for proper disposal or is solely for purposes of export consistent with the requirements of section 17 of FIFRA. In any final order granting Arysta's request for voluntary cancellation of end-use product registrations:

1. As of the effective date of the cancellation order, Arysta is prohibited from distributing or selling existing stocks of end-use products, unless the

sale or distribution is for proper disposal, or is solely for export consistent with the requirements of FIFRA section 17;

2. As of the effective date of the cancellation order, persons other than Arysta are prohibited from distributing or selling existing stocks of Arysta's end-use products, unless the sale or distribution is for proper disposal, return to Arysta, or is intended solely for export consistent with the requirements of FIFRA section 17; and

3. As of the effective date of the cancellation order, no person may use any existing stocks of any of Arysta's end-use products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 14, 2012.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–28210 Filed 11–20–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, November 29, 2012 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW, Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Advisory Committee for 2013 (Additional New Member).

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336.

Lisa V. Terry,

Assistant General Counsel.

[FR Doc. 2012–28417 Filed 11–19–12; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Nakesha Woodward, Wireline Competition Bureau, Telecommunications Access Policy Division at 202–418–7400 or email at *Kesha.Woodward@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0824.

OMB Approval Date: November 1, 2012.

OMB Expiration Date: November 30, 2015.

Title: Service Provider Identification Number (SPIN) and Contact Information Form, Report and Order, GN Docket No. 09–191 and WC Docket No. 07–52.

Form Number: FCC Form 498.

Estimated Annual Burden: 5,000 respondents; 5,000 responses; 1.5 hours per response; 7,500 burden hours per year; total annual cost burden N/A.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 254, and Part 54 of the Commission's rules.

Nature and Extent of Confidentiality: The Commission notes that USAC must preserve the confidentiality of all data obtained from respondents and contributors to the universal service programs, must not use the data except for purposes of administering the universal service programs, and must not disclose data in company-specific form unless directed to do so by the Commission. With respect to the Service Provider Identification Number and Contact Information Form (FCC Form 498), USAC shall publish each participant's name, SPIN, and contact information via USAC's Web site. All other information, including financial institution account numbers or routing information, shall remain confidential.

Needs and Uses: The information collected by FCC Form 498 is used by USAC to disburse federal universal service support consistent with the specifications of eligible participants in the universal service programs. FCC Form 498 submissions also provide USAC with updated contact information so that USAC can contact universal service fund participants when necessary. Without such information, USAC would not be able to distribute support to the proper entities and this would prevent the Commission from fulfilling its statutory responsibilities under the Act to preserve and advance universal service.

Federal Communications Commission.

Bulah P. Wheeler,

Associate Secretary.

[FR Doc. 2012–28347 Filed 11–20–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012057–008.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Asia to USEC and PNW-Suez/PNW & Panama Loops.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Party: Mark J. Fink, Esq.; Cozen O'Connor; 1627 I Street, NW Suite 1100; Washington, DC 20006.

Synopsis: The amendment would provide for the deployment of the seventeenth vessel and revise the space allocations of the parties accordingly. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: November 16, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–28344 Filed 11–20–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

November 15, 2012.

TIME AND DATE: 10:00 a.m., Thursday, December 6, 2012.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Prairie State Generating Co., LLC* v. *Secretary of Labor,* Docket Nos. LAKE 2009–711–R, et al. (Issues include whether the Administrative Law Judge erred in upholding the District Manager's disapproval of roof control and ventilation plans submitted by the operator.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–28393 Filed 11–19–12; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

November 15, 2012.

TIME AND DATE: 1:00 p.m., Thursday, December 6, 2012.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Wolf Run Mining Co.,* Docket No. WEVA 2008–1265. (Issues include whether the Administrative Law Judge correctly construed the ''repeated failure'' language of section 110(b)(2) of the Mine Act.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–28394 Filed 11–19–12; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 22, 2013.

ADDRESSES: You may submit comments, identified by Reg G or Reg H–7, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Disclosure and Reporting Requirements of CRA-Related Agreements.

Agency form number: Reg G.

OMB control number: 7100–0299.

Frequency: On occasion and annual.

Reporters: Insured depository institutions (IDIs), savings and loan holding companies (SLHCs) and nongovernmental entities or persons (NGEPs).

Estimated annual reporting hours: 78 hours.

Estimated average hours per response: 1 hour (3 disclosure requirements and 5 reporting requirements) and 4 hours (2 reporting requirements).

Number of respondents: 3 IDIs and SLHCs, and 6 NGEPs.

General description of report: This information collection is mandatory pursuant the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831y(b) and (c). The FDI Act authorizes the Federal Reserve to require the disclosure and reporting requirements of Regulation G (12 CFR part 207). In general, the Federal Reserve does not consider individual respondent commercial and financial information collected by the Federal Reserve pursuant to Regulation G as confidential. However, a respondent may request confidential treatment pursuant to section (b)(4) of Freedom of Information Act, 5 U.S.C. 552(b)(4).

Abstract: Section 48 of the Federal Deposit Insurance Act (FDI Act), entitled ''CRA Sunshine Requirements,'' imposes disclosure and reporting requirements on IDIs or their affiliates, and NGEPs that enter into written agreements that meet certain criteria (covered agreements).[1] The written agreements must (1) be made in fulfillment of the CRA and (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year. Section 48 excludes from the disclosure and reporting requirements any agreement between an IDI or its affiliate and an NGEP if the NGEP has not contacted the IDI or its affiliate, or a banking agency, concerning the CRA performance of the IDI.

The disclosure and reporting requirements in connection with Regulation G are mandatory and apply to state member banks and their subsidiaries; savings and loan holding companies; bank holding companies; affiliates of bank holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations; and NGEPs that enter into covered agreements with any of the aforementioned companies.

2. *Report title:* Disclosure Requirements in Connection With Subpart H of Regulation H (Consumer Protections in Sales of Insurance).

Agency form number: Reg H–7.

OMB control number: 7100–0298.

Frequency: On occasion.

Reporters: State member banks.

Estimated annual reporting hours: 12,962 hours.

Estimated average hours per response: 1.5 minutes

Number of respondents: 823.

General description of report: This information collection is mandatory pursuant the Federal Deposit Insurance (FDI) Act, 12 U.S.C. 1831x. The FDI Act authorizes the Federal Reserve to require the disclosure requirements associated with Subpart H of Regulation H (12 CFR 208.81—208.86). Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises.

Abstract: Section 305 of the Gramm-Leach-Bliley Act of 1999 requires financial institutions to provide written and oral disclosures to consumers in connection with the initial sale of an insurance product or annuity concerning its uninsured nature and the existence of the investment risk, if appropriate, and the fact that insurance sales and credit may not be tied.

Covered persons are required to make insurance disclosures before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure must be made orally and in writing to the consumer that: (1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the financial institution or an affiliate of the financial institution; (2) the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation or any other agency of the United States, the financial institution, or (if applicable) an affiliate of the financial institution; and (3) in the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

Covered persons are required to make a credit disclosure at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold. The disclosure must be made orally and in writing that the financial institution may not condition an extension of credit on either: (1) the consumer's purchase of an insurance product or annuity from the financial institution or any of its affiliates; or (2) the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Board of Governors of the Federal Reserve System, November 16, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–28298 Filed 11–20–12; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1831y.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW.,Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

Report Title: Recordkeeping Requirements Associated with the Interagency Statement on Complex Structured Finance Activities.

Agency Form Number: FR 4022.

OMB Control Number: 7100–0311.

Frequency: Annual.

Reporters: State member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve.

Estimated Annual Reporting Hours: 200 hours.

Estimated Average Hours per Response: 10 hours.

Estimated Number of Respondents: 20.

General Description of Report: The FR 4022 is authorized by sections 11(a), 11(i), 21, and 25 of the Federal Reserve Act (12 U.S.C. 248(a), 248(i), 483, and 602), section 5 of the Bank Holding Company Act (12 U.S.C. 1844), and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) and is voluntary guidance for supervised institutions. However, the Federal Reserve expects to use the Statement in reviewing the internal controls and risk management systems of those financial institutions engaged in Complex Structured Finance Activities (CSFTs) as part of the Federal Reserve's supervisory process. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event records generated under the guidance are obtained by the Federal Reserve during an examination of a state member bank or U.S. branch or agency of a foreign bank, or during an inspection of a bank holding company, confidential treatment may be afforded to the records under exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). FOIA exemption 8 exempts from disclosure matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

Abstract: The Interagency Statement on Complex Structured Finance Activities provides that state member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve should establish and maintain policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with certain CSFTs. A financial institution engaged in CSFTs should maintain a set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal, and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs, or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those jurisdictions. A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. A financial institution should define what constitutes a new complex structured finance product and establish a control process for the approval of such new products. An institution's policies also should provide for new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

Current Actions: On August 28, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 52031) requesting public comment for 60 days on the extension, without revision, of the FR 4022. The comment period for this notice expired on October 29, 2012. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, November 16, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–28309 Filed 11–20–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 10:00 a.m. (Eastern Time), November 27, 2012.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: All parts will be open to the public.

Matters To Be Considered:

1. Approval of the Minutes of the October 22, 2012 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Acting Executive Director
   a. Monthly Participant Activity Report
   b. Quarterly Investment Performance Report
   c. Legislative Report
3. 2012/2013 Board Meeting Calendar

Contact Person for More Information:

Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: November 19, 2012.

Megan Grumbine,

Acting Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–28433 Filed 11–19–12; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Ventron Corporation facility, in Beverly, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 12, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the

following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked for the Ventron Corporation at its facility in Beverly, Massachusetts, from November 1, 1942, through December 31, 1948, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on November 11, 2012, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on November 11, 2012, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–28295 Filed 11–20–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10430]

Agency Information Collection Activities: Proposed Collection; 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) 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 functions; (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:* Reinstatement of a previously approved collection; *Title:* Information Collection Requirements for Compliance with Individual and Group Market Reforms under Title XXVII of the Public Health Service Act; *Use:* The provisions of title XXVII of the Public Health Service Act (PHS Act) are designed to make it easier for people to get access to health care coverage and to reduce the limitations that can be put on the coverage. Sections 2723 and 2761 of the PHS Act direct CMS to enforce a provision (or provisions) of title XXVII of the PHS Act with respect to health insurance issuers when a state has notified CMS that it has not enacted legislation to enforce or that it is not otherwise enforcing a provision (or provisions) of the individual and group market reforms with respect to health insurance issuers, or when CMS has determined that a state is not substantially enforcing one or more of those provisions. This collection also pertains to notices issued by individual and group health insurance issuers and self-funded non-Federal governmental plans. This collection includes the issuance of certificates of creditable coverage; notification of preexisting condition exclusions; notification of special enrollment rights; and review of issuers' filings of individual and group market products or similar Federal review in cases in which a state is not enforcing a title XXVII individual or group market provision. This information collection is a reinstatement of a previously approved collection (which expired on September 30, 2012 (OMB#: 0938–0702 and OMB#: 0938–0703)) with minimal changes to reflect laws passed since the previous collection document was approved. While the OMB control number for this proposed collection will remain the same as the previously approved collection, this proposed collection will be given a new CMS Form Number. *Form Number:* CMS–10430 (OMB#: 0938–0702); *Frequency:* Annually; Occasionally; *Affected Public:* Private Sector; Business or other for-profits and Not-for-profit institutions, and State, Local, or Tribal Governments; *Number of Respondents:* 8,716; *Total Annual Responses:* 39,831,442; *Total Annual Hours:* 3,760,422 hours. (For policy questions regarding this collection contact Lisa Campbell at 301–492–4114. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 22, 2013:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10430/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 16, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–28380 Filed 11–20–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10433]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Title of Information Collection:* Initial Plan Data Collection to Support Qualified Health Plan (QHP) Certification and Other Financial Management and Exchange Operations; *Type of Information Collection Request:* New information collection; *Use:* As required by the CMS–9989–F (77 CFR 18310, March 27, 2012): Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (Exchange rule), each Exchange must assume responsibilities related to the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain minimum certification standards, such as essential community providers, essential health benefits, and actuarial value. In order to meet those standards, the Exchange is responsible for collecting data and validating that QHPs meet these minimum requirements as described in the Exchange rule under 45 CFR 155 and 156, based on the Affordable Care Act, as well as other requirements determined by the Exchange. In addition to data collection for the certification of QHPs, the reinsurance and risk adjustment programs outlined by the Affordable Care Act, detailed in 45 CFR 153, CMS–9975–F(77 FR 17220, March 23, 2012): Standards for Reinsurance, Risk Corridors, and Risk Adjustment, have general information reporting requirements that apply to non-QHPs outside of the Exchanges.

The original 60-day comment period began on July 6, 2012 (77 FR 40061). We received a number of public comments which addressed multiple issues. Some of the commenters were concerned with duplicate data collection. CMS is working with States to minimize any required document submission to streamline and reduce duplication, especially in future years. CMS has oversight and enforcement responsibilities unique to Exchanges that may require more than verification from a state. CMS has also aligned the data collection for SBCs, healthcare.gov, and EHB. Other commenters asked for more clarification on the data elements we are collection. We have included those data elements in this data collection. Furthermore, CMS will provide greater clarification on its process associated with QHP certification, essential community providers, and network adequacy among other QHP certification requirements. We have taken into consideration all of the proposed suggestions and have made changes to this collection of information. In addition, CMS is increasing the estimated burden by 21 hours.

Form Number: CMS–10433; *Frequency:* Annually; *Affected Public:* States and Private Sector: Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 3490; *Number of Responses:* 3490; *Total Annual Hours:* 242,190 hours in year one and 184,110 hours in years two and three. (For policy questions regarding the QHP Certification data collection, contact Gina Zdanowicz at (301) 492–4451. For policy questions regarding risk adjustment and reinsurance data collection, contact Milan Shah at (301) 492–4427. For all other issues, call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on December 21, 2012. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: November 16, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–28379 Filed 11–20–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10451 and CMS–10455]

Agency Information Collection Activities: Proposed Collection; 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) 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 functions; (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:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Use:* Section 42 CFR 424.5(a)(5) requires providers of services to submit a claim for payment prior to any Medicare reimbursement. Charges billed are coded by revenue codes. The bill specifies diagnoses according to the International Classification of Diseases, Ninth Edition (ICD–9–CM) code. Inpatient procedures are identified by ICD–9–CM codes, and outpatient procedures are described using the CMS Common Procedure Coding System (HCPCS). These are standard systems of identification for all major health insurance claims payers. Submission of information on the CMS–1450 permits Medicare intermediaries to receive consistent data for proper payment. *Form Numbers:* CMS–1450 (UB–04) (OMB#: 0938–0997); *Frequency:* Reporting—On occasion; *Affected Public:* Not-for-profit institutions, business or other for-profit; *Number of Respondents:* 53,111; *Total Annual Responses:* 181,909,654; *Total Annual Hours:* 1,567,455. (For policy questions

regarding this collection contact Matt Klischer at 410–786–7488. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Report of a Hospital Death Associated with Restraint or Seclusion; *Use:* Executive Order 13563, Improving Regulation and Regulatory Review, was signed on January 18, 2011. The order recognized the importance of a streamlined, effective, and efficient regulatory framework designed to promote economic growth, innovation, job creation, and competitiveness. Each agency was directed to establish an ongoing plan to reduce or eliminate burdensome, obsolete, or unnecessary regulations to create a more efficient and flexible structure.

The regulation that was published on May, 16, 2012 (77 FR 29034) included a reduction in the reporting requirement related to hospital deaths associated with the use of restraint or seclusion, § 482.13(g). Hospitals are no longer required to report to CMS those deaths where there was no use of seclusion and the only restraint was 2-point soft wrist restraints. It is estimated that this will reduce the volume of reports that must be submitted by 90 percent for hospitals. In addition, the final rule replaced the previous requirement for reporting via telephone to CMS, which proved to be cumbersome for both CMS and hospitals, with a requirement that allows submission of reports via telephone, facsimile or electronically, as determined by CMS. Finally, the amount of information that CMS needs for each death report in order for CMS to determine whether further on-site investigation is needed has been reduced.

The Child Health Act (CHA) of 2000 established in Title V, Part H, Section 591 of the Public Health Service Act (PHSA) minimum requirements concerning the use of restraints and seclusion in facilities that receive support with funds appropriated to any Federal department or agency. In addition, the CHA enacted Section 592 of the PHSA, which establishes minimum mandatory reporting requirements for deaths in such facilities associated with use of restraint or seclusion. Provisions implementing this statutory reporting requirement for hospitals participating in Medicare are found at 42 CFR 482.13(g), as revised in the final rule that published on May 16, 2012 (77 FR 29034). *Form Number:* CMS–10455 (OCN: 0938–New); *Frequency:* Occasionally; *Affected Public:* Private Sector. *Number of Respondents:* 4,900. *Number of Responses:* 24,500. *Total Annual Hours:* 8,085. (For policy questions regarding this collection contact Danielle Miller at 410–786–8818. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 22, 2013:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 16, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–28381 Filed 11–20–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8046–N]

RIN 0938–AR14

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2013

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2013 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2013, the inpatient hospital deductible will be $1,184. The daily coinsurance amounts for CY 2013 will be: $296 for the 61st through 90th day of hospitalization in a benefit period; $592 for lifetime reserve days; and $148 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: This notice is effective on January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Clare McFarland, (410) 786–6390 for general information.

Gregory J. Savord, (410) 786–1521 for case-mix analysis.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

II. Computing the Inpatient Hospital Deductible for CY 2013

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4

(or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2013 for hospitals paid under the inpatient prospective payment system is the market basket percentage increase, otherwise known as the market basket update, reduced by 0.1 percentage points (see section 1886(b)(3)(B)(xii)(II) of the Act), and an adjustment based on changes in the economy-wide productivity (the multifactor productivity (MFP) adjustment (see section 1886(b)(3)(B)(xi)(II) of the Act). Under section 1886(b)(3)(B)(viii) of the Act, hospitals will receive this update only if they submit quality data as specified by the Secretary. The update for hospitals that do not submit this data is reduced by 2.0 percentage points. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will remain the same, as the majority of hospitals submit quality data and receive the full market basket update.

Under section 1886(b)(3)(B)(ii)(VIII) of the Act, the percentage increase used to update the payment rates for FY 2013 for hospitals excluded from the inpatient prospective payment system is as follows:

- For FY 2013, the percentage increase for long term care hospitals is the market basket percentage increase reduced by 0.1 percentage points and the MFP adjustment (see sections 1886(m)(3)(A) and 1886(m)(4)(C) of the Act).
- For FY 2013, the percentage increase for inpatient rehabilitation facilities is the market basket percentage increase reduced by 0.1 percentage points and the MFP adjustment (see sections 1886(j)(3)(C) and 1886(j)(3)(D)(ii) of the Act).
- For FY 2013, the percentage increase used to update the payment rate for psychiatric hospitals is the market basket percentage increase reduced by 0.1 percentage points and the MFP adjustment (see sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act).

The market basket percentage increase for 2013 is 2.6 percent and the MFP adjustment is 0.7 percent, as announced in the final rule with comment period published in the **Federal Register** on August 31, 2012 entitled, ''Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2013 Rates and to the Long Term Care Hospital PPS and FY 2013 Rates'' (77 FR 53257). Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system is 1.8 percent. The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 2.05 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2013 is 1.84 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated an average case-mix for each hospital that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2012 compared to FY 2011. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2012. These bills represent a total of about 8.2 million Medicare discharges for FY 2012 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2012 is 0.33 percent. Based on these bills and past experience, we expect the overall case mix change to be 0.7 percent as the year progresses and more FY 2012 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. We estimate that the change in real case mix will be 0.7 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 1.84 percent, and the real case-mix adjustment factor for the deductible is 0.7 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in CY 2013 is $1,184. This deductible amount is determined by multiplying $1,156 (the inpatient hospital deductible for CY 2012) by the payment-weighted average increase in the payment rates of 1.0184 multiplied by the increase in real case-mix of 1.007, which equals $1,185.51 and is rounded to $1,184.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2013

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2013, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $296 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $592 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $148 (one-eighth of the inpatient hospital deductible).

IV. Cost to Medicare Beneficiaries

Table 1 below summarizes the deductible and coinsurance amounts for CYs 2012 and 2013, as well as the number of each that is estimated to be paid.

TABLE 1—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2012 AND 2013

Type of cost sharing	Value		Number paid (in millions)	
	2012	2013	2012	2013
Inpatient hospital deductible	$1,156	$1,184	8.19	8.44
Daily coinsurance for 61st–90th Day	289	296	2.11	2.17
Daily coinsurance for lifetime reserve days	578	592	1.04	1.08
SNF coinsurance	144.50	148	43.82	45.72

The estimated total increase in costs to beneficiaries is about $1,030 million (rounded to the nearest $10 million) due to—(1) the increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each CY. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. 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).

VII. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C., Part I, Ch. 8).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $1,030 million due to—(1) the increase in the deductible and coinsurance amounts; and (2) the increase in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major action as defined in Title 5, United States Code, Part I, Ch. 8), and is an economically significant action under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis under the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. The Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This notice will have no consequential effect on State, local, or tribal governments or on the private sector. However, States may be required to pay the deductibles and coinsurance for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 6, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: November 15, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–28273 Filed 11–16–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8048–N]

RIN 0938–AR16

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2013

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical

Insurance (SMI) program beginning January 1, 2013. In addition, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2013 are $209.80 for aged enrollees and $235.50 for disabled enrollees. The standard monthly Part B premium rate for all enrollees for 2013 is $104.90, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2012 standard premium rate was $99.90.) The Part B deductible for 2013 is $147.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

DATES: January 1, 2013.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met by transfers from the general fund of the Treasury.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half of the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2013 Part B deductible is calculated by multiplying the 2012 deductible by the ratio of the 2013 aged actuarial rate over the 2012 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in

2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known as the Medicare Modernization Act, or MMA), which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on their annual income. Specifically, if a beneficiary's ''modified adjusted gross income'' is greater than the legislated threshold amounts (for 2013, $85,000 for a beneficiary filing an individual income tax return, and $170,000 for a beneficiary filing a joint tax return) the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25 percent premium, these beneficiaries now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, or 80 percent of the estimated total cost of Part B coverage, rather than 25 percent. The end result of the higher premium is that the Part B premium subsidy is reduced and less general revenue financing is required for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-year transition to full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2012, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates.

A further provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act, referred to as the ''hold-harmless'' provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. The ''hold-harmless'' provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2013 are $209.80 for enrollees age 65 and over and $235.50 for disabled enrollees under age 65. In section II.B. of this notice, we present the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for all enrollees for 2013 is $104.90. The Part B annual deductible for 2013 is $147.00. Listed below are the 2013 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	42.00	146.90
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	104.90	209.80
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	167.80	272.70
Greater than $214,000	Greater than $428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $129,000	167.80	272.70
Greater than $129,000	230.80	335.70

The Part B annual deductible for 2013 is $147.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2013

Except where noted, the actuarial assumptions and bases used to determine the monthly actuarial rates and the monthly premium rates for Part B are established by the Office of the Actuary in the Centers for Medicare & Medicaid Services. The estimates underlying these determinations are prepared by actuaries meeting the qualification standards and following the actuarial standards of practice established by the Actuarial Standards Board.

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year, and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2011 and 2012.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (millions)	Liabilities (millions)	Assets less liabilities (millions)
December 31, 2011	$79,693	$15,015	$64,678
December 31, 2012	68,164	17,162	51,002

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits; and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2013 is determined by first establishing per-enrollee cost by type of service from program data through 2011 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2010 through December 31, 2013 are shown in Table 2.

As indicated in Table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2013 is $198.11. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. The monthly actuarial rate of $209.80 provides an adjustment of $14.07 for a contingency margin and −$2.38 for interest earnings.

The size of the contingency margin for 2013 is affected by several factors. The largest factor involves the current law formula for physician fees, which is scheduled to result in a reduction in physician fees of nearly 30 percent in 2013. For each year from 2003 through 2012, Congress has acted to prevent physician fee reductions from occurring. In recognition of the strong possibility of substantial increase in Part B expenditures that would result from similar legislation to override the decreases in physician fees in 2013, it is appropriate to maintain a significantly larger Part B contingency reserve than would otherwise be necessary. The asset level projected for the end of 2012 is not adequate to accommodate this contingency.

As noted, the scheduled physician fee schedule reductions have been legislatively overridden for each year since 2003. During this period, lawmakers enacted physician payment updates that ranged from 0 percent to 2.2 percent; the average increase was 1 percent per year over this period. The 2012 Medicare Technical Review Panel recommended using a 1-percent physician fee schedule update assumption for alternative analysis and financial projection purposes, and the Office of the Actuary has adopted this recommendation. However, the contingency margin for the 2013 Part B premium has been calculated based on an assumption that the scheduled physician payment reduction for 2013 will be legislatively changed to 0 percent. Use of the 0-percent physician fee update assumption for purposes of the contingency margin was directed by the Secretary, who determines the Part B premium each year under section 1839 of the Act. In view of the additional data that are now available, and the continuing uncertainty associated with the legislative process, an assessment of the reasonableness of this assumption and its impact on the adequacy of Part B assets in 2013 would require substantial additional time and analysis. Such an analysis is not feasible within the available time. Accordingly, the Office of the Actuary is unable to determine the reasonableness of this assumption for the purposes of determining the contingency margin.

Another factor affecting the size of the contingency margin comes from section 302 of The Budget Control Act of 2011 (Pub. L. 112–25), which mandates a government-wide sequestration process to reduce Federal outlays. The sequestration process will automatically start in February 2013 under current law. Medicare benefit payments are subject to a maximum 2-percent reduction. Total Part B expenditures are estimated to be reduced by $4.3 billion in 2013 as a result of this sequestration. However, reductions of this dollar magnitude from the physician payment formula have been legislatively overridden in past years, and there is a possibility that the sequestration requirements will be modified or postponed before taking effect. The contingency margin has been adjusted to accommodate this possibility.

Two other, smaller factors affect the contingency margin for 2013. Starting in 2011, manufacturers and importers of brand-name prescription drugs have paid a fee that is allocated to the Part B account of the SMI trust. For 2013, the total of these brand-name drug fees is estimated to be $2.7 billion. The contingency margin has been reduced to account for this additional revenue.

Another small factor impacting the contingency margin comes from the requirement that certain payment incentives, to encourage the development and use of health information technology (HIT) by Medicare physicians, are to be excluded from the premium determination. HIT bonuses or penalties will be directly offset through transfers with the general fund of the Treasury. The monthly actuarial rate includes an adjustment of −$0.86 for HIT bonus payments in 2013.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. To accomplish this goal, a 17 percent reserve has been the normal target used to calculate the Part B premium. In view of the strong likelihood of actual expenditures exceeding estimated levels, due to the likelihood of the enactment of legislation after the financing has been set for 2013 as a result of the scheduled 2013 physician update and, possibly in addition, the scheduled 2013 sequestration, a contingency reserve ratio in excess of 20 percent of the following year's expenditures would better ensure that the assets of the Part B account can adequately cover the cost of incurred-but-not-reported benefits together with variations between actual and estimated cost levels.

The actuarial rate of $209.80 per month for aged beneficiaries, as announced in this notice for 2013, reflects the combined net effect of the factors previously described and the projection assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2013 is $231.92. The monthly actuarial rate of $235.50 also provides an adjustment of −$4.07 for interest earnings and $7.65 for a

contingency margin, reflecting the same factors described above for the aged actuarial rate. Based on current estimates, the assets associated with the disabled Medicare beneficiaries are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to an appropriate level.

The actuarial rate of $235.50 per month for disabled beneficiaries, as announced in this notice for 2013, reflects the combined net effect of the factors described above for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative cost growth rate assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $71,851 million by the end of December 2013 under the cost growth rate assumptions used in preparing this report and assuming that the provisions of current law are fully implemented. This amounts to 28.5 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $38,839 million by the end of December 2013 under current law, which amounts to 13.8 percent of the estimated total incurred expenditures for the following year. If the physician fee reduction and the scheduled 2-percent sequestration of Medicare expenditures were legislatively overridden, the ratio under the pessimistic assumptions would be very close to zero. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $96,011 million by the end of December 2013, or 42.0 percent of the estimated total incurred expenditures for the following year.

The previous analysis indicates that the premium and general revenue financing established for 2013, together with existing Part B account assets would be adequate to cover estimated Part B costs for 2013 under current law, even if actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, listed are the 2013 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	42.00	146.90
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	104.90	209.80
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	167.80	272.70
Greater than $214,000	Greater than $428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $129,000	167.80	272.70
Greater than $129,000	230.80	335.70

TABLE 2—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2010–2013

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab [4]	Other carrier services [5]	Out-patient hospital	Home health agency	Hospital lab [6]	Other intermediary services [7]	Managed care
	Fees [2]	Residual [3]								
Aged:										
2010	2.5	1.4	1.8	1.4	3.4	5.1	2.4	2.2	1.0	−1.8
2011	0.9	1.8	−3.9	−2.9	4.5	7.6	−1.6	4.9	4.4	0.9
2012	−1.0	2.6	4.4	6.8	3.6	9.3	0.5	5.1	8.1	2.6
2013	−28.5	8.1	−0.3	2.9	5.0	5.6	1.7	1.6	−6.4	4.3

TABLE 2—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2010–2013—Continued

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab [4]	Other carrier services [5]	Outpatient hospital	Home health agency	Hospital lab [6]	Other intermediary services [7]	Managed care
	Fees [2]	Residual [3]								
Disabled:										
2010	2.5	2.9	2.7	−3.9	3.2	5.4	1.1	0.5	−0.1	−0.9
2011	0.9	1.9	−2.2	3.7	3.5	8.3	−1.4	7.2	0.9	1.3
2012	−1.0	2.5	4.4	21.8	3.5	10.3	2.1	4.3	7.4	0.9
2013	−28.5	8.0	−0.4	2.8	4.9	5.5	2.7	1.6	−0.6	4.6

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2010 THROUGH DECEMBER 31, 2013

	Financing periods			
	CY 2010	CY 2011	CY 2012	CY 2013
Covered services (at level recognized):				
Physician fee schedule	80.62	81.75	81.25	62.90
Durable medical equipment	8.94	8.49	8.67	8.66
Carrier lab [1]	4.31	4.13	4.32	4.45
Other carrier services [2]	21.23	21.89	22.20	23.36
Outpatient hospital	32.93	34.99	37.41	39.58
Home health	11.85	11.50	11.31	11.53
Hospital lab [3]	3.66	3.79	3.90	3.97
Other intermediary services [4]	14.18	14.62	15.47	14.50
Managed care	54.74	57.06	61.63	64.00
Total services	232.47	238.22	246.16	232.95
Cost sharing:				
Deductible	−5.91	−6.19	−5.37	−5.62
Coinsurance	−30.91	−30.92	−31.77	−28.13
HIT payment incentives	0.00	−0.17	−0.74	−0.86
Total pre-sequester benefits	195.64	200.94	208.28	198.34
Pre-sequester administrative expenses	2.94	3.29	3.66	3.43
Sequester	0.00	0.00	0.00	−3.65
Incurred expenditures	198.58	204.23	211.94	198.11
Value of interest	−2.74	−2.52	−2.12	−2.38
Contingency margin for projection error and to amortize the surplus or deficit	25.16	28.99	−10.02	14.07
Monthly actuarial rate	221.00	230.70	199.80	209.80

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2010 THROUGH DECEMBER 31, 2013

	Financing periods			
	CY 2010	CY 2011	CY 2012	CY 2013
Covered services (at level recognized):				
Physician fee schedule	85.33	86.85	86.45	66.85
Durable medical equipment	16.89	16.24	16.62	16.59
Carrier lab [1]	5.84	5.10	6.05	6.24
Other carrier services [2]	25.89	26.27	26.38	27.72
Outpatient hospital	46.13	49.37	53.31	56.33
Home health	10.10	9.82	9.82	10.11
Hospital lab [3]	5.16	5.38	5.50	5.59
Other intermediary services [4]	41.05	41.70	42.66	42.61
Managed care	40.77	43.51	47.40	48.99

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2010 THROUGH DECEMBER 31, 2013—Continued

	Financing periods			
	CY 2010	CY 2011	CY 2012	CY 2013
Total services	277.16	284.24	294.20	281.03
Cost sharing:				
Deductible	−5.55	−5.81	−5.05	−5.28
Coinsurance	−45.71	−46.19	−46.76	−42.62
HIT payment incentives	0.00	−0.18	−0.77	−0.90
Total pre-sequester benefits	225.90	232.05	241.62	232.23
Pre-sequester administrative expenses	3.38	3.80	4.26	3.97
Sequester	0.00	0.00	0.00	−4.27
Incurred expenditures	229.28	235.85	245.87	231.92
Value of interest	−4.05	−5.05	−4.52	−4.07
Contingency margin for projection error and to amortize the surplus or deficit	45.17	35.49	−48.85	7.65
Monthly actuarial rate	270.40	266.30	192.50	235.50

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2013

As of December 31,	2011	2012	2013
This projection:			
Actuarial status (in millions):			
Assets	79,693	68,164	88,193
Liabilities	15,015	17,162	16,341
Assets less liabilities	64,678	51,002	71,851
Ratio (in percent) [1]	26.6	21.7	28.5
Low cost projection:			
Actuarial status (in millions):			
Assets	79,693	77,325	111,554
Liabilities	15,015	16,144	15,542
Assets less liabilities	64,678	61,180	96,011
Ratio (in percent) [1]	27.8	28.2	42.0
High cost projection:			
Actuarial status (in millions):			
Assets	79,693	57,291	55,997
Liabilities	15,015	18,370	17,158
Assets less liabilities	64,678	38,921	38,839
Ratio (in percent) [1]	25.3	15.2	13.8

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent. These estimates are based on the assumption that all provisions of current law will be implemented in full, including (i) the approximately 28.0-percent reduction in Medicare payment rates to physicians required by the statutory ''sustainable growth rate'' formula, and (ii) the sequestration of up to 2 percent of all Medicare payments to providers and plans as required by the Budget Control Act of 2011. Under the intermediate projection assumptions (as shown in table 2), if the 2013 physician payment reduction were overridden through new legislation, then the Part B asset reserve ratio for December 31, 2013 would be approximately 9.3 percentage points lower than shown here. If, in addition, the 2013 sequestration were similarly overridden, then the reserve ratios at the end of 2013 would be reduced by approximately another 2 percentage points. The impacts of these potential overrides on the 2013 reserve ratio for the low cost and high cost projections would be similar.

III. Regulatory Impact Analysis

A. Statement of Need

Section 1839 of the Act requires us to annually announce (that is by September 30th of each year) the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. We also announce the Part B annual deductible because its determination is directly linked to the aged actuarial rate.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism

(August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major notice with economically significant effects ($100 million or more in any 1 year).

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. This notice will not have a significant impact on a substantial number of small businesses or other small entities. Therefore, the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2013 are $209.80 for enrollees age 65 and over and $235.50 for disabled enrollees under age 65. It also announces the 2013 monthly Part B premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with a dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	Less than or equal to $170,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $107,000.	Greater than $170,000 and less than or equal to $214,000.	42.00	146.90
Greater than $107,000 and less than or equal to $160,000.	Greater than $214,000 and less than or equal to $320,000.	104.90	209.80
Greater than $160,000 and less than or equal to $214,000.	Greater than $320,000 and less than or equal to $428,000.	167.80	272.70
Greater than $214,000	Greater than $428,000	230.80	335.70

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are also announced and listed in the following chart.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $85,000	$0.00	$104.90
Greater than $85,000 and less than or equal to $129,000	167.80	272.70
Greater than $129,000	230.80	335.70

The standard Part B premium rate of $104.90 is 5 percent higher than the $99.90 premium rate for 2012. We estimate that this increase will cost approximately 48.1 million Part B enrollees about $2.4 billion for 2013. Therefore, this notice is a major rule as defined in 5 U.S.C. 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such

announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. The statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Moreover, we find that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 15, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 15, 2012.

Kathleen Sebelius,

Secretary. Department of Health and Human Services.

[FR Doc. 2012–28275 Filed 11–16–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8047–N]

RIN 0938–AR15

Medicare Program; Part A Premiums for CY 2013 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2013. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the ''uninsured aged'') and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2013, for these individuals will be $441. The reduced premium for certain other individuals as described in this notice will be $243.

DATES: This notice is effective on January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance Program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. These ''uninsured aged'' individuals are uninsured under the OASDI program or the Railroad Retirement Act, because they do not have 40 quarters of coverage under Title II of the Act (or are/were not married to someone who did). (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Medicare Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium for certain disabled individuals who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, but who are no longer entitled to disability benefits and free Medicare Part A coverage because they have gone back to work and their earnings exceed the statutorily defined ''substantial gainful activity'' amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the impending calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A of the Act). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2013 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for CY 2013

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2013, is $441.

The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $243.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2013 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2013 on—(1) current historical data; and (2) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2013 Budget.

We estimate that in CY 2013, 42,352,324 people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur about $223.933 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $440.62 and the monthly premium is $441. The full monthly premium reduced by 45 percent is $243.

IV. Costs to Beneficiaries

The CY 2013 premium of $441 is approximately 2.22 percent lower than the CY 2012 premium of $451. We estimate that approximately 604,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 50,000 enrollees will pay the reduced premium. We estimate that the aggregate savings to enrollees paying these premiums in CY 2013, compared to the amount that they paid in CY 2012, will be about $75 million.

V. Waiver of Proposed Notice and Comment Period

We use general notices, rather than notice and comment rulemaking procedures, to make announcements such as this premium notice. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. The agency may also waive notice and comment if there is ''good cause,'' as defined by the statute. We considered publishing a proposed notice to provide a period for public comment. However, under the APA, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest.

We are not using notice and comment rulemaking in this notification of Medicare Part A premiums for CY 2013 as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The APA permits agencies to waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. 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).

VII. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C., Part I, Ch. 8).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the overall effect of these changes in the Part A premium will be a savings to voluntary enrollees (section 1818 and section 1818A of the Act) of about $75 million. Therefore, this notice is a not a major action as defined in Title 5, United States Code, Part I, Ch. 8 and is not an economically significant action under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis under the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. The Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This notice will have no consequential effect on State, local, or tribal governments or on the private sector. However, States are required to pay the premiums for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 6, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: November 15, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–28274 Filed 11–16–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Parents and Children Together (PACT) Evaluation.

OMB No.: 0970–0403.

Description: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing data collection activity as part of the Parents and Children Together (PACT) Evaluation.

The PACT project is a formative evaluation whose overall objective is to document and provide initial assessment of selected Responsible Fatherhood and Healthy Marriage grant programs that were authorized under the 2010 Claims Resolution Act. This information will be critical to informing decisions related to future investments in this kind of programming as well as the design and operation of such services.

To meet the objective of the study, PACT is utilizing three major, interrelated evaluation strategies:

(a) Impact evaluation;

(b) Implementation evaluation; and

(c) Qualitative evaluation.

Each of these strategies will be employed separately with (1) Responsible Fatherhood and (2) Healthy Marriage grantees. Specifically, we anticipate the following studies:

(a) Impact evaluation:

(1) Responsible Fatherhood grantee evaluation; and (2) Healthy Marriage grantee evaluation.

(b) Implementation evaluation:

(1) Responsible Fatherhood grantee evaluation;

(1—additional substudy) Responsible Fatherhood grantee evaluation with a focus on Hispanic populations; and

(2) Healthy Marriage grantee evaluation.

(c) Qualitative evaluation:

(1) Responsible Fatherhood grantee evaluation.

The following instruments have been approved for this study: Site selection: a discussion guide to assist in selecting sites was approved by OMB on April 20, 2012.

(a) Impact evaluation:

(1) Responsible Fatherhood grantee evaluation:

- Introductory script, approved October 31, 2012.
- Baseline survey, approved October 31, 2012.

(b) Implementation evaluation:

(1) Responsible Fatherhood grantee evaluation:

- Responsible Fatherhood Study MIS, approved October 31, 2012.

This 60-Day **Federal Register** Notice requests clearance of new instruments:

(a) Impact evaluation:

(1) Healthy Marriage grantee evaluation:

- Introductory script, which program staff will use to introduce the study to participants.
- Baseline survey, to capture participant characteristics and experiences prior to randomization.

(b) Implementation evaluation:

(1) and (2) Responsible Fatherhood and Healthy Marriage grantee evaluation:

- Semi-structured interview topic guide, to gather information on program implementation from program staff.
- On-line survey, to capture program staff experiences.
- Telephone interviews (with staff at referral organizations), to document linkages between the program and referral agencies.
- Working Alliance Inventory, to assess the strength of the participant-program staff working relationship.
- Focus group guide, to elicit participant experiences.
- Telephone interviews (with program dropouts), to determine reasons why those eligible for the program choose not to participate.

(1—additional substudy) Responsible Fatherhood grantee evaluation with a focus on Hispanic populations:

- Semi-structured interview topic guide, to examine how agencies adapt programs to address the needs of Hispanic populations.
- Focus group guide, to elicit participant experiences.
- Participant questionnaire, to capture participant characteristics and experiences.

(2) Healthy Marriage grantee evaluation:

- Study MIS (for use in HM programs), to track participation in the program.

(c) Qualitative evaluation:

(1) Responsible Fatherhood grantee evaluation:

- Guide for in-person, in-depth interviews, to understand the experiences, both in and out of the program, of a subset of men.
- Check-in call guide, to follow-up from the in-person, in-depth interviews, to ascertain new experiences by these men since last discussion.

This 60-Day **Federal Register** Notice also serves as a request for OMB to waive subsequent 60-day **Federal Register** notices pertaining to the PACT Evaluation.

Respondents:

Respondents include program applicants, program participants, program staff, and staff at referral agencies. Specific respondents per instrument are noted in the burden tables below.

Annual Burden Estimates

Some burden has already been approved for this study, and the following instruments are still in use. Approved burden is provided below:

Instrument respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total annual burden hours
Site Selection				
Selecting Study Grantees:				
Discussions/grantee and partner organization staff	50	1	60	50

Instrument respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total annual burden hours
Impact Responsible Fatherhood Grantee Evaluation				
Introductory Script:				
Grantee staff	30	70.2	10	351
Program applicants	2,105	1	10	351
Baseline Survey:				
Study participants	2,000	1	30	1,000
Implementation Responsible Fatherhood Grantee Evaluation				
RF Study MIS:				
Grantee staff	30	2,533	2	2,533
Total				4,285

This current 60-Day **Federal Register** Notice covers many new instruments:

Instrument respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total annual burden hours
Impact Healthy Marriage Grantee Evaluation				
Introductory script:				
Program staff	20	246	10	820
Program applicants	4,211	1	10	702
Baseline survey:				
Study participants	4,000	1	30	2,000
Implementation Responsible Fatherhood and Healthy Marriage Grantee Evaluation				
Semi-structured interview topic guide:				
Program staff	250	2	62	517
On-line survey:				
Program staff	250	2	30	250
Telephone interviews (with staff at referral organizations):				
Program staff at referral organizations	50	1	30	25
Working Alliance Inventory:				
(1) Program staff	50	20	10	167
(2) Participants	1,000	1	10	167
Focus group guide:				
Study participants	600	1	90	900
Telephone interviews (with program dropouts):				
Study participants (program dropouts)	150	1	15	38
Additional Substudy: Responsible Fatherhood Grantee Evaluation With a Focus on Hispanic Populations				
Semi-structured interview topic guide:				
Program staff	42	1	65	45
Focus group guide:				
Study participants	25	1	90	38
Participant questionnaire:				
Study Participants	25	1	30	13
Healthy Marriage Grantee Evaluation				
HM Study MIS (for use in HM programs):				
Program staff	30	3,400	2	3,400
Qualitative Responsible Fatherhood Grantee Evaluation				
Guide for in-person, in-depth interviews:				

Instrument respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total annual burden hours
Study participants	95	3	120	570
Check-in call guide:				
Study participants	63	4	10	42
Total				9,694

Estimated Total Annual Burden Hours (for instruments previously approved and currently in use, as well as those associated with this 60-Day Notice): 13,969.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Administration for Children and Families, Reports Clearance Officer.

[FR Doc. 2012–28321 Filed 11–20–12; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1040]

Antiseptic Patient Preoperative Skin Preparation Products; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a public hearing to obtain input on how to address microbial contamination of patient preoperative skin preparation drug products. Currently, patient preoperative skin preparations are not required to be sterile. Bacteria can contaminate these products at the time of manufacture or during product use. Contaminated patient preoperative skin preparations have been associated with clinical infections and adverse outcomes. At this public hearing, FDA is interested in obtaining public comment about certain scientific and product use issues related to patient preoperative skin preparations.

*Date and Time:*The public hearing will be held on December 12 and 13, 2012, from 9 a.m. to 4 p.m. The meeting may be extended or may end early, depending on the level of public participation.

Location: The public hearing will be held at the DoubleTree by Hilton Hotel Washington, DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910.

Contact Person: Lee Lemley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–3441, FAX: 301- 847–8753, email: *AntisepticPreOpPublic Meeting@fda.hhs.gov*.

Registration: The public hearing is free, and seating will be on a first-come, first-served basis. Attendees who do not wish to make an oral presentation do not need to register. If you need special accommodations due to disability, please contact Lee Lemley (see *Contact Person*) at least 7 days in advance.

Requests for Oral Presentations: If you wish to make an oral presentation during the hearing, you must register by submitting a written or electronic request by close of business on November 27, 2012, to Lee Lemley (see *Contact Person*). Provide your name, title, business affiliation (if applicable), address, telephone and fax numbers, email address, and type of organization you represent (e.g., pharmaceutical company or consumer organization). You also should submit a brief summary of the presentation, including the discussion topic(s) that will be addressed and the approximate time requested for your presentation. We encourage individuals and organizations with common interests to consolidate or coordinate their presentations to allow adequate time for each request for presentation. Persons registered to make an oral presentation should check in before the hearing.

Participants should submit a copy of each presentation to Lee Lemley (see *Contact Person*) no later than December 7, 2012. We will file the hearing schedule, indicating the order of presentation and the time allotted to each person, with the Division of Dockets Management (see *Comments*). We will mail, email, or telephone the schedule to each participant before the hearing. In anticipation of the hearing presentations moving ahead of schedule, participants are encouraged to arrive early to ensure their designated order of presentation. Participants who are not present when called risk forfeiting their scheduled time.

Comments: Interested persons may submit either written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 or electronic comments to *http://www.regulations.gov*. Comments will be accepted after the hearing until February 12, 2013. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and

organize your comments to identify the specific questions identified by the topic to which they refer. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA is announcing a public hearing to obtain input on how to address microbial contamination of patient preoperative skin preparation drug products. To provide the public with additional background, FDA is making information available that is pertinent to this safety issue. This information is available electronically in the docket for this **Federal Register** notice on the Internet at *http://www.regulations.gov* and on FDA's Web site at *http://www.fda.gov/Drugs/NewsEvents/ucm319621.htm*. This information is also available at the Division of Dockets Management and by mail (see *Comments*).

I. Background

Patient preoperative skin preparations are over-the-counter (OTC) topical antiseptic drug products used to reduce the number of bacteria on the skin prior to medical procedures or injections. Although they are marketed predominantly to healthcare facilities, the use of these products extends beyond the healthcare facility setting. For example, consumers with medical conditions requiring regular injections (e.g., of insulin or heparin) may use these products at home.

Patient preoperative skin preparations are marketed through one of three regulatory pathways: an OTC drug monograph, an approved new drug application (NDA), or an approved abbreviated new drug application (ANDA). Many patient preoperative skin preparations contain antiseptic active ingredients subject to an OTC drug monograph, such as povidone-iodine or alcohol. Products that are marketed under approved NDAs or ANDAs include those that contain chlorhexidine gluconate (either alone or in combination with an alcohol).

Patient preoperative skin preparations are marketed as solutions, swabs, pads saturated with a solution, and applicators containing a solution. Some patient preoperative skin preparation products are intended for one-time use only (single-use); others are intended for repeated use from the same container (multiple-use). Multiple-use containers of patient preoperative skin preparations may also be labeled for other indications, such as surgical hand scrub, healthcare personnel handwash, or skin wound and general skin cleanser.

Despite their inherent antimicrobial activity, patient preoperative skin preparations may become contaminated with bacteria. A number of product recalls have been prompted by the identification of bacterial contamination (see FDA's Archive for Recalls, Market Withdrawals, and Safety Alerts at *http://www.fda.gov/Safety/Recalls/ArchiveRecalls/default.htm*). Furthermore, infections related to bacterial contamination of patient preoperative skin preparations have been described in the literature (Ref. 1). Some of these infections have remained localized at the site of an injection, but others have resulted in sepsis and death.

Contamination of patient preoperative skin preparations occurs by two known mechanisms. Intrinsic contamination occurs when microorganisms gain entry to the product during the manufacturing process and remain viable. Bacterial contaminants have been isolated from pharmaceutical water supplies and nonsterile antiseptic manufacturing environments. By contrast, extrinsic contamination occurs when microorganisms are introduced into a finished product by the end user. Extrinsic contamination can arise from a variety of causes, including dilution of the product with contaminated water, failure to use appropriate aseptic techniques during handling, and repeated use of nonsterile containers for product storage.

Our current good manufacturing practice (CGMP) regulations require manufacturers to have appropriate procedures in place to prevent the presence of objectionable organisms in drug products that are not sterile (21 CFR 211.113). However, the microbial limits test (United States Pharmacopeia Chapter 1111 (Ref. 2)) currently in use by many manufacturers may not detect very low levels of microbial contamination and does not screen for the types of intrinsically antiseptic-resistant organisms frequently identified as contaminants in patient preoperative skin preparations, such as *Burkholderia cepacia* and *Bacillus cereus.* Therefore, a product that passes the premarket microbial limits test may still support the growth of contaminating microorganisms and become the source of clinical infection.

The subject of contaminated patient preoperative skin preparations was discussed at an Advisory Committee meeting held on August 5, 2009 (Ref. 3). FDA asked the Committee whether we should require patient preoperative skin preparations to be manufactured as sterile products. The Committee did not vote on FDA's question, but rather emphasized adherence to CGMP.

Reports of contaminated patient preoperative skin preparations, which have led to product recalls and clinical infections, raise a public health concern. Consequently, FDA has decided to hold a public hearing to hear from interested parties, including healthcare facilities, healthcare professionals, manufacturers, consumers, and others, about ways that these issues might be addressed.

II. Scope of the Public Hearing

FDA is holding this public hearing to seek input from interested members of the public on how to address microbial contamination of patient preoperative skin preparation antiseptic drug products. This hearing may be of interest to a wide range of audiences, including product manufacturers, those representing healthcare facilities, healthcare professionals, and consumers who use these products. FDA is interested in obtaining information and public comment on the following issues:

A. Intrinsic Contamination

1. Are healthcare providers and consumers aware that patient preoperative skin preparations generally are not sterile? What measures can be taken to increase awareness of this fact?

2. In light of the adverse events associated with contamination of patient preoperative skin preparations, should all such products be manufactured sterile?

3. Are manufacturers currently producing, or planning to produce, sterile patient preoperative skin preparations? If so, what method(s) are or will be used (e.g., terminal sterilization or validated aseptic manufacturing)?

4. What technical challenges, if any, are there in producing sterile patient preoperative skin preparation products? For a given manufacturer, approximately how long would a manufacturing switch take to allow for

production of a sterile preoperative skin prep product?

5. How would the market change if all patient preoperative skin preparations were required to be manufactured sterile?

6. What can FDA do to help manufacturers overcome challenges in this area?

B. Extrinsic Contamination

1. Products manufactured sterile can be contaminated as soon as they are opened for the first time. What steps can be taken to reduce the risk of extrinsic contamination of patient preoperative skin preparations?

2. Excluding the use of these products before surgical procedures or injections, are these products used for other purposes in healthcare or home settings (e.g., wound care or maintenance care for indwelling catheters)? If so, what is the extent of these uses in healthcare or home settings? What settings or uses comprise the majority of utilization for single-use products? What settings or uses comprise the majority of utilization for multiple-use products?

3. To what extent are multiple-use containers of patient preoperative skin preparations further processed (e.g., diluted, mixed, or repackaged for subsequent redistribution) in healthcare or home settings? If these products are diluted, mixed, or repackaged, are they handled aseptically? Why are these products diluted?

4. Should patient preoperative skin preparations be marketed only in single-use containers? If single and multiple-use containers are permitted, in which ways could single-use containers be clearly distinguished from multiple-use containers (e.g., by labeling, size, volume, presence/absence of applicator)? What technical and practical challenges would manufacturers and users face should there be regulatory requirements that limit package sizes for multiple-use patient preoperative skin preparations?

5. Can product labeling, for example, instructions to ''discard X days after opening,'' be used to reduce the risk of adverse events associated with extrinsic contamination of patient preoperative skin preparations? How could a ''discard by'' date be established for individual products and how meaningful would such a date be in the context of current practices?

6. Are healthcare facilities or other entities providing information or training on safe use of multiple-use patient preoperative skin preparations, or taking other steps to reduce the risk of extrinsic contamination of these multiple-use products? If so, please describe these efforts and any available information on their effectiveness.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by management and technical personnel from the Center for Drug Evaluation and Research.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation (§ 15.30(e)). Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10), subpart C and § 10.203(a)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see *Transcripts* for more details). To the extent that the conditions for the hearing as described in this notice conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

IV. References

The following references have been placed on display in the Division of Dockets Management (see *Comments*) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weber, D.J., W.A. Rutala, and E.E. Sickbert-Bennett, ''Outbreaks Associated with Contaminated Antiseptics and Disinfectants,'' *Antimicrobial Agents and Chemotherapy,* 51:4217–4224, 2007.

2. *The United States Pharmacopeia 35-National Formulary 30.* The United States Pharmacopeial Convention, Inc., MD, ''Microbiological Examination of Nonsterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use,'' Chapter 1111:691, 2012.

3. Pharmaceutical Science and Clinical Pharmacology Advisory Committee meeting transcript, available at: *http://www.fda.gov/downloads/AdvisoryCommittee/CommitteesMeetingMaterials/Drugs/AdvisoryCommitteeforPharmaceuticalScienceandClinicalPharmacology/UCM179891.pdf,* 2009.

Dated: November 16, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28357 Filed 11–20–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

60-Day Proposed Information Collection; Request for Public Comment: Indian Health Service Contract Health Services Report

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–0002, ''IHS Contract Health Service Report.'' *Type ofInformation Collection Request:* Extension, without change, of a currently approved information collection, 0917–0002, ''IHS Contract Health Service Report.'' *Form Number:* IHS 843–1A. The form can be found on the Public Use Forms Web page(s) at the IHS Web site (*http://www.ihs.gov/cio/puf/*) and the Department of Health and Human Services' Web site (*http://www.hhs.gov/forms/publicuse.html*).

Need and Use of Information Collection: The IHS Contract Health Service (CHS) Program, located in the Office of Resource Access and Partnerships, needs this information to certify that the health care services requested and authorized by the IHS have been performed by the CHS provider(s) to have providers validate services provided; to process payments for health care services performed by such providers; and to serve as a legal document for health and medical care authorized by IHS and rendered by health care providers under contract with the IHS. *Affected Public:* Patients, health and medical care providers or Tribal Governments. *Type of Respondents:* Health and medical care providers.

Burden Hours: The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hours
IHS 843–1A	7,977	52	3/60	20,740
Total				20,740

* For ease of understanding, burden hours are also provided in actual minutes.

The total estimated burden for this collection is 20,740 hours.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (this is the amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Tamara Clay, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852; call non-toll free (301) 443–1611; send via facsimile to (301) 443–2316, or send your email requests, comments, and return address to *tamara.clay@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: November 9, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–28236 Filed 11–20–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A New Class, Now in Session: the First HLA Class II Restricted T Cell Receptor That Recognizes the Cancer Testis Antigen, MAGE–A3, Developed for Cancer Immunotherapy

Description of Technology: NIH scientists have developed T cell receptors (TCRs) against the melanoma antigen family A3 (MAGE–A3) tumor antigen in the context of major histocompatibility complex (MHC) class II molecule HLA–DP-beta1*04. They are the first HLA class II restricted MAGE–A3 TCRs developed for use in adoptive immunotherapy. Previously developed MAGE–A3 TCRs are HLA class I restricted and generate CD8+ T cell responses to mediate tumor regression in some patients with MAGE–A3+ tumors. Other patients may not respond due to a lack of CD4+ T cells participation. Cancer immunotherapy with these new HLA class II TCRs could yield a robust and effective CD4+ T cell immune response that selectively targets MAGE–A3 expressing tumors without generating toxicity against healthy cells.

MAGE–A3 is a cancer testis antigen expressed on many types of cancer cells that blocks the functions of tumor suppressor proteins to mediate tumor growth and spreading. MAGE–A3 is not expressed on normal cells other than non-MHC expressing germ cells of the testis, which do not generate an immune response. Thus, MAGE–A3 represents an ideal target for cancer immunotherapies that are predicted to generate fewer toxic side effects than current standard cancer treatments.

Potential Commercial Applications:

- A personalized immunotherapy to mediate regression of many types of cancers using human T cells expressing a HLA class II TCR.
- An adoptive immunotherapy combining T cells engineered to express a HLA class I restricted TCR with HLA class II TCR-expressing T cells to enhance the antitumor response by eliciting CD8+ and CD4+ T cell immune responses in patients.
- A research tool to investigate signaling pathways in MAGE–A3 antigen expressing cancer cells.
- An in vitro diagnostic tool to screen for cells expressing the MAGE–A3 tumor antigen.

Competitive Advantages:

- Class I restricted TCRs can only treat a subset of patients, but since ~80% of patients express the HLA–DP-beta1*04 class II HLA allele, this TCR expands the population pool treatable with MAGE–A3 TCRs to include the majority of patients.
- MAGE–A3 is a highly expressed tumor target on many cancer cells, so MAGE–A3 TCR therapy should be a viable treatment option for many cancer cases.
- MAGE–A3 is only expressed on tumor cells and non-MHC expressing cells so these TCRs should target MAGE–A3 expressing tumor cells with little or no side effects/toxicity to normal cells.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.

Inventors: Paul Robbins, Xin Yao, Steven Rosenberg (NCI).

Intellectual Property: HHS Reference No. E–230–2012/0 — U.S. Patent Application No. 61/701,056 filed 14 Sep 2012.

Related Technologies:

- HHS Reference No. E–236–2010/0—PCT Patent Application No. PCT/US2011/057272.
- HHS Reference No. E–266–2011/0—PCT Patent Application No. PCT/US2012/054623.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov.*

Novel Small Molecule Agonists of the Relaxin Receptor as Potential Therapy for Heart Failure and Fibrosis

Description of Technology: The present invention is directed to novel small molecule agonists of the mammalian relaxin family receptor 1 (RXFP1), including human RXFP1. Activation of RXFP1 induces: (1) Vasodilation due to up-regulation of the endothelin system; (2) extracellular matrix remodeling; (3) moderation of inflammation by reducing levels of inflammatory cytokines; and (4) angiogenesis. Small molecule agonists of RXFP1 may be useful in treating acute heart failure (AHF), scleroderma, fibrosis, other conditions associated with the biology of relaxin, and in improving reproductive health and wound healing. These compounds are the first and only small molecule agonists of RXFP1.

Potential Commercial Applications: Therapeutics for:

- Cardiovascular diseases.
- Ischemia.
- Fibrosis.
- Inflammation.
- Acute heart failure.
- Human and animal reproductive health.

Competitive Advantages:

- First and only small molecule agonists of RXFP1.
- Potent and highly selective.
- Bioavailable with excellent exposure.
- Easy to synthesize and scale-up.

Development Stage:

- Early-stage.
- In vitro data available.
- In vivo data available (animal).

Inventors: Juan J. Marugan (NCATS), et al.

Publications:

1. Chen ZC, et al. Identification of small-molecule agonists of human relaxin family receptor 1 (RXFP1) by utilizing a homogeneous cell-based cAMP assay. J. Biomol. Screen. 2012, accepted.

2. Additional manuscript is under revision.

Intellectual Property: HHS Reference No. E–072–2012/0—U.S. Provisional Application No. 61/642,986 filed 04 May 2012.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *nguyenantczakla@mail.nih.gov.*

Collaborative Research Opportunity: The National Center for Advancing Translational Sciences is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize small molecule agonists of RXFP1. For collaboration opportunities, please contact Krishna (Balki) Balakrishnan, Ph.D. at 301–217–2336 or *balki@nih.gov.*

Treatment of Tuberculosis—Adjuvant Therapies To Increase the Efficiency of Antibiotic Treatments

Description of Technology: There is growing evidence that resistance to *Mycobacterium tuberculosis* infection is governed in large part by the regulation of host cell death. Lipid mediators called eicosanoids are thought to play a central role in this process. The subject invention is a novel method of enhancing the efficacy of antibiotic treatments for *Mycobacterium tuberculosis* infection by co-administering an inhibitor of 5-lipoxygenase and a COX–2 dependent prostaglandin. Inhibition of 5-lipoxygenase and treatment with prostaglandin E2 results in alteration of the eicosanoid balance. The synergistic effects of altering the eicosanoid balance and treatment with antibiotics is believed to result in more efficient reduction of the bacterial burden and thus, the period of antibiotic administration and antibiotic dosage could potentially be reduced. In vivo data from mouse models can be provided upon request.

Potential Commercial Applications: The subject invention can be used as an adjuvant therapy for existing antibiotic treatment regiments against tuberculosis.

Competitive Advantages: The disclosed method can be applied to increase the efficacy of existing antibiotic treatments for tuberculosis, potentially reducing both the duration and dosage of the antibiotic treatment.

Development State:

- Early-stage.
- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: Katrin D. Mayer, Bruno Bezerril D. Andrade, F. Alan Sher, and Daniel L. Barber (NIAID).

Intellectual Property:

- HHS Reference No. E–189–2011/0—U.S. Provisional Patent Application No. 61/515,229 filed 04 Aug 2011.
- HHS Reference No. E–189–2011/1—U.S. Provisional Patent Application No. 61/515,237 filed 04 Aug 2011.
- HHS Reference No. E–189–2011/2—International Application No. PCT/US2012/049280 filed 02 Aug 2012.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize adjuvant therapy for antibiotic treatment regiments against tuberculosis. For collaboration opportunities, please contact Katrin Mayer, Ph.D. at *mayerk@niaid.nih.gov* or 301–594–8061.

Adeno-Associated Virus Gene Therapy for Diabetes and Obesity

Description of Technology: This invention is directed to adeno-associated virus (AAV) vector delivery of exendin-4 (Ex-4) to salivary glands as treatment for diabetes and obesity. Ex-4 is a potent and long-acting agonist of the receptor for glucagon-like peptide 1 (GLP–1). Scientists at NIDCR have shown that AAV-mediated delivery of Ex-4 resulted in improved glucose homeostasis and weight profile in two rat models of obesity and type 2 diabetes. Further, AAV-mediated delivery of Ex-4 to rat salivary glands resulted in localized and sustained expression of Ex-4 that was biologically active and well tolerated.

AAV-mediated delivery of Ex-4 is superior to administering GLP–1 analogs in that AAV-Ex-4 expression is more stable and longer acting. Like GLP–1 analogs, Ex-4 expression also potentially provides beneficial effects like reduced hypoglycemia, appetite suppression, and potential weight loss.

Potential Commercial Applications: Therapy for diabetes or obesity.

Competitive Advantages:

- Potential for potent glucose homeostasis therapy with longer duration than current drugs.
- More convenient than daily or weekly injections.

Development Stage:

- Early-stage.
- In vitro data available.
- In vivo data available (animal).

Inventors: John A. Chiorini (NIDCR), Giovanni DiPasquale (NIDCR), Edoardo Mannucci (Careggi Teaching Hospital).

Publication: Di Pasquale G, et al. Sustained exendin-4 secretion through

gene therapy targeting salivary glands in two different rodent models of obesity/type 2 diabetes. PLoS One. 2012;7(7):e40074. [PMID 22808093]

Intellectual Property: HHS Reference No. E–142–2011/0—

- U.S. Application No. 61/477,523 filed 20 May 2011.
- PCT Application No. PCT/US2012/34268 filed 19 Apr 2012.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *nguyenantczakla@mail.nih.gov.*

Collaborative Research Opportunity: The NIDCR is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize treatment of diabetes by expression NGF-extendin 4 protein. For collaboration opportunities, please contact David Bradley, Ph.D. at 301–402–9242 or *bradleyda@nidcr.nih.gov.*

Small Molecule MRS5474 With Anticonvulsant Activity for Treatment of Epilepsy

Description of Technology: Adenosine modulates many physiological processes by activating specific adenosine receptors. These adenosine receptors play a critical role in the regulation of cellular signaling and are broadly distributed throughout the body. Thus, the ability to modulate adenosine receptor-mediated signaling is an attractive therapeutic strategy for a broad range of diseases. This technology relates to a group of compounds that display high affinity and specificity for the A1 adenosine receptor subtype.

One of the compounds, MRS5474, displays anticonvulsant activity in the 6 Hz animal model of clonic seizures. In the minimal behavioral toxicity test using the rotarod, no toxicity (zero out of eight mice) was observed at all doses tested up to 30 mg/kg, the highest dose tested, which was nearly completely protective (seven out of eight animals) in the 6 Hz model. MRS 5474 also tested well in the corneal kindled mouse model to examine its effect on focal seizures.

Potential Commercial Applications:

- Oral anticonvulsant drug.
- Provides a means to mimic A1AR mediated signaling in vitro and in vivo.

Competitive Advantages:

- These small molecules display increased specificity for the A1 type of adenosine receptors, which may reduce unwanted side effects previously seen in A1AR agonist therapies.
- The physical properties of these molecules are drug-like, which makes them attractive for pre-clinical development.

Development Stage:

- Early-stage.
- In vitro data available.
- In vivo data available (animal).

Inventor: Kenneth A. Jacobson (NIDDK).

Publication: Tosh DK, et al. Truncated (N)-Methanocarba Nucleosides as A1 Adenosine Receptor Agonists and Partial Agonists: Receptor Docking and Potent Anticonvulsant Activity. In preparation.

Intellectual Property:

- HHS Reference No. E–285–2008/0—International Application No. PCT/US2009/52439 filed 31 Jul 2009.
- HHS Reference No. E–285–2008/1—U.S. Patent Application No. 13/479,973 filed 24 May 2012.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The NIDDK is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize MRS5474, A1 adenosine receptor agonist for treatment of seizures. For collaboration opportunities, please contact Marguerite Miller at *millermarg@mail.nih.gov.*

Glucocorticoid-Induced TNFR Family-Related Receptor Ligand (GITRL) Antibodies for Diagnosis and Treatment of Immune System Disorders

Description of Technology: This technology provides novel antibodies and methods for diagnostics and treatment of disorders arising from dysregulation of the immune system using antibodies directed against glucocorticoid-induced tumor necrosis factor receptor family-related receptor ligand (GITRL). Also available are hybridomas producing anti-mouse GITRL monoclonal antibodies (clone 5F1).

Glucocorticoid-induced TNFR family-related receptor (GITR, also known as TNFRSF18) is expressed on the surface of responder T cells (CD4+CD25- or CD8+CD25- T cells). Upon activation of the immune response, GITR is up-regulated and binds to its ligand, GITRL (also known as TNFSF18), which enhances the immune response. The inventors have developed anti-GITRL monoclonal antibodies that block the interaction between GITR and GITRL, and have demonstrated in in vitro experiments that administration of these blocking antibodies can suppress the immune response. These antibodies may be useful for treatment of immune system disorders such as multiple sclerosis, rheumatoid arthritis, and other inflammatory diseases.

Potential Commercial Applications:

- Development of therapeutic agents for autoimmune diseases, including autoimmune and inflammatory diseases, allergy and transplant rejection.
- Tool for investigating the role of GITRL in enhancement of the T-cell mediated immune response.

Competitive Advantages: The GITR/GITRL pathway is a novel target for the treatment of autoimmune diseases.

Development Stage:

- In vitro data available.
- In vivo data available (animal).

Inventors: Ethan Shevach et al. (NIAID).

Publication: Stephens GL, et al. Engagement of glucocorticoid-induced TNFR family-related receptor on effector T cells by its ligand mediates resistance to suppression by CD4+CD25+ T cells. J Immunol. 2004 Oct 15;173(8):5008–20. [PMID 15470044].

Intellectual Property: HHS Reference No. E–229–2003/2—

- U.S. Patent No. 7,618,632 issued 17 Nov 2009.
- JP Patent No. 4638876 issued 03 Dec 2010.

Licensing Contact: Tara L. Kirby. Ph.D.; 301–435–4426; *tarak@mail.nih.gov.*

Treatment for Ichthyosiform Skin Diseases

Description of Technology: A synthetic composition that contains the transglutaminase 1 (TGase I) enzyme and a lipid vesicle, which can be used to provide ameliorative therapy for inherited autosomal recessive ichthyoses (ARI). Icthyoses are rare inherited skin disorders that result in extensive scaling of the skin. Because this abnormality can affect heat and fluid transfer through the skin, individuals with this disease may have an increased risk for dehydration and skin infections. Each year, more than 16,000 babies are born with some form of ichthyosis. Ichthyosis affects people of all ages, races and gender. Currently, there is no cure for this disease and the only treatments available alleviate symptoms without affecting the disease itself. ARI are often caused by defects in lipid barrier function in the skin and are the result of genetic errors of either protein or lipid synthesis. One such disease, termed lamellar ichthyosis, is caused by genetic inactivation of the (TGase I) gene. The TGase I enzyme is essential for maintaining proper skin cornification, which protects skin cells against water loss and infection. Rather than simply treating the disease symptoms superficially, this technology provides a platform for treating the

underlying cause of disease, namely the absence of TGase I function.

Potential Commercial Applications:

• Treatment for ichthyosiform skin diseases.

• Method for correcting defects in skin cell cornification.

Competitive Advantages: Targets underlying cause of skin disorder rather than just treating the resulting symptoms.

Development Stage:

• Early-stage.

• In vitro data available.

Inventors: Peter M Steinert, Nemes Zoltan, Lyuben N Marckov (NIAMS).

Publications:

1. Candi E, et al. Transglutaminase 1 mutations in lamellar ichthyosis. Loss of activity due to failure of activation by proteolytic processing. J Biol Chem. 1998 May 29;273(22):13693–702. [PMID 9593710]

2. Yang YM, et al. Novel mutations of the transglutaminase 1 gene in lamellar ichthyosis. J Invest Dermatol. 2001 Aug;117(2):214–8. [PMID 11511296]

Intellectual Property: HHS Reference No. E–149–1999/0—U.S. Patent No. 6,852,686 issued 08 Feb 2005.

Licensing Contact: Suryanarayana Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Dated: November 16, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–28276 Filed 11–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, PAR 12–151: Centers of Excellence for Research on Complementary Alternative Medicine (CAM).

Date: January 16–18, 2013.

Time: 5 p.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Martina Schmidt, Ph.D. Scientific Review Officer, Office of Scientific Review, National Center for Complementary, & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: November 15, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–28278 Filed 11–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Advisory Council on Alcohol Abuse and Alcoholism, National Advisory Council on Drug Abuse, and National Cancer Advisory Board; Notice of Joint Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a joint teleconference and Web cast meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, National Advisory Council on Drug Abuse, and National Cancer Advisory Board. The meeting will be open to the public as indicated below.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism, National Advisory Council on Drug Abuse, and National Cancer Advisory Board.

Date: December 13, 2012.

Time: 11:30 a.m. to 1:00 p.m. EST.

Agenda: NIH report on the functional integration of substance use, abuse and addiction-related research and discussion with the NIH Principal Deputy Director and Members of NIAAA and NIDA Councils, and the NCAB.

Teleconference Line: 1–888–324–8014 (toll-free); Passcode: 4418818.

Webcast Site: https://webmeeting.nih.gov/suaa/.

Contact Persons: Abraham Bautista, Ph.D., Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, RM 2085, Rockville, MD 20892, 301–443–9737, *bautista@mail.nih.gov.*

Teresa Levitin, Ph.D., Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Blvd., RM 4243, Rockville, MD 20852, 301–443–2755, *tlevitin@nida.nih.gov.* Paulette S. Gray, Ph.D., Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee(s) by forwarding the statement to a 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.

Information will also be available on the Institute's/Center's home pages: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx, http://www.drugabuse.gov/about/organization/nacda/NACDAHome.html,* and *http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,* as well as NIH's Feedback page: *http://feedback.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: November 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–28277 Filed 11–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Sleep Research Resource Project.

Date: December 12, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 7192, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Research Dissemination and Implementation.

Date: December 12, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 15, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–28279 Filed 11–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: December 14, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 15, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–28280 Filed 11–20–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5623–N–02]

Federal Housing Administration (FHA) Healthcare Facility Documents: Revisions and Updates and Notice of Information Collection; 30-Day Notice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On May 3, 2012, and consistent with the Paperwork Reduction Act of 1995 (PRA), HUD published for public comment, for a period of 60 days, a notice advising that HUD was updating and revising a set of production, underwriting, asset management, closing, and other documents used in connection with transactions involving healthcare facilities, excluding hospitals, that are insured pursuant to section 232 of the National Housing Act (Section 232). These documents are referred to collectively as the healthcare facility documents. The 60-day notice published on May 3, 2012, together with a companion proposed rule published on that same date, started the process of updating the healthcare facility documents and the Section 232 program regulations.

This 30-day notice published today continues the process required by the PRA. With the issuance of this notice, HUD will submit the information collection for the closing documents to the Office of Management and Budget (OMB) for review and approval, and assignment of OMB control numbers. In accordance with the PRA, the closing documents will undergo the public comment process every three years to retain OMB approval.

DATES: *Comment Due Date:* December 21, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–

3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Kelly Haines, Director, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500; telephone number 202–708–0599 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 3, 2012, at 77 FR 26304, HUD published, in accordance with PRA requirements, a notice (60-day notice) seeking comments for 60 days on proposed changes to the healthcare facility documents. In conjunction with publication of the 60-day notice, the proposed revised healthcare facility documents were made available at: *www.hud.gov/232forms*. HUD presented the proposed revised healthcare facility documents in two formats: (1) A clean unmarked format for all documents; and (2) where available and appropriate, a redline/strikeout format showing changes made to either the final updated multifamily rental project closing documents or sample documents that have been in wide use.[1] Along with the 60-day notice, HUD also published on May 3, 2012, at 77 FR 26218, a proposed rule that proposed to strengthen regulations for HUD's Section 232 programs to reflect current policy and practices, and to improve accountability and strengthen risk management. A final rule following the May 3, 2012, proposed rule, and taking into consideration public comment, was published on September 7, 2012, at 77 FR 55120 (referred to in this Notice as the ''2012 Final 232 Rule'').

This 30-day notice published today continues the process required by the PRA for the healthcare facility documents. As was the case with the 60-day notice, HUD will post on its Web site the healthcare facility documents. Again, HUD will show the documents (1) in a clean format, and (2) in redline/strikeout format, to show the changes made from the versions posted with issuance of the 60-day notice.

While complying with the PRA, this 30-day notice, as was the case with the 60-day notice, provides information beyond that normally provided in such notices. The 60-day notice published on May 3, 2012, provided descriptions of the major documents that are used in FHA's healthcare transactions and identified differences, as applicable, from the final multifamily rental project closing documents and existing healthcare facility documents. This notice issued today identifies substantive changes that HUD has made to the healthcare facility documents in response to public comment submitted on the 60-day notice, responds to significant issues raised by commenters, and identifies changes that HUD is proposing for comment in this 30-day notice following further consideration of certain issues.

The healthcare documents that HUD is submitting to OMB are posted on HUD's Web site at *http://www.hud.gov/232forms*. The Office of Residential Care Facilities (ORCF) is the office within HUD that manages the Section 232 program, which provides mortgage insurance for residential care facilities such as assisted living facilities, nursing homes, intermediate care facilities, and board and care homes.

II. Document Changes Following 60-Day Notice

This section identifies key changes made by HUD in response to public comment on the 60-day notice, and further consideration of certain issues by HUD as highlighted below.

A. Numbers of Documents

In the May 3, 2012, 60-day notice, HUD presented for public comment 154 healthcare facility documents. In response to public comment and upon further examination and consideration of the documents during the 60-day comment period, HUD now advises in this 30-day notice, that it has eliminated certain documents from the PRA process for various reasons, and separated concepts in certain existing documents into new documents. As a result of these changes, the number of healthcare facility documents presented for PRA purposes now numbers 115. Of the eliminated documents:

- 14 documents were removed for various reasons: the information in the forms is captured elsewhere; the information is no longer necessary; or the particular form would better serve HUD and the industry as a sample document rather than a prescribed form. For example, the Healthcare Facility Summary Appraisal Report was eliminated, and any necessary portions were incorporated into HUD–92264a–ORCF Maximum Insurable Loan Calculation; the Certification titled FHA Retyped Forms was deleted as obsolete; and the Deposit Account Control Agreement (DACA) and Deposit Account Instructions and Service Agreement (DAISA) were deleted from the PRA process and are being made into samples.
- 20 checklists (including all 16 Production Checklists and 4 Asset Management Checklists) were removed. The Checklists summarize and list other exhibits in the application but do not collect information. The Checklists simply serve as a reminder of the documents that may be needed for a particular transaction.
- The 8 Firm Commitments have been removed. The Firm Commitments are letters from HUD to the lender setting forth the terms of the transaction and do not collect information or imposing recordkeeping requirements.
- The Subordination Agreement and Subordination, Non-Disturbance, and Attornment Agreement relating to the Operating Lease, were combined into one document.

In addition, 4 new documents were added:

- The HUD–2205A–ORCF, Borrower's Certificate of Actual Cost, was added, because the existing HUD multifamily form no longer applies to Section 232 projects.
- An additional addendum was added to the existing Section 223a7 Lender Narrative to address Transfers of Physical Assets (TPA), which now allows for more seamless processing of a refinance and TPA simultaneously.
- In addition to the existing Lender Narrative for a Blended Rate—Single Stage, two additional documents were added to allow a project to submit for a blended rate in a two stage process: Blended Rate—Initial Submission and Blended Rate—Final Submission.

B. Key General Changes

Long-term debt service reserve. A key provision proposed for the Section 232 program regulations and the healthcare facility documents was the establishment of a long-term debt service reserve. The proposed long-term debt service reserve was meant to provide a borrower facing operating difficulties at any time throughout the life of the mortgage the time to arrange a workout plan by providing a source of funds from which the borrower could

[1] The final multifamily rental project closing documents can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments*. See also the announcement of the final documents published in the **Federal Register** on May 2, 2011 (76 FR 24507).

make debt service payments and thus delay or avoid an insurance claim by the lender. In the 2012 Final 232 Rule, HUD revised its policy so that this reserve will not be established for every project, but is likely to be implemented when there is an atypical long-term project risk. Atypical long-term risks could occur, for example, in circumstances in which there is an unusually high mortgage amount, or when some other risk mitigant, such as a master lease structure typically used in a portfolio transaction, is unavailable in a particular transaction.

Consistent with the change made in the 2012 Final 232 Rule, applicable healthcare facility documents have been revised to reflect the policy that the long-term debt reserve is not a requirement for every project.

Segregation of operators' accounts. HUD originally proposed a requirement to segregate accounts by facility. In the 2012 Final 232 Rule, HUD stated that public commenters advised, and HUD agreed, that accounting software was available today to maintain accounts in a manner that separates funds for HUD's reporting purposes. Consistent with the 2012 Final 232 Rule, the applicable healthcare facility documents provide that the operator must maintain accounts in a manner that will allow HUD and the lender to reliably and readily discern the funds attributable to the facility. To the extent an operator's accounting software maintains account information so that funds attributable to the facility can be readily and reliably tracked, segregating accounts by facility is not specifically required.

Reasonable costs for goods and services. HUD's 2012 Final 232 Rule at 24 CFR 232.1007 requires that the costs of goods and services purchased or acquired in connection with the project be reasonable and reflect market prices, which provides HUD with adequate protection in regard to the level of principals' salaries or other compensation. Applicable healthcare facility documents have been revised to reflect this change made at the final rule stage.

HUD approval of a material revision to management agreements. In the 2012 Final 232 Rule, HUD decided to retain the proposed requirement for HUD initial approval of management agent agreements. However, the 2012 Final 232 Rule dropped the requirement that HUD approve every change to the management agent agreement and instead requires approval of only those revisions that are material. This requirement has been revised in the applicable documents, such as HUD–90017–ORCF the Consolidated Certification—Management Agent.

Requirements applicable to third parties. Several commenters expressed concern that forms establishing privity with unrelated third parties would not be acceptable to such third parties who are not benefiting from the FHA-insured transaction. Commenters suggested that such documents be adopted as guides with variations permitted to suit the specifics of each respective transaction. HUD agrees with this proposal and the provisions of the proposed Deposit Account Control Agreement (DACA), the proposed Deposit Account Instructions and Services Agreement (DAISA), and the proposed Blocked Account Agreements will be incorporated into sample documents outside of the PRA process.

Requirements for Financial Reports. Consistent with the 2012 Final 232 Rule, the documents require that financial reports be submitted within 30 days of the end of a quarter to allow HUD to effectively monitor a property's financial operations and the trend of those operations. As the rule recognized the intricacies involved in developing year-end financial statements, HUD has extended the submission of the final quarter and year-to-date operator-certified statements submitted for the 4th fiscal year quarter to 60 calendar days following the end of the fiscal year. In addition, the documents still reflect the policy established in the 2012 Final 232 Rule that separate reports are still required when the borrower is also the operator, as operator reports are to be submitted in separate systems that allow for more prompt submission than audited reports.

Surplus Cash. Consistent with the 2012 Final 232 Rule, which removed a proposed regulatory definition of surplus cash and stated that the term would be defined in the documents, surplus cash is defined in the borrower's regulatory agreement. Commenters had stated that HUD was proposing inappropriate and unnecessary alterations of the definition of surplus cash as it has been used in practice, in accordance with guidance set forth in the Industry User Guide for the Financial Assessment Subsystem—Multifamily Housing (FASS–SUB)[2], and other handbooks and guidance, for many years. Upon consideration of the issues raised by the commenters, HUD concluded there was no need to alter the definition of surplus cash, and returned to that definition of surplus cash currently in use.

Working Capital. The proposed rule included a requirement to maintain positive working capital. In response to commenters' concerns about such matters as the need to look at operators' aggregate portfolios, and limitations on the operators' ability to efficiently manage cash at the multi-provider level, the 2012 Final 232 Rule dropped the requirement to maintain positive working capital at all times. Pursuant to comment, HUD has revised the definition of ''Healthcare Facility Working Capital'' in the operator's regulatory agreement and will provide additional details on its calculation as necessary.

HUD also revised the operator's regulatory agreement, consistent with the 2012 Final 232 Rule, to remove the requirement to maintain positive working capital. In lieu of such requirement, consistent with the 2012 Final 232 Rule, if a quarterly financial statement is not filed or demonstrates negative working capital, the operator's regulatory agreement now prohibits funds generated by the operation of the healthcare facility to be taken as distribution or used for other purposes, except as specified.

Across-the-board changes. Several of the certifications were revised to include language from HUD's regulations namely 24 CFR 200.62, which provides that any agreement, undertaking, statement or certification required by the Commissioner shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

Other nomenclature and wording changes were made. For example, in HUD–92415–ORCF, the Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, the term ''mortgagor'' was changed to ''applicant'' throughout the document. Further, adjustments were made to make the forms more generic, and eliminate needless duplication. In addition, several of the documents were revised, in accordance with the 2012 Final 232 Rule, to revise the time frame for providing notices relating to certain operational deficiencies to two (2) business days.

All changes made to the healthcare facility documents, whether substantive changes or wordsmithing changes, are presented in the redline/strikeout

[2] Available on the HUD web page at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/fass/fassmf_guide.*

versions of the documents on HUD's Web site.

C. Key Changes by Category of Document

Production—Lender Narratives

These documents include information and certifications that must be made by the lender to ensure that a project is consistent with the Section 232 program requirements and therefore meets FHA eligibility requirements. These ''Lender Narratives'' are the summary document for each application submission. Based on commenters' concerns, the Lender Narratives have been simplified and revised to make the documents as consistent as possible across each loan type.

While members of the public did not submit extensive public comments on these documents, many of the changes adopted reflect changes made in other healthcare facility documents. For example, the other documents include updated environmental requirements, and updated procedures such as those regarding the amount of commercial space allowed in a facility or the flood insurance requirements. Also, minor technical changes were made, such as cross references to new or changed documents. Changes to these documents are reflected in the redlined/strikeout documents posted on HUD's Web site at the address set forth in the introduction to this notice.

HUD–9001h–ORCF: Addendum to Underwriting Narrative—Transfer of Physical Assets (TPA), Section 232/223(a)(7)

HUD has added an additional addendum to the lender's narrative for the Section 223(a)(7) refinance program. This new addendum addresses the requirements for conducting a TPA concurrently with a refinance. This addendum takes the place of the previous addendum ''h,'' which related to the operating lease and is being incorporated into the main lender's narrative document, Lender Narrative, Section 232/223(a)(7), HUD–9001–ORCF.

HUD–9003a–ORCF: Addendum to Underwriting Narrative—Phase I Environmental Site Assessment, Section 232/241(a)

This form has been eliminated, and relevant information has been incorporated into a checklist.

HUD–90025–ORCF: Lender Narrative—Existing Buildings with New Construction, Section 232—Blended Rate 2 Stage, Initial Firm Submission; and HUD–90025a–ORCF: Lender Narrative—Blended Rate, Section 232—2 Stage, Final Firm Submission

These forms were added as lenders have requested the option to submit blended rate projects via the two stage process.

Production—Certifications

This group of documents consists primarily of consolidated certifications, which allow each participant in the application submission process—the lender, borrower, principal of borrower, operator and/or management agent—to submit one document containing all required certifications. The required certifications mirror the certifications required for the multifamily program, and include certifications relating to: identifying parties to the transaction, whether there are identities of interest, granting credit authorizations, compliance with the Byrd Amendment, compliance with Title VI of the Civil Rights Act of 1964, and HUD mortgage insurance program requirements. These certifications also include language regarding previous participation disclosures. These certifications did not receive any public comments, and few substantive changes were made to them since the initial publication. Changes to the documents are reflected in the redlined documents posted on HUD's Web site at the address set forth in the introduction to this notice.

Construction Documents

There were few public comments on these documents, and those comments submitted predominately related to loans for the Section 232 program for new construction. The majority of changes to the documents were for minor editing changes or clarifications of policy. Changes to the documents are reflected in the redlined documents posted on HUD's Web site at the address set forth in the introduction to this notice.

Escrow Documents

These documents were generally updated to clarify escrow calculations. Some signature lines were added to specify certification of the calculations included on the forms.

Asset Management Documents

Few comments were submitted on these documents which are used by HUD for routine reviews and approval of facility operations.

Accounts Receivable Documents

HUD–92322–ORCF: Intercreditor Agreement

A provision related to the timeframe and scope of the lien was adjusted to provide at least 30 days notice before the ''Cut-Off Time'' when HUD assumes a priority lien position. This would allow additional time for a turnaround, rather than having the cut-off enforced at the time notice is served.

Several definitions were revised to accommodate concerns from the accounts receivable industry, including ''Protective Advances,'' ''AR Lender Priority Collateral'' and ''AR Loan Obligations.''

HUD–90020–ORCF: Account Receivable Financing Certification

As a result of public comment to the Intercreditor Agreement, a new section clarifies HUD's requirements that property securing FHA-insured loans may not cross-collateralize obligations of properties without FHA insured loans.

HUD–92321–ORCF: Blocked Account Agreement

This document was removed as a result of public comments. It will be a sample document, not a required form.

HUD–92324–ORCF: Rider to the Intercreditor Agreement

This document was removed as a result of public comments. It has been incorporated directly into the Intercreditor Agreement.

Master Lease Documents

The collection of Master Lease documents was established to address the increase in the number of multi-facility portfolio transactions submitted to the Section 232 program. The May 3, 2012 60-day notice proposed a master tenant security agreement, a master tenant regulatory agreement, a subordination/subordination non-disturbance and attornment agreement, a cross-default guaranty of subtenants, and an addendum to the master lease which includes provisions protecting the lender and HUD's interests. The master lease structure allows for any rental deficiencies at one facility to be supported by income from another facility under the master lease. A master lease does not, however, pool the assets of all facilities for underwriting a single mortgage; each individual loan must meet HUD's underwriting standards on its own merit.

HUD–92211–ORCF: Master Lease Addendum

In reviewing this document in response to public comment, HUD attempted to eliminate unnecessary duplication and retain only those provisions most appropriate for the Master Lease Addendum. Provisions requiring direct enforcement rights were moved to the master tenant regulatory agreement. In addition, HUD clarified provisions regarding ''bed authority,'' acknowledging that in most instances, the operator holds the licenses required to operate the healthcare facility. HUD clarified the term ''Approved Use'' consistent with current policy.

HUD–92331–ORCF: Cross-Default Guaranty of Subtenants

The title of this document was changed from ''Subtenants Cross Guaranty'' to ''Cross-Default Guaranty of Subtenants.'' HUD also made additional clarifications pursuant to public comment.

HUD–92333–ORCF: Master Lease Subordination, Non-Disturbance and Attornment Agreement (SNDA)

Minor rewording and clarifications were made to make this document consistent with other documents and terminology used throughout all of the healthcare facility documents.

To be consistent with 24 CFR 232.1015 of HUD's 2012 Final 232 Rule, the time frame for providing notices relating to certain operational deficiencies has been clarified as two (2) business days.

In response to comments, this document was revised to give additional rights to and clarify the rights of the lender. For example, clarifications were adopted to provide the lender authority to allow the operator to select and engage the services of a management consultant in the event of a project operating deficiency.

HUD–92335–ORCF: Guide for Opinion of Master Tenant's Counsel

The title of this document was changed from Master Tenant's Attorney's Opinion to Guide for Opinion of Master Tenant's Counsel. New sections were added in the document to describe the exercise of rights or enforcement of remedies, security interest and rights to the collateral, which are consistent with the Guide for Opinion of Borrower's Counsel. A new section was added to clarify that the Guide for Opinion of Master Tenant's Counsel is governed by the laws of the state where the project is located.

HUD–92337–ORCF: Healthcare Regulatory Agreement—Master Tenant

Changes were made to make this document consistent with the borrower's and operator's regulatory agreements. Provisions that had required segregated accounts were revised in accordance with the 2012 Final 232 Rule. The provision requiring the healthcare facility to maintain positive working capital at all times has been removed.

HUD–92340–ORCF: Master Tenant Security Agreement

In response to public comments regarding Uniform Commercial Code (UCC) requirements, among other changes, the UCC definition of ''Debtor's location'' reflects UCC requirements rather than, as in the proposed document, the location of the chief executive's office. A new clarification was added for ''Permitted Liens,'' encompassing both the security interest in favor of the secured party and any liens approved in writing by the secured party and HUD, which are allowable liens against the collateral. Additional recitals and optional language were added to this document to address different scenarios within a project (e.g. to account for a situation where the borrower is not the same as the operator or when a master lease is involved).

Additional Legal Documents

This category is mainly comprised of the documents relating to the borrower's and operator's attorneys' opinions. A summary of the substantive updates is presented below.

HUD–91725–ORCF: Guide for Opinion of Borrower's Counsel

The document was modified to provide that the enforceability opinion does not include the ground lease and certain other documents.

HUD–92325–ORCF: Guide for Opinion of Operator's Counsel and Certification

The documents include several revisions in response to public comments. One modification was to change all references to ''Property'' to refer to the ''Project'' when referring collectively to all of the types of property interest that are to serve as collateral for the loan.

Additional ORCF Documents

Changes to the documents are reflected in the redlined/strikeout documents posted on HUD's Web site at the address set forth in the introduction to this notice.

HUD–91121–ORCF: Deposit Account Control Agreement (DACA); HUD–91122–ORCF: Deposit Account Instructions and Services Agreement (DAISA); and HUD–92321–ORCF: Blocked Account Agreement

Several commenters recommended that these documents be eliminated as HUD mandated forms because they are used with third parties who do not normally do business with HUD. The commenters noted that many depository banks, which are large institutions, have their own forms and will not accept the HUD form. The commenters suggested, and HUD agrees, that these documents are more appropriate as samples rather than as forms. As a result, these documents have been removed from the PRA process. Several commenters also provided technical comments which will be addressed when the sample documents are generated.

HUD–92264–ORCF: Healthcare Facility Summary Appraisal Report

As this form was only used by Section 232 new construction program applicants, a few sections of this form (e.g., Land and Replacement Cost) were incorporated into the related Maximum Insurable Loan Calculation form. The Healthcare Facility Summary Appraisal Report has been eliminated.

HUD–92264a–ORCF: Maximum Insurable Loan Calculation

The document name was changed to Maximum Insurable Loan Calculation to avoid confusion with an existing FHA multifamily program form with a similar name. The document was also changed to an Excel spreadsheet with tabs for instructions, sources and uses, land, replacement cost, loan determination criteria and criteria by loan type. Additional features of the form include context sensitive comments for individual cells and calculations for many cells.

HUD–92323–ORCF: Operator Security Agreement

In response to public comment, a new attachment was added to provide an operator Assignment of Leases and Rents subpart of this form. This new document is the only portion of the operator Security Agreement that is recorded. This change removes the recordation requirement for the main document. Other changes were made in response to public comment, including adding a concept of ''permitted liens,'' and clarifying government receivables account requirements.

HUD–92466–ORCF: Healthcare Regulatory Agreement—Borrower

This agreement reflects changes made in the 2012 Final 232 Rule. For example, the time frame for providing notices relating to certain operational deficiencies has been clarified as two (2) business days; the long-term debt service reserve requirement is no longer a standard provision for every transaction; provisions relating to reasonable operating expenses and ensuring goods and services are acquired at favorable prices were clarified, and in reliance of these clarifications, subsequently unnecessary provisions, such as provisions limiting payments to affiliates, have been relaxed.

HUD also made several changes to this document pursuant to public comment. Triggers for causing the termination of a management agreement were clarified. The surplus cash calculation provisions reflective of current policy were reinstated. Requirements for non-profit borrowers to take distributions were clarified to reflect current policy.

HUD–92466a–ORCF: Healthcare Regulatory Agreement—Operator

This agreement also reflects changes made in the 2012 Final 232 Rule. For example, since the 2012 Final 232 Rule allows aggregated accounts so long as accounting can readily and reliably identify and analyze each facility's financial transactions, provisions requiring segregated accounts have been revised accordingly. As with the borrower's regulatory agreement, the time frame for providing notices relating to certain operational deficiencies has been clarified as two (2) business days and the provisions relating to reasonable operating expenses and procedures for ensuring favorable pricing for goods and services have been clarified.

Several changes were made based on public comments received. The requirement to maintain positive working capital at all times was removed. Clearer standards triggering HUD's right to require the operator to hire a consultant were set forth. HUD limited its ability to declare an immediate event of default to situations where a termination, suspension or restriction on a necessary permit or approval would have a materially adverse effect on the operation of the healthcare facility.

HUD–94000–ORCF: Security Instrument/Mortgage/Deed of Trust

In addition to the revisions made in response to the comments discussed below, language was added to this document in response to comment to obligate the borrower to assure that the operator, master tenant and management agent comply with UCC related provisions and to allow liens in favor of HUD-approved accounts receivable lenders.

HUD–9839–ORCF: Management Certification

This form has been revised to be consistent with HUD's 2012 Final 232 Rule, at 24 CFR 232.1011, captioned Management Agents, and to clarify the requirements for a management agent and the management agreement.

Production—Firm Commitments

As stated previously, HUD determined that these documents are inappropriate for the PRA process, and these documents have been removed. HUD will provide additional details about these documents as necessary.

Production—Checklists

As stated previously, HUD determined that these documents are inappropriate for the PRA process, and these documents have been removed. HUD will provide additional details about these documents as necessary.

III. Discussion of Specific Public Comments

Thirteen sets of public comments were submitted in response to the 60-day notice through *www.regulations.gov,* the government-wide portal for the receipt of public comments on federal agency documents.[3] Comments were submitted by a wide variety of parties including: commercial mortgage bankers and other lenders, a management oversight and consulting services company for skilled nursing facilities and related healthcare providers, companies that own, manage, and operate skilled nursing facilities and assisted living facilities; and national and state healthcare associations. Comments were also submitted by a coalition of national investment and mortgage bankers that participate in HUD's healthcare programs, as well as a trade association of lenders. The ''HUD Practice Committee'' submitted comments on behalf of the Forum on Affordable Housing and Community Development Law of the American Bar Association. Private individuals also submitted comments.

[3] Public comments submitted in response to the May 3, 2012, 60-day notice can be found at *http://www.regulations.gov/#!searchResults;rpp=25;po=0;s=FR-5623-N-01.*

As a special outreach to the public on proposed changes to the Section 232 program regulations, HUD hosted a forum, the ''Section 232 Document and Proposed Rule Forum'' on May 31, 2012, in Washington, DC. A video of this forum is available on the HUD Internet site at *http://portal.hud.gov/hudportal/HUD?src=/press/multimedia/videos.* While comments were raised and discussed at the forum, as reflected in the video, HUD encouraged forum participants to file written comments through the *www.regulations.gov* Web site so that all comments would be more easily accessible to interested parties. All comments, whether submitted through *www.regulations.gov* or raised at the forum, were considered in the development of these revised documents.

In addition to comments submitted in response to the 60-day notice, 27 public comments were submitted in response to the companion May 3, 2012, Section 232 proposed rule. To the extent that comments submitted on the proposed rule related to the healthcare facility documents, those comments were taken into consideration in the further development of the healthcare facility documents presented for additional public comment in this 30-day notice.

This section of the notice highlights the key issues raised by public comments on the documents and HUD responses to these comments. Some documents received no comments and therefore are not included in the discussion section below. For other documents, many of the changes suggested and those adopted by HUD have been discussed in Section II of this notice.

Many commenters recommended different terminology or different organizational structure to several of the documents. All these types of comments are not necessarily addressed in this section of the notice. To address each editorial/organizational structure recommended change would result in a very lengthy notice. The redline/strikeout versions of the documents, however, reflect all changes that HUD agreed with and adopted, and have taken into account any such recommended editorial/organizational changes that HUD did not agree or adopt. Finally, certain issues raised by the commenters on the documents were also raised in connection with the companion proposed rule. To the extent that comments were similar and have been addressed in the preamble to the 2012 Final 232 Rule, HUD does not repeat the issue and response in this notice.

Generally, in the discussion of public comments that follows, the terms ''section'' and ''paragraph'' are interchangeable. Some of the documents specifically use the term section, while others simply number paragraphs.

HUD–93305–ORCF: Agreement and Certification

Comment: A commenter raised questions about whether the language in the document regarding reduced costs (section 3) was determined by HUD to be a ''loan reduction'' and must either go to pay down the mortgage or be deposited into the reserve for replacement account to avoid modification of the loan and an accompanying prepayment penalty. Essentially, the commenter asked whether this constituted prepayment of the loan amount if it was less than estimated prior to final endorsement.

HUD Response: HUD revised the language in the document to clarify the treatment of these funds and re-characterize the calculation as excess mortgage proceeds. These amounts would thus not constitute a prepayment and accordingly would not trigger the need to look to the prepayment lockout and accompanying penalties.

HUD–92441–ORCF: Building Loan Agreement

Comment: A commenter recommended changing paragraph 4(c), which requires a disbursement agreement be attached to the document, to allow either separate disbursement agreement or an attached table of mortgageable cost items rather than requiring a separate disbursement agreement.

HUD Response: HUD declined to adopt this revision. HUD recently addressed this question in connection with the update of the multifamily rental project closing documents, and determined that a disbursement agreement is always required in new construction. HUD determined that it would be much harder to enforce a table of mortgageable costs versus a disbursement agreement that is signed by the parties.

HUD–92441a–ORCF: Building Loan Agreement Supplemental

Comment: A commenter suggested eliminating this supplemental form given that the provisions in this form are addressed in the Building Loan Agreement.

HUD Response: It is HUD's view that it would be very rare that a borrower acts as its own general contractor, a supplement is more appropriate rather than adding this language to the standard Building Loan Agreement.

HUD–92554–ORCF: Supplementary Conditions of the Contract for Construction

Comment: A commenter questioned why there was a supplement to the Construction Contract, stating that this structure made sense when HUD was using old documents, but that it seemed more efficient to incorporate these provisions into the contract now.

HUD Response: The approach to retain a set of supplemental conditions to the construction contract maintains a long-standing approach used in the multifamily documents and matches an approach used by the AIA construction forms.

HUD–92412–ORCF: Working Capital Escrow

Comment: A commenter suggested additional language at page 3, paragraph 4, specifying that for purposes of calculating the debt service coverage ratio, any operating lease will be disregarded and that the debt service coverage ratio will be calculated based upon the operating results of the project rather than of the borrower, master tenant or operator. A similar comment, to carve out the operating lease from debt service coverage calculation, is made to the Escrow for Operating Deficit.

HUD Response: Public commenter's recommendation to exempt an operating lease in the debt service calculation has been adopted in both documents.

HUD–91116–ORCF: Addendum to Operating Lease

Comment: A commenter stated that in order to avoid possible confusion or conflicting requirements among the HUD documents, the operator Lease Addendum should be removed and its provisions should be addressed in the Regulatory Agreement.

HUD Response: HUD declined to adopt the commenter's recommendation. HUD has decided to retain the Addendum.

Comment: Commenters submitted revisions to address what they stated were inconsistencies between the Master Lease Addendum and Operating Lease Addendum. Commenters suggested that HUD needed to develop a form of Operating Lease Addendum for use in Master Lease structures or should incorporate options in the Addendum to Operating Lease for use in a Master Lease structure. The commenters further suggested that HUD revise the documents to address inconsistencies between the Master Lease Addendum and the Operating Lease Addendum. A commenter stated that the ability to tailor an agreement to the facts and circumstances of the loan and the parties needs to be retained, especially when dealing with agreements to be signed by third parties such as accounts receivable lenders and unaffiliated operators and/or managers. Several commenters stated that HUD should revise terminology and add definitions.

HUD Response: HUD accepted many of these recommendations, and added several definitions. The redline/strikeout version of this document reflects the recommendations adopted.

Comment: A commenter stated that if the tenant is not affiliated with the borrower, section 2 should be revised to require only that the tenant comply with the mortgage loan documents to which it is a party. If the tenant is not affiliated with the landlord, it may not even have a copy of the landlord's mortgage loan documents and should not be required to comply with agreements to which it is not a party.

HUD Response: HUD disagrees. Operation of the healthcare facility in accordance with ''Program Obligations'' is vital to ensuring the success of the project.

Comment: Commenters stated that the provisions in section 3 allowed HUD to eliminate the need for a separate subordination agreement. Also, commenters stated that non-disturbance and attornment provisions could be built into this section and used when appropriate in lieu of a separate Subordination, Non-disturbance and Attornment Agreement (SNDA).

HUD Response: HUD determined to keep the paragraph on subordination and to also retain a separate subordination agreement in order to establish privity of contract between the lender and the tenant.

Comment: A commenter stated that if the tenant is not affiliated with the borrower, section 3(a) should be revised to preserve the tenant's rights set forth in the SNDA which contains the HUD approved non-disturbance language that protects the tenant so long as the tenant is not in default under the operating lease.

HUD Response: HUD agrees with the commenter and accordingly adopts the change.

Comment: A commenter suggested that section 3(b) relating to easements and licenses, be revised to allow the tenant to enter into short term telecommunications services that are not recorded against the property and that are terminable upon 30 days' notice without HUD's consent. The commenter

stated that this change will allow the tenant to run its business without having to obtain HUD's approval for short-term telecommunications contracts.

HUD Response: HUD has determined that proper oversight requires notice of these and similar contracts and will provide additional details regarding the process for approval as necessary.

Comment: Multiple commenters suggested revisions to section 4, relating to furnishings, fixtures, and equipment (FF&E). A commenter stated that some operating leases provide that certain non-essential FF&E, such as the tenant's computers, will remain the property of the tenant. To prevent such FF&E from becoming the landlord's property under section 4 of the addendum, the commenter suggested inserting an exception for a lease between unaffiliated parties. Another commenter stated that HUD's requirements do not reflect how the industry actually works and that who owns the personalty should be irrelevant to HUD because HUD will obtain security agreements from both the borrower and the operator.

HUD Response: HUD largely agrees with the commenters and has revised section 4 accordingly. The revised section now contemplates that Lessee could own the FF&E but the borrower would have the right to purchase the FF&E at the termination of the Lease. HUD has also revised section 4 to permit removal of FF&E in the ''ordinary course of business.''

Comment: A commenter suggested that in cases where the tenant is not affiliated with the landlord, the tenant may not know if the rent payments are sufficient for the landlord to pay its bills. The commenter stated that the landlord, not the tenant, should make the representation in the first sentence of section 5. Similarly, because the landlord is the borrower under, and benefits from, the HUD insured loan, the landlord should be responsible to HUD for the various premiums that may be required under the landlord's mortgage. The commenter stated that while an existing lease may require the tenant to pay such premiums, to the extent the tenant did not agree to pay for these premiums and it is not affiliated with the landlord, it should not be required to incur additional fees as a result of the landlord's HUD financing.

HUD Response: Under the revised document both the borrower/lessor and the lessee make the representation.

Comment: A commenter stated that language should be added under section 6, ''Operator's Regulatory Agreement and Security Agreement,'' that addresses the termination of the operating lease if there is a programmatic default of the operator regulatory agreement.

HUD Response: HUD has revised this section to clarify the requirements and to make it consistent with section 13, HUD's right to require termination of the operating lease. Defaults of the operator's regulatory agreement will not terminate the operating lease unless requested or approved by HUD.

Comment: Commenters stated that sections 10 and 11 (Financial Statements, Reporting Requirements and Inspections) should be removed as these functions are already addressed in the operator Regulatory Agreement. The commenters stated that HUD should omit any provision addressed in the Regulatory Agreement from the Lease Addendum.

HUD Response: HUD adopted the commenter's recommendations and removed these sections from this document.

Comment: Commenters suggested adding language to make it clear that the tenant will maintain insurance. A commenter specifically suggested adding a sentence requiring proof of insurance compliance annually, since this requirement also appears in the Master Lease Addendum.

HUD Response: HUD adopted the commenter's recommendation into current section 10.

Comment: A commenter recommended that HUD add provisions in section 13 (now section 11, Assignment) that require a transferee to obtain a Form HUD–2530: Previous Participation Certificate in the case of a transfer to a subsidiary. The commenter stated that HUD would therefore be required to give prior written consent when a change of control occurs involving a master tenant which is controlled or owned by a publicly traded entity. Another commenter recommended clarifications for transfers to affiliated or subsidiary parties be added as a new section.

HUD Response: HUD determined that the language in proposed section 13 (now section 11), as revised, is broad enough to provide adequate protection of HUD's interests and adequate notice of HUD's requirements to interested parties, whether such transfers involve affiliates or non-affiliates, and that additional language is not necessary.

Comment: Multiple commenters stated that section 14 (now section 12, relating to accounts receivable (AR) financing) is more appropriate in the operator Security Agreement.

HUD Response: HUD declines the commenter's recommendation and has determined that this provision is appropriate to memorialize the understanding of the parties and clarify the expectations regarding accounts receivable financing.

Comment: A commenter suggested that in situations where the tenant is not affiliated with the landlord, section 15 (now section 13, relating to termination of the operating lease) be revised to clarify that HUD can terminate the lease only for violations by the tenant. The commenter stated that this is consistent with the tenant's rights under the Subordination Non-Disturbance and Attornment Agreement (SNDA) to be signed at closing.

HUD Response: HUD has determined that it must reserve the right to cause termination of the operator lease for any violations of the operator's regulatory agreement and for other violations of program obligations.

Comment: A commenter stated that the defined term of ''Material Term'' is used in section 14 of the Addendum to restrict the tenant's ability to make material changes to its accounts receivable documents. HUD, the mortgage lender, the AR Lender, the landlord and the tenant may negotiate the parameters of future amendments in the Intercreditor Agreement. Additionally, AR borrowers need some flexibility in managing the AR loans such as extending the maturity of the loans, adding additional guarantors, increasing or decreasing the principal balance by less than ten percent (10%), increasing the interest rate by no more than five percent (5%) or adding collateral.

HUD Response: Although these changes were not adopted for the Addendum to Operating Lease, consistent with current practice, provisions were added to the Intercreditor Agreement to provide this flexibility.

Comment: A commenter suggested that HUD add several new sections relating to operator responsibilities, defaults, and remedies upon default (to be sections 20–28). The commenter stated that, in particular, section 23 the ''Special Purpose Entity Provisions'' must be considered carefully as a number of the major long-term care companies that have existing operators are not special purpose entities. The commenter suggested that the ''Special Purpose Entity Provisions'' be waived as part of the underwriting process.

HUD Response: HUD adopted some of the commenter's suggested additions, but has declined to adopt others. HUD determined that where the provisions duplicated rights found in other provisions or other documents, they

were not necessary to repeat here. In addition, HUD determined that such provisions would be preferable in the operator's regulatory agreement, which HUD has the right to enforce directly.

HUD–91111–ORCF: Survey Instructions and Borrower's Certification

Comment: A commenter suggested that the Table A requirements be adjusted, reviewed and made more practical for use on a refinance (as opposed to new development or acquisition).

The commenter recommended that Table A, Item 1 be deleted, subject to being required by the title company in order to issue the title insurance required by HUD. The commenter further suggested that Item 6b should be dropped as current building setback and related items only impact new construction and not a previously existing structure. The commenter also suggested that Item 10(a) should be deleted, subject to being required by the title company in order to issue the title insurance required by HUD; Item 10(b) should be deleted; Item 11(b) should be deleted and replaced by 11a plotting or disclosure of utilities by observable evidence is sufficient. Going beyond observable evidence is extremely burdensome and oppressive; Item 19 should be deleted as a required item.

The commenter further recommended that section I—2nd paragraph modify the sections that the survey will comply with. The commenter recommended that section I E be revised to add ''HUD Project Name'' to basic information to be provided.

The commenter recommended that section II A be modified to say: ''The title company will delete the title policy survey exception and accept the prior survey in issuing the policy of title insurance otherwise required at endorsement by HUD;''

HUD Response: HUD declined to adopt the commenter's recommendations at this time, but will consider these recommendations further in connection with future changes to the documents.

HUD–9839–ORCF: Management Certification

Comment: A commenter suggested that HUD revise proposed section 1(b)2(b), relating to compensation, to reflect variations in compensation. The commenter stated that managers typically receive a ''Base Management Fee'' comprised of a percentage of a project's gross revenue after adjustments and contractual allowances, and sometimes net of ancillary expenses. Third party managers frequently also receive an ''Incentive Management Fee'' based on net cash flow from operations, Earnings Before Interest, Taxes, Depreciation, Amortization, (EBITDA) or net profits.

HUD Response: HUD agrees with the commenter, and made the section (now section B(2)(b)), generic to allow for various forms of compensation to be stated and to allow for industry practice changes for compensation. The form has been adjusted to consider any types of compensation that has been agreed upon between the owner and the management agent. The compensation is expected to be typical of industry practices and not excessive or grossly out of line from a norm. Industry abuse or excessive fees will not be approved based upon HUD's review and determination.

Comment: A commenter stated that the requirement to abide by any decisions HUD makes as a result of appeal of excessive fees is too vague, and recommended new language, further stating that if HUD can change the agreement and economics, the management agent should have the ability to terminate the contract.

HUD Response: The appeal process was removed from the form. As long as the compensation is typical of industry practices the compensation will be allowed.

Comment: A commenter suggested removing language about the management agent complying with payment requirements and reasonableness of the fees (proposed section 2(c), now section D(2)), stating it is too vague, that the management agent will need more definition of the requirements, and that reasonableness is already discussed in a previous section.

HUD Response: HUD declines to adopt the commenter's recommendation. The provision alerts the management agent that the fees charged are to be reasonable within industry standards and allocation of those costs between the management fee and the Healthcare Facility's account.

Comment: The commenter stated that section 3(f) should be deleted as it is too burdensome to maintain copies of verbal and written estimates.

HUD Response: HUD determined that an audit trail of transactions is necessary for compliance and for analysis and standard operating purposes. HUD determined that a record of the operations of the facility is typical of a project and is in the normal course of business and not burdensome. Therefore, the provision to keep records in accordance with program obligations was maintained (now section D(6)).

Comment: A commenter suggested that HUD reduce the number of documents with which the Agent must comply, since many of the loan documents are beyond the scope of the Agent's relationship.

HUD Response: HUD has determined that, in managing the healthcare facility, the management agent must comply with program obligations, including any regulatory agreements and the operating leases. In revising these provisions, HUD attempted to balance any burden to the management agent with the important role the management agent plays in the operation of the healthcare facility.

Comment: A commenter suggested that HUD delete proposed section 3(g) saying that it should be the borrower's obligation (not the management agent's) to invest project funds.

HUD Response: Although deal structures may vary, the management agent typically is collecting and depositing funds, including into accounts in the operator's or borrower's name. In revising this section (now section D(7)), HUD attempted to provide flexibility for deal-specific variations in a management agent's responsibilities.

Comment: A commenter stated that section (4) changes insurance notification to the lender (not HUD), and suggested that the correct ''loss payee'' designation is ''the Lender, its successors and assigns.'' Until HUD is assigned the Note, it is the lender who is the Loss Payee.

HUD Response: HUD agrees with the commenter. As this certification is meant only to confirm the management agent's compliance with HUD's insurance requirements set forth in other legal documents, this provision (now section D(8)) and other references to insurance have been revised accordingly.

Comment: A commenter suggested that proposed section 5(b)(2) be modified to allow accounting principles other than Generally Accepted Accounting Principles (GAAP)[4].

HUD Response: HUD has revised this section (now section E) to clarify the bookkeeping requirements. HUD will provide more details as necessary.

Comment: A commenter stated that it may be in the project's best interests to allow the management agent to advance funds to the project, and as such, suggested deleting section 6(g) that disallows such advances.

HUD Response: HUD declines to adopt the commenter's recommendation

[4] GAAP refers to the standard framework of guidelines for financial accounting used in any given jurisdiction; generally known as accounting standards.

and has maintained this provision (now section F(7)). A management agent should not advance funds to a project without discussing with the operator and owner the current and future hardships necessitating such advances. Simply forwarding funds to the project can jeopardize the project if the owner or operator is not aware of the situation.

Comment: A commenter suggested deleting the entire ''hold harmless'' of section 7, stating the provision is too vague.

HUD Response: HUD disagrees with the commenter and declined to adopt the commenter's recommendation. This section (now section F(9)) allows such agreements if approved by HUD. It is HUD's position that, given the potential for harm, any hold harmless and similar arrangements should be rare and HUD requires HUD review of any such provisions.

Comment: A commenter suggested that HUD revise the form and update the termination provisions to provide a 30-day notice period.

HUD Response: HUD agrees in part with this comment and has revised the relevant sections (now sections H(1) and (2), and corresponding language in section C) accordingly. Although these sections now provide for a 30-day notice period for terminations based upon violations of the regulatory agreements, the provisions reserve HUD's right to act immediately if the permits or approvals are in substantial and imminent risk of being terminated, suspended, or otherwise restricted in a way that would have a materially adverse effect on the project.

Comment: A commenter stated that a new provision be added to section 9 to require the management agent's certification if the owner or operators plan to permit collection of a new fee which not set forth in a management agent's certification.

HUD Response: HUD has clarified in this section (now section (I)) the triggers for requiring a new certification. The commenter's suggestion is not necessary to add because similar protections are set forth elsewhere in the document.

Comment: A commenter stated that many projects have existing identity-of-interest management agents, and, that under the documents as proposed, these parties will now have the additional burden of ''clearly establishing'' that the fees charged are consistent with those charged by independent management agents.

HUD Response: Consistent with the 2012 Final 232 Rule, HUD is maintaining the requirement for HUD approval of a management agent and management agreement prior to a management agent being retained. In light of new provisions in HUD's Section 232 program regulations at 24 CFR 232.1007, which provide that operating expenses shall be reasonable and necessary for the operation or maintenance of the project, HUD determined that it was unnecessary to delineate further management agent restrictions in regulatory language. Accordingly, the documents are revised to be consistent with the policy established in the final regulation.

HUD–92466–ORCF: Healthcare Regulatory Agreement—Borrower

Comment: A commenter suggested adding the phrase ''as evidenced by the discharge or satisfaction of the Security Instrument'' to the third paragraph on page 2, to clarify when the regulatory agreement remains in effect.

HUD Response: HUD has revised this paragraph to include the phrase ''as evidenced by the discharge or release of the Security Instrument,'' as a release of the lien of the security instrument would be a recorded instrument that can provide adequate evidence of satisfaction of the note.

Comment: A commenter stated that the definition of ''Approved Use'' should be changed to conform to the Firm Commitment forms.

HUD Response: HUD agrees with the commenter and adopted the commenter's recommendation.

Comment: A commenter stated that the definition of ''distribution'' should omit the phrase ''any asset of borrower.''

HUD Response: HUD declines to adopt the commenter's recommendation. As set forth in the 2012 Final 232 Rule, the borrower is, unless otherwise approved by HUD, a single asset entity, so any assets of the borrower's will be project funds subject to distribution requirements.

Comment: A commenter recommended that the definition of ''healthcare facility'' be expanded to include ''independent living facility'' and that the word ''or'' be changed to ''and/or.''

HUD Response: HUD broadened the definition to include anything that might be insured under section 232 of the National Housing Act.

Comment: A commenter requested that, in the definition of ''Identity of Interest,'' HUD replace the term ''party'' with the term ''entity'' and that HUD provide an exclusion for ownership interests of less than five percent in public companies. The commenter also requested that the definition of ''family member'' be modified to exclude ''aunts, uncles, mother-in-law, father-in-law, brothers-in-law and sisters-in-law.''

HUD Response: In consideration of other comments and otherwise in the course of HUD's review of this and other documents, HUD determined that the defined term ''Identity of Interest'' is not necessary in the regulatory agreement and deleted the definition. HUD will follow the multifamily program's model and rely on the definition in program obligations.

Comment: A commenter stated that, under the definition of ''nonprofit borrower,'' a statement that the nonprofit entity may not make distributions is unnecessarily overboard. The commenter recommended that an exception be added for distributions approved by HUD or permitted under program obligations.

HUD Response: The language specified in this comment has been deleted from the definition of ''nonprofit borrower.'' HUD has also revised the document to be consistent with HUD policy and has added section 16(e) to clarify if and when a non-profit borrower may take distributions.

Comment: A commenter proposed a change to the definition of principal to clarify the parties that are considered principals. The commenter stated that the original draft was confusing and seemed to indicate that members of a principal are to be considered a principal of the borrower.

HUD Response: HUD has clarified the definition of principal. HUD notes that it is not HUD's intention in these documents to alter the policy currently in practice regarding previous participation clearance and other requirements relating to principals.

Comment: Several commenters commented on the provisions defining and relating to ''Reasonable Operating Expenses.'' One commenter stated that the definition of ''Reasonable Operating Expenses'' should be expanded to include ''any other disbursement, conveyance or transfer provided for in the Agreement.'' Another commenter stated that in the definition of ''Reasonable Operating Expenses,'' the general exclusion of compensation paid to affiliates or identity-of-interest entities is overly broad and the exclusion should be modified to allow such compensation to the extent it is not in excess of that payable in arms-length transactions. Another commenter stated that it is quite common and accepted in the health care market for related parties to engage in arms-length, market rate transactions. The commenter stated that in today's market, HUD would be moving away from the nation's healthcare delivery system to prohibit such affiliate transactions. To the extent

that an affiliate of the borrower is providing a service at a cost consistent with a market rate, arms-length transaction, then having HUD review and approve each one of those transactions across its portfolio will become extremely burdensome and will utilize valuable resources both within HUD and for its borrowers. Another commenter stated that since section 23 of this agreement provides that the costs must not exceed reasonable costs for the area, HUD should have the requisite protection to ensure that affiliate transactions are not detrimental to the project.

HUD Response: HUD recognizes the commenters' concerns and has revised the cited provisions accordingly. HUD has made the definition of Reasonable Operating Expenses consistent with § 232.1007 of the 2012 Final 232 Rule.

Comment: A commenter suggested changing the definition of ''Rents'' by changing ''income from Healthcare Facility'' to ''income from Mortgaged Property.''

HUD Response: HUD agrees with the commenter's concern but changed the wording to ''income arising from the operation of the Healthcare Facility.'' Unlike the multifamily program, the terms ''Mortgaged Property,'' ''Healthcare Facility,'' and ''Project'' are all slightly different in the 232 program. Since the ''Mortgaged Property'' is granted by the borrower, it is limited to the borrower's interests. The term ''Project'' is meant to encompass all interests involved in the FHA-insured transaction.

Comment: A comment recommended changes to include an instructional note in bold and caps to clarify that sections 2, 3, 5, 6, 8, and 9 do not apply to loans under sections 223(a)(7) or 223(f) of the National Housing Act.

HUD Response: HUD does not believe such instructional notes are necessary and has not adopted the commenter's recommendation. Where the provisions may be confusing, HUD has added the phrase ''if any'' to indicate potential inapplicability.

Comment: A commenter recommended that HUD add a clause to the final sentence of section 7, stating that residency and operation of the facility do not require prior written HUD consent if the project is occupied and in operation as of loan closing (for sub-rehabilitation loans and loans insured under section 241(a) which provides insurance for mortgage loans to finance repairs, additions, and improvements).

HUD Response: HUD declines to adopt the commenter's recommendation. HUD believes the provision for HUD approval provides sufficient flexibility where necessary.

Comment: A commenter stated that while section 8 states the borrower should have to disclose all obligations as of date of this agreement, HUD's interest should only require disclosure of delinquent obligations or those outside the ordinary course of business. Another commenter stated that such disclosure requirements would create substantial administrative burdens for HUD and distract staff from more important project reviews. Another commenter also suggested deleting the final sentence as unnecessary, stated that the section is overbroad, and questioned if HUD might be exposing itself to third-party claims asserting HUD liability for damages resulting from project operations.

HUD Response: HUD disagrees with these comments and has retained the proposed language. These requirements conform to the requirements in the multifamily program and are long-standing HUD requirements. It is important for the borrower to disclose all obligations so that HUD can accurately analyze the transaction and oversee the use of the loan proceeds.

Comment: A commenter stated that section 9 should include a ''cost cut-off date'' to describe the period for pre-completion accounting.

HUD Response: HUD clarifies that the cost cut-off date is any date chosen by the borrower after completion of the project, in accordance with program obligations.

Comment: A commenter stated the provisions in section 11(h) requiring all litigation against principals to be disclosed to HUD creates an unnecessary administrative burden. The commenter stated as an example that divorce proceedings or professional liability claims on any facility that an operator handles would need to be disclosed.

HUD Response: HUD determined to retain this provision. Appropriate oversight requires knowledge of the litigation risks and patterns confronting a project. To limit the administrative burden of this provision, HUD has added the phrase ''pursuant to Program Obligations'' and will provide additional details as and if necessary.

Comment: A commenter recommended that section 13(e), relating to transfer of ''Replacement Reserve Accounts'' upon refinancing be deleted.

HUD Response: HUD has adopted this recommendation because section 13(b) adequately addresses the interests involved and makes section 13(e) unnecessary.

Comment: A commenter recommended section 13(g) (now 13(f)), be revised to refer to ''withdrawals'' from the reserve for replacement, rather than ''loans.''

HUD Response: HUD declines to accept this recommendation. This section provides for the possibility that a borrower may take funds in the form of a loan to be repaid, rather than as a withdrawal, from the reserve, and that such funds would not be limited to the purposes for which withdrawals from this reserve must be limited.

Comment: Several comments suggested elimination or substantial revision to the long-term debt service reserve requirements in proposed section 14.

HUD Response: As stated in the preamble, HUD has revised the borrower's regulatory agreement to eliminate the long term debt service reserve provisions in accordance with the 2012 Final 232 Rule, 24 CFR 232.11. The document reserves a section for provisions to be inserted in those rare instances where HUD will require a long-term debt service reserve.

Comment: Several commenters objected to language used in section 15 revising the definition and calculation of surplus cash.

HUD Response: As stated in the preamble, HUD recognizes the concerns raised by the commenters and has returned to the definition of surplus cash currently in use in the program.

Comment: Several commenters submitted comments on section 16 (''Distributions''). A commenter stated that, in section 16(a), reconciliation requirements are not defined, and recommended this provision be revised to include a reference to the requirements listed in section 16(d). The commenter further recommended a modification to the prohibition on distributions to non-profit borrowers in conformance with the revised definition of non-profit borrower. The commenter further recommended revising section 16(b) to include an exception to the prohibition on distributions from borrower funds in the instance where the borrower is the operator and the distribution is permitted under the operator's regulatory agreement. With respect to section 17, a commenter made a similar comment, recommending that in section 17(a) a statement that distributions to non-profit borrowers are prohibited be modified to reflect a revised definition of non-profit borrowers. With respect to section 17(b), the commenter stated that HUD's proposed agreement should be revised to include a method of calculating a standard for periodic determination of

the amount that constitutes residual receipts.

HUD Response: HUD has revised section 16 in accordance with these comments. HUD removed the capitalization from the words ''Reconciliation Requirements'' to indicate that the plain meaning of the words, as clarified in the context of the provision, should prevail. HUD also added section 16(e) to set the terms under which non-profit borrowers may make distributions, in accordance with HUD's recent practice.

Comment: Multiple commenters commented on section 18. Multiple commenters stated that this section was confusing. Multiple commenters stated that section 18(c) requiring HUD approval of interest on advances was unnecessary since repayment of interest by affiliates must be in accordance with loan documents and program obligations, or approved by HUD.

HUD Response: HUD has revised this section to clarify the provisions. HUD has determined that proper oversight requires that repayment of advances be made on terms approved by HUD. HUD will provide further details as and if necessary.

Comment: A commenter recommended that section 19(c) be revised to stipulate that annual financial statements must comply with both HUD and GAAP requirements, and quarterly financial statements must meet HUD requirements but not GAAP requirements.

HUD Response: HUD agrees with the commenter and adopted the commenter's recommendations. HUD will provide additional details for the requirements of operator's financial statements as necessary.

Comment: Multiple commenters expressed concern that HUD's requirements for expenses to be reasonable and necessary and specifying procedures for acquiring goods and services above certain thresholds (in section 23) are overly broad and may not be enforceable by HUD.

HUD Response: Similar comments were received in connection with the 2012 Final 232 Rule, and HUD has revised this document to be consistent with that final rule. In making such revisions, HUD has attempted to balance its interests in meaningful oversight without imposing unreasonable burdens on the project or creating unenforceable requirements. HUD determined that the level of specificity of this provision in the proposed document is unnecessary and may interfere with appropriately desired flexibility to address what is considered reasonable and necessary in any specific geographic area. To provide some direction HUD establishes a high threshold as a benchmark. HUD set a threshold of 5 percent of the effective gross revenue of the facility, requiring that written cost estimates must be obtained by the purchaser (though not routinely provided to HUD) when goods and services having a cost about that threshold are being acquired.

Comment: Several commenters commented on section 25 (''Permits and Approvals'') and section 36 (''Declaration of Default''). One commenter objected to the rights that sections 36(b) and 25(c) provide to HUD if HUD determines there is a substantial risk of termination, suspension, or restriction with respect to any permits or approvals. The commenters stated that these provisions present concerns for the following reasons: (i) HUD obtains unilateral right to require replacement of the operator based upon a subjective determination; (ii) the extensive obligations set forth in the various regulatory agreements, security instrument and other program obligations provide HUD with more than adequate protections; (iii) HUD's ability to declare a default due to a ''material adverse diminution'' in value could result in unreasonable outcomes; and (iv) HUD's ability to declare a default due to a ''restriction'' on a permit or approval could result in unreasonable outcomes. The commenter stated that these provisions permit HUD to act in those situations when the risk would prevent the project from being operated for its approved use and would have a material adverse effect on the value of the mortgaged property. Another commenter recommended limiting HUD's remedies to instances where risks jeopardized operation of the project for the approved use. The commenter recommended the deletion of the provision entitling HUD to declare a default.

HUD Response: HUD understands the commenters' concerns and in response has limited the definition of ''Permits and Approvals'' to those ''reasonably necessary'' to operate the facility. In addition, HUD has modified the declaration of default provisions so that they apply only where such restrictions of the permits or approvals would have a materially adverse impact on the project.

Comment: A commenter suggested language be added to section 26(a) (''Operator; Cooperation in Change of Operator'') to require the borrower to execute an operator security agreement if the borrower is or becomes the operator.

HUD Response: HUD agrees and has revised this section accordingly.

Comment: A commenter stated that section 28 would require borrowers and operators to conform to post-closing changes in HUD's professional liability insurance (PLI) requirements, and that, given the expense of such insurance, a unilateral right to HUD to modify is unreasonable.

HUD Response: HUD disagrees with this comment. These provisions conform to multifamily program requirements and protect HUD's interest in maintaining up-to-date requirements for insurance.

Comment: Multiple commenters stated that section 31, which requires all third-party vendor contracts to include a provision entitling HUD to terminate the contract without cause or penalty, is intrusive and unnecessary. One commenter stated that it is unreasonable that section 31 allows HUD to require replacement of a Management Agent even if the borrower, operator and Managing Agent are in complete compliance with loan documents. Another commenter recommended limiting requirements to instances of violations of the borrower's regulatory agreement, which would be parallel to the structure of section 12 (now section 13) of the operator's regulatory agreement. Another commenter recommended that section 31 be deleted in its entirety. The commenter asked why HUD should require termination when such vendors are subordinate to the mortgage lien and may be terminated upon foreclosure. Another commenter suggested that the provision in section 30 entitling HUD to require actions by the borrower to cause conformance to program obligations should be tied to failure to cure a violation with 30 days of notice.

HUD Response: HUD modified the provision to limit HUD's termination rights for management agreements to only those instances when there is an event of default under a loan document or when any of the necessary permits or approvals is in substantial and imminent risk of termination, so as to have a material adverse effect on the property. HUD limited the required termination provision for vendors to those having an identity of interest with the borrower and/or operator.

Comment: A commenter recommended revisions to section 33 to exclude leases for beauty parlors and other leases for support or ancillary services from the requirement of HUD written approval (provided any such lease is subordinate to Security Instrument), for a term not more than a year and represents less than two percent of projected gross revenues.

HUD Response: HUD agrees and has adopted the commenter's recommendation.

Comment: A commenter suggested revisions to section 34(d) to allow payment of fair and reasonable compensation to employees who are officers, directors, etc. The commenter also recommended that section 34(i) be deleted because HUD's purposes are not served by restricting a borrower's ability to accept receipt of endowments. The commenter also recommended revisions to section 34(j) to state more clearly the applicable limitations on amendment of borrower's organizational documents.

HUD Response: HUD has generally accepted these comments. HUD has made section 34(d) consistent with 24 CFR 232.1013 of the 2012 Final 232 Rule and has revised the other sections referenced to address the commenter's concerns.

Comment: A commenter stated that section 34(k) (now 34(j)) requires that a borrower must obtain HUD approval in order to institute litigation. The commenter stated that this was an inappropriate intrusion by HUD and commenters are unaware of any loan documents of any lender which would impose such lender approval rights.

HUD Response: HUD determined that this provision already included adequate limits to address the commenter's concerns. Litigation seeking a recovery below the $100,000 threshold and litigation covered by professional liability are explicitly excluded from this section.

Comment: A commenter stated that section 34(m) (now 34(l)), that calls for HUD to approve any payments from a provider of goods and services did not seem to serve reasonable interests. The commenter stated that this provision would require approval for refunds of overpayments, refunds for unnecessary and unused goods, discounts, rebates, and returns of stolen funds or property, all of which would benefit the project.

HUD Response: HUD agrees and has limited this provision to instances where the fee is exchanged for a right to provide the goods and/or services.

Comment: A commenter stated that section 34(o) (now section 34 (n)), that requires HUD approval for all contract amendments, will involve HUD in mundane, day-to-day business decisions that do not warrant HUD's attention.

HUD Response: Pursuant to the changes in the 2012 Final 232 Rule, HUD modified this provision to exclude those instances where program obligations dictate that HUD approval is not required and to insert a materiality threshold to the enumerated types of amendments that require approval.

Comment: A commenter suggested revisions to section 38 (''Nonrecourse Debt''), to reference an attached non-recourse rider for execution and drafted a proposed rider.

HUD Response: HUD declines to adopt the suggestion, but has provided that this section may be executed in counterpart.

Comment: A commenter object to section 43 of the borrower's regulatory agreement that provides ''any reference in this regulatory agreement to program obligations shall be construed as referring to those program obligations which are amended from time to time.'' The commenter asked whether this was intended to change the previously established definition of program obligations arrived at when HUD revised its multifamily documents.

HUD Response: HUD has modified the document to delete this sentence. HUD believes the document as revised is consistent with the corresponding multifamily rental project closing document provisions.

HUD–92466A–ORCF: Healthcare Regulatory Agreement—Operator

Comment: A commenter stated that section 1 requires that rent due under a borrower-operator agreement be sufficient to pay all of the borrower's required mortgage loan payment including, replacement reserves, debt service reserves, and any maintenance and/or repairs for which the borrower has responsibility. The section further requires that if the operator and the borrower are not affiliated and have already executed a lease agreement or other borrower-operator agreement, the effect of the requirement is to either create an administrative obligation that is not reflected in the parties' contracts, or to force the parties to re-negotiate their business relationship. The commenter stated that in either case, the requirement shifts more cost to the operator, and while the borrower has the right to pursue a HUD loan, a non-affiliated operator should not be required to pay more than the rent it originally agreed to in the contract between the parties. The commenter stated that this provision clearly should apply only if the borrower and the operator are affiliates.

HUD Response: HUD declines to accept this recommendation. HUD has determined that its oversight responsibilities require it to ensure that the borrower will have sufficient funds available to meet its debt service and related responsibilities.

Comment: A commenter stated that the provisions of section 3 could result in HUD being overwhelmed with notices for every minor violation, and that HUD should therefore establish a materiality threshold.

HUD Response: A materiality threshold for receipt of notices of violation is established at the end of section 3(c).

Comment: Multiple commenters objected to section 4(e) (now section 5(e)) that requires resident consent in the event the operator proposes to add an additional resident to an existing unit. One commenter stated that such requirement could prevent the operator from adding the additional resident, even if HUD approves it and such change has complied with any requirements of state or local law. As there may be financial implications that support a proposal to add an additional resident, the commenter stated that such situation should at least be considered, but that the language as proposed by HUD would not allow such consideration. The commenter therefore proposed deleting the requirement for resident consent in all cases.

HUD Response: These provisions are required by 12 U.S.C. 1715w(d)(4)(C)(ii).

Comment: Several commenters commented that the provisions in section 5 (now section 6), requiring the operator to hire a consultant if HUD determines that an operator's performance may be placing the operational and/or financial viability of a healthcare facility at risk, were overly broad and vague. One commenter stated that HUD should not have the power to cause consultants to dictate how the operator should run its business or require the operator to pay for the consultant, especially for an operator not affiliated with the borrower. Another commenter stated that such requirement can be very expensive and third-party operators will not want to be forced to hire a consultant without a ''bright-line'' trigger for this requirement. Several commenters suggested revisions to limit the applicability of this provision. One commenter stated that even after a monetary default, to avoid wasting funds, a consultant should only be brought in upon certain significant threshold events such as: (a) the facility has multiple surveys within a significant time period with actual ''harm tags'' not corrected within the time periods required by the Centers for Medicare and Medicaid Services (CMS); (b) the facility's survey puts the facility on fast track decertification and such issue has not be resolved within the time periods required by CMS; and (c) the operating income plus management fees Earnings Before Interest, Taxes, Depreciation, Amortization, Rent and

Management Fees (EBITDARM) becomes negative on a trailing twelve-month basis.

HUD Response: HUD acknowledges the commenters' concerns and has significantly revised this provision. HUD has set forth the concept of ''project operating deficiency'' as a bright-line trigger for requirements to hire a consultant, and has detailed the circumstances that constitute such a project operating deficiency, as set forth in revised section 5. HUD has also clarified that HUD will consult with operator, lender, and borrower before approving the consultant's recommendations.

Comment: A commenter stated that the requirement in section 6 (now section 7) that the operator must create a risk management program can be a very expensive endeavor for small single facilities with little benefit to HUD that is not covered by Housing Notice 04–15: Professional Liability Insurance.

HUD Response: HUD acknowledges the commenter's concern but has determined that a risk management program is vital to managing the risks inherent in operating healthcare facilities. HUD has determined that the requirements for the risk management program are flexible and are not overly burdensome, and HUD will provide additional details as necessary.

Comment: Many commenters commented on the provisions in section 7(c) making it a violation of the agreement if the operator fails to maintain positive healthcare facility working capital. Multiple commenters stated that operators routinely move cash around their operations so that, on a short term basis, a project may have negative working capital. Another commenter stated that the violation should be tied to occurrences of negative working capital in the aggregate on a quarterly basis. Another commenter stated that merely having a poor performing property should not be an event of default, but that HUD should restrict specific actions, such as cash distributions, if the working capital goes negative.

HUD Response: HUD acknowledges the commenters' concerns and has deleted the provisions making it a violation of the operator's regulatory agreement to have negative working capital. Instead, HUD tied a project operating deficiency, which triggers HUD's rights to require the operator to hire a consultant, to three quarters of negative working capital. In addition, HUD has restricted the operator's ability to take distributions if the operator's most recent quarterly financial statement indicates negative working capital.

Comment: A commenter stated that section 20 (now section 21, ''Uniform Commercial Code/Liens'') provides that if the project includes a skilled nursing home, the operator is permitted to pledge the facility's accounts receivables to an accounts receivable lender. But in typical accounts receivable financing, the operator is generally required to pledge more than its accounts receivables. The commenter stated that the operator should be allowed to pledge all of its personal property in such form as approved by the lender and HUD.

HUD Response: HUD has revised this section to accommodate the commenter's concern. In addition, HUD notes that granting liens on collateral, including but not limited to the accounts receivable, may be allowed by the language of this provision if such liens are approved by HUD. The HUD-required intercreditor agreement may evidence certain HUD approvals.

Comment: A commenter stated that several provisions of this agreement effectively penalize a performing operator for the borrower's failure to satisfy borrower obligations, and that such regulatory structure is inappropriate, particularly in a non-identity-of-interest case.

HUD Response: HUD acknowledges the commenter's concerns but has determined that HUD's interests, including those of protecting the insurance fund, require HUD to approach oversight of the project in a holistic manner. HUD notes that in a non-identity-of-interest scenario, the operator can secure a right to cure borrower's defaults, with an extendable cure period, through the Subordination, Non-Disturbance, and Attornment Agreement (SNDA) relating to its operating lease.

HUD 94000–ORCF: Security Instrument/ Mortgage Deed of Trust

Comment: A commenter stated that the ''Mortgaged Property'' as defined includes licenses and accounts receivable held by the operator. The commenter stated that this is problematic because HUD cannot require the operator (especially third party operators) to offer the license in the operator's name as collateral for the borrower's mortgage. The commenter stated that, in addition, if a facility's operator has accounts receivable financing, HUD will not have the first priority on that collateral.

HUD Response: The definition of ''Mortgaged Property'' is limited to the ''borrower's present and future right, title, and interest in'' the items listed. HUD is attempting, through the documents in their totality, to protect its interests comprehensively, given the variety of possible deal structures. With regard to accounts receivable financing, any discrepancies in the respective loan documents will be governed by the Intercreditor Agreement.

Comment: A commenter stated that section 48, Environmental Hazards, should account for state-specific requirements, such as states with a ''One Act Rule.''

HUD Response: HUD has revised this section, giving instruction to add state-specific requirements as necessary. Such provisions may provide, for example, that a separate environmental indemnity may need to be recorded to comply with the practice and requirements of that jurisdiction.

Comment: A commenter stated that HUD should consider requiring a separate Security Agreement for borrowers, rather than relying upon the security agreement language contained in the Security Instrument.

HUD Response: HUD declines to adopt the commenter's recommendation. The security agreements contained within the Security Instrument follow the model set by the multifamily program and conform to industry practice.

HUD–92070–ORCF: Lease Addendum (ground lease)

Comment: A commenter requested that HUD revise the instructions to allow for buildings, improvements, and fixtures to be either owned in fee simple by the ground lease tenant or leased to the tenant under the ground lease; exclude the instructions from inclusion with the Addendum in the Lease; and remove all signature blocks on the form because the lease addendum must be incorporated by reference in the ground lease and the lender is not party to the ground lease.

HUD Response: HUD agrees with the recommended changes, but not with removal of the signature blocks.

HUD–94001–ORCF: Healthcare Facility Note.

Comment: A commenter recommended that paragraph 9(h), which relates to loans insured under the section 207 program, pursuant to sections 207 and section 223 of the National Housing Act, be removed. The commenter stated that this provision is not applicable to healthcare loans and it is an optional provision for mortgages insured under section 223(f) of the National Housing Act concerning use agreements for rental housing projects.

HUD Response: HUD agrees with the commenter and the recommended change was accepted.

Comment: A commenter stated that section 13 of the Note converts an interest payment into a partial prepayment in the event that the interest rate exceeds the maximum legal rate in the property jurisdiction. The commenter stated that such a partial prepayment could trigger a prepayment penalty under section 9. As such, the commenter recommended that section 9(c) be modified so that any prepayment which results from section 13 will not trigger any prepayment penalty.

HUD Response: HUD has determined that no change to the documents is necessary. Section 13 dictates that, under the specified conditions, in order to preserve payments the lender has previously received, that portions of such payments would be deemed payments toward the reduction of the indebtedness owed the lender. In order to charge a prepayment premium in such circumstance, a lender would have to argue that as a result of the structure it imposed on the loan and of the conventions dictated in section 13, it is entitled to additional funds in excess of the limits that triggered the provisions of section 13 in the first place. A lender would be estopped from making such an argument.

HUD–92414–ORCF: Latent Defects Escrow

Comment: A commenter suggested that the escrow should not be applied to the indebtedness in the event of the borrower's default as these are the funds for the contractor, and should not be applied to indebtedness.

HUD Response: HUD agrees with the commenter and has adopted the commenter's recommendation.

HUD–9443–ORCF: Minor Moveable Escrow

Comment: A commenter stated that the Movable Equipment Escrow Agreement published for review and comment does not contain the boilerplate language and terminology used across the other proposed escrow agreements. The commenter suggested a revised form, using the proposed Escrow Agreement for Working Capital as the starting point and modifying it by inserting the substantive provisions from the proposed form of Minor Movable Equipment Escrow Agreement.

HUD Response: HUD agrees and accepted the commenter's recommendation.

HUD–92266–ORCF: Application for Transfer of Physical Assets (TPA)

Comment: A commenter stated that the preliminary approval instructions should be consistent with the other forms, such as the TPA submission check.

HUD Response: HUD agrees with the commenter and has adopted the recommendations.

HUD–93486–ORCF: Computation of Surplus Cash

Comment: A commenter requested that HUD conform the form to the borrower's regulatory agreement definition of surplus cash.

HUD Response: HUD adopted the commenter's recommendation and changes were made to conform to the revised definition of ''Surplus Cash'' in section 15 of the borrower's regulatory agreement.

HUD–92322–ORCF: Intercreditor Agreement

Several commenters suggested that HUD should reach out directly to accounts receivable lenders to determine mutually agreeable provisions for this document, since this is an agreement with a third-party lender, as opposed to a loan document to a party directly benefiting from the FHA-insured loan. HUD agreed with the commenters' suggestion and has reached out to members of the accounts receivable industry directly. Through both submitted written comment and direct discussions with members of the accounts receivable industry, the comments discussed below emerged as the most important to the industry.

Comment: Several comments were received regarding the concept of ''Cut-Off Time.'' Several commenters stated that the proposed Cut-Off Time provisions did not give accounts receivable lenders (''AR Lenders'') sufficient notice of the loss of their priority position, since the Cut-Off Time would be effective immediately upon delivery of notice of default. Many commenters stated that having the Cut-Off Time effective immediately would eliminate any incentive for AR Lenders to participate in workouts and would instead encourage AR Lenders to halt further advances. Many commenters stated that no AR Lender would accept this provision resulting in difficulty to secure accounts receivable financing for FHA-insured transactions.

HUD Response: HUD has substantially revised the concept of Cut-Off Time. Although HUD determined that the previously used concept of ''Possession Date'' provided too long a period before the AR Lender lost priority, HUD agreed that additional notice would be beneficial. HUD revised the document to differentiate between triggering events caused by defaults of the accounts receivable financing (''AR Loan Triggering Event''), for which the AR Lender should be immediately aware if conducting appropriate oversight, and triggering events caused by defaults of the FHA-insured loan (''FHA Triggering Event''), for which the AR Lender may not be aware without notice. HUD has specified that the Cut-Off Time may be no earlier than 30 days after notice of an FHA Triggering Event and 30 days after an AR Loan Triggering Event. The Cut-Off Time Notice has also been revised to account for this distinction, and to explicitly contemplate extension of the Cut-Off Time if, for example, the parties are negotiating in hopes of a workout. In addition, the definition of ''Protective Advances'' has been revised to clarify that it includes any advances made after the Cut-Off Time which the AR Lender, in its discretion, deems reasonably necessary to preserve and protect its priority collateral.

Comment: Several commenters suggested expanding the definition of the ''AR Lender Priority Collateral'' to include all collateral except certain collateral carved out as priority collateral securing the FHA-insured loan. Multiple commenters stated that AR Lenders need to preserve access to the books and records and that HUD should preserve the ability of these items to serve as collateral for the accounts receivable loan.

HUD Response: HUD largely declined to make the suggested changes, as HUD determined that the reduced exposure resulting from changes to Cut-Off Time provided adequate additional protection to AR Lenders. Regarding books and records, HUD notes that the fact that books and records are not given the extra beneficial treatment of ''AR Lender Priority Collateral'' does not exclude such items from the AR Lender's collateral. AR Lenders may still take a security interest in the books and records and reserve a right to inspect those books and records as necessary. HUD did determine that adding deposit accounts to the definition of AR Loan Priority Collateral was appropriate.

Comment: Several commenters suggested expanding the definitions of ''AR Loan Obligations'' and ''Priority Obligations'' to incorporate interest and letters of credit.

HUD Response: HUD largely adopted the commenters' suggestions, provided that the ''Maximum Commitment Amount'' and program obligations

provide some limit to potential obligations.

Comment: Several commenters questioned how this form would work in a portfolio transaction with many healthcare facilities.

HUD Response: HUD contemplates that a distinct Intercreditor Agreement will be executed for each FHA-insured loan. To clarify requirements, HUD revised the agreement to include a definition of ''Other Facilities,'' and added section 2.2(c) to disclaim prioritization among FHA-insured lenders. HUD also revised the definition of Cut-Off Time to provide that AR Loan Triggering Events that relate to one accounts receivable line of credit would be considered triggering events for the other facilities financed by that line of credit. In contrast, since each Intercreditor Agreement sets forth the relationship of its respective FHA-insured lender vis-à-vis the AR Lender, a similar provision for an FHA Triggering Event would not be appropriate.

Comment: A commenter suggested consolidating the various options for section 3.4 (relating to lock-box and other account agreements).

HUD Response: HUD declines to make the suggested changes. HUD determined that retaining the three possible versions is necessary to allow several appropriate options.

Comment: A commenter stated that the Intercreditor Agreement no longer permits cross-defaults between FHA and non-FHA lines of credit, and that this will discourage large portfolio owners from utilizing FHA-Insured financing. The commenter stated that it frequently finds AR Lenders are willing to allow FHA and non-FHA facilities to be segregated as collateral but are requiring them to be cross-defaulted as permitted under the current Notice H 08–09: Accounts Receivable (''AR'') Financing.

HUD Response: Each facility will have its own Intercreditor Agreement and the document includes a definition of ''Other Facilities'' that means any other healthcare facility financed by a mortgage loan made by a HUD-approved lender or held by HUD. Section 3.6 was revised to require the AR Lender and operator to certify and agree that any and all cross-default provisions have been disclosed to and approved in writing by HUD. HUD determined that these provisions were necessary to meet its oversight obligations.

HUD–92323–ORCF: Operator Security Agreement

Comment: A commenter stated that a separate form of security agreement should be developed for use when the operator does not share an identify of interest (''IOI'') with the borrower because a non-IOI operator will generally not be willing to grant a security interest in its assets as security for a loan being obtained by an unrelated borrower.

HUD Response: HUD declines to differentiate between IOI and non-IOI operators at this stage. HUD has determined that proper oversight of the projects requires a direct security interest in the operator's interests in the healthcare facility.

Comment: Multiple commenters expressed concern with recording this document, as Exhibit C sets forth sensitive deposit account information that the operator would not want included in a recorded document.

HUD Response: HUD determined that the inclusion of the deposit account information is necessary. However, HUD acknowledged the concern with recording sensitive information. Because only the assignment of leases portion of the document would need to be recorded to perfect the security interest it purports to grant, the assignment of leases portions of this document have been separated into an attachment. In this way, the assignment of leases provisions may be separated and recorded without recording the rest of the document.

Comment: With respect to sections 2(a) and 2(b), Representations and General Covenants, a commenter proposed the addition of a concept of permitted liens encompassing both the security interest in favor of the secured party and any liens approved in writing by the secured party and HUD, which are allowable liens against the collateral.

HUD Response: HUD accepts the concept of permitted liens, and the document has been revised accordingly.

Comment: A commenter proposed language in section 2(b) that obligates the operator to ensure necessary UCC terminations are filed and to provide the secured party with search results evidencing the same. A commenter also proposed use of the operator's location (rather than the chief executive's office), as this term is used in the UCC, under which secured parties must file a UCC–1.

HUD Response: HUD partially accepts the commenter's recommendation. HUD has included language in the ''Further Assurances'' section obligating the operator to provide UCC searches showing HUD filings and no other filings on request or in any event within 45 days. Additionally, HUD has added the operator's location as used in the UCC.

Comment: A commenter requested that HUD revise section 8(a), relating to an Event of Default, to clarify that if the obligations are not paid when due (regardless of which entity pays them) it constitutes an Event of Default.

HUD Response: HUD agrees with the commenter's recommendation.

Comment: Several commenters found provisions relating to government receivables accounts, deposit account control agreements, deposit account instructions and service agreements, and related concepts, lacking and provided suggestions for clarifying requirements.

HUD Response: HUD largely agreed with the suggested revisions. Such changes are reflected in the redlined/strikeout version of this document posted on HUD's Web site at the address set forth in the introduction to this notice.

HUD–92211–ORCF: Master Lease Addendum

Comment: A commenter stated that subordination, non-disturbance and/or attornment language should be incorporated into the Master Lease Addendum, negating the need for separate subordination agreements.

HUD Response: HUD disagrees with this recommendation. The lender needs privity of contract with the lessee and this addendum to the master lease does not establish that.

Comment: A commenter stated that as drafted, section 9, relating to ownership of bed authority, conflicts with licensing requirements and similar sections of the Operating Lease Addendum. A commenter stated that if the landlord owns the bed authority the operator would not be able to obtain and maintain the provider agreements. The commenter suggested removing that requirement from the Master Lease Addendum.

HUD Response: HUD agreed with the commenter and accepted the recommendation.

Comment: A commenter suggested adding to section 13 (now section 11, Subletting and Assignment) a clause clarifying that in the case of a transfer to an affiliate, the transferee must submit a form HUD–2530 for previous participation clearance, and receive prior HUD approval.

HUD Response: HUD determined that this provision is not necessary given the existing language in this section that requires HUD approval of any transfer.

Comment: A commenter suggested several additional provisions to expand the scope of the Master Lease Addendum.

HUD Response: Most of these provisions were duplicative of provisions in other documents, such as the master tenant's regulatory agreement. Since HUD is not a party to the Master Lease Addendum, HUD determined it would set forth its oversight requirements for the master tenant in the master tenant regulatory agreement.

HUD–92331–ORCF: Cross-Default Guaranty of Subtenants

Comment: A commenter recommended adding new provisions for a ''waiver of subrogation'' in section 6, or as a new section 26.

HUD Response: A waiver of subrogation is already in the first sentence of section 10 of this document.

HUD–92333–ORCF: Master Lease Subordination Non-Disturbance and Attornment Agreement (SNDA)

Comment: A commenter stated that the Agreement should be limited to a subordination agreement, and that HUD should move all regulatory and oversight provisions to the operator or master tenant regulatory agreement and retain necessary SNDA provisions, if applicable. Another commenter recommended moving the necessary SNDA provisions to the Master Lease Addendum to avoid introducing conflicting agreements. The commenter expressed concern that tremendous efforts will be needed at each closing to make the subordination agreements consistent with the regulatory agreements and the Master Lease Addendum. The commenter further stated that the Master Lease Addendum could be structured so that the lender acknowledges the subordination provisions and a separate agreement can be eliminated.

HUD Response: HUD agrees with the commenter's approach of limiting the provisions in the SNDA to subordination and related provisions and placing regulatory and oversight provisions in the master tenant regulatory agreement, and has revised the document accordingly. However, HUD disagrees with the comments regarding incorporating the SNDA provisions into the Master Lease Addendum and has determined that the SNDA is appropriate as a separate and recordable document.

Comment: A commenter stated that the provisions in this document and the operator regulatory agreement document requiring the master tenant and/or operator to hire a consultant if a deficiency occurs should be made consistent. The commenter stated that unlike the operator regulatory agreement, this document's ''bright line'' provisions for when a consultant must be hired is a better method than the ambiguity created in the operator's regulatory agreement, but that the current trigger for such requirement, a project operating deficiency, is unacceptable to the industry.

HUD Response: HUD has revised the cited provisions in this document and in the operator's regulatory agreement to be consistent and has revised the concept of a project operating deficiency in response to comments from the industry.

Comment: Multiple commenters stated the provisions in section 6, regarding a master tenant's and operator's right to cure defaults, should be revised and clarified. One commenter suggested that the rights to cure and the extensions of cure periods should not be limited to instances where no project operating deficiency exists. Another commenter also recommended further extending the cure period extensions.

HUD Response: HUD acknowledges the commenters' concerns but has determined that the revised definition of project operating deficiency adequately addresses the concerns regarding the limitation on the cure rights. HUD has also determined that the extension periods provided are sufficient. These provisions attempt to balance the rights of the lender with the borrower and operator's rights.

HUD–92337–ORCF: Healthcare Regulatory Agreement—Master Tenant

Comment: A commenter objected to provisions giving HUD rights, if HUD determines there is a substantial risk of termination, suspension, or restriction with respect to any permit or approval, to declare an Event of Default without further notice. The commenter stated that: (i) HUD's unilateral right to require replacement of the operator is based upon a subjective determination, (ii) the extensive obligations set forth in the various regulatory agreements, security instrument and other program obligations provide HUD with more than adequate protections, (iii) HUD's ability to declare a default due to a ''restriction'' on a permit or approval could result in unreasonable outcomes. The commenter recommended that these provisions be revised to permit HUD to act in those situations when the risk would prevent the project from being operated for its ''Approved Use'' and would have a material adverse effect on the value of the Mortgaged Property.

HUD Response: HUD acknowledges the commenter's concerns and has revised the document accordingly. The definition of ''Permits and Approvals'' has been limited to those reasonably necessary to operate and/or fund the project for its approved use, and the restrictions on permits and/or approvals triggering HUD's rights have been limited to such restrictions that would have a materially adverse effect on the project.

Comment: The commenter recommended that the document be revised so the operator is not required to have a risk management program that meets the requirements of the section unless HUD requires the operator to do so.

HUD Response: HUD acknowledges the commenter's concern but has determined that a risk management program is vital to managing the risks inherent in operating healthcare facilities. HUD has determined that the requirements for the risk management program are flexible and are not overly burdensome, and HUD will provide additional details as necessary.

Comment: A commenter objected to the provisions in section 14 regarding the segregation of project accounts. The commenter stated that the master tenant will not be operating the facility and will likely have an account into which rents paid under all of the subleases of projects covered by the master lease are deposited.

HUD Response: HUD revised the language to be consistent with the 2012 Final 232 Rule to allow for the use of a general collection account, provided deposits can be readily and reliably traced to each applicable facility.

Comment: Multiple commenters commented on the financial reporting and covenants provisions in section 14. One commenter stated that HUD does not have an interest in the financial reports of the master tenant. Another commenter stated that section 14, paragraph (e), requiring the master tenant to cause the healthcare facility to maintain positive working capital is unworkable for master lease transactions.

HUD Response: HUD maintains its interests in the financial reports of all parties involved in the transaction, but has clarified the reporting provisions to indicate that consolidated reports may be appropriate. Consistent with the 2012 Final 232 Rule, HUD has removed the requirement to maintain positive healthcare facility working capital.

HUD–92340–ORCF: Master Tenant Security Agreement

Comment: A commenter stated that as published, the master tenant security agreement appears to contemplate that it will be a recorded instrument. The

commenter further stated that if the security interests in the master tenant security agreement are adequately perfected through filing of the UCC financing statements, there would be no need to also record the master tenant security agreement.

HUD Response: HUD declined to adopt the commenter's recommendation because this document includes assignments of rents and leases which are typically required to be recorded. The master tenant's assignment of its subleases is the primary collateral it is pledging as security for the obligations set forth in the loan documents. HUD notes, however, the reluctance to record sensitive information and has indicated that Exhibit C, which includes sensitive information, should not be recorded.

Comment: A commenter recommended that separate forms of the security agreement should be developed for use when the operator and/or master tenant does not share an identity of interest with the borrower. The commenter recommended that a non-identity of interest operator and/or master tenant should not be required to grant a security interest in favor of both the lender and the borrower in its assets as security for payment and performance of its obligations under the lease and the obligations of the operator or master tenant under those loan documents to which the operator or master tenant is a party.

HUD Response: HUD has determined at this time to maintain a uniform set of requirements for both identity of interest and non identity of interest transactions.

HUD–91725–INST–ORCF: Instructions for Guide to Opinion of Borrower's and Operator's Counsel

Comment: A commenter stated that separate forms and instructions should be promulgated with respect to both a guide for opinion of operator's counsel and a guide for opinion of master tenant's counsel.

HUD Response: HUD determined that the instructions to the borrower's counsel's opinion were sufficiently encompassing to apply to both the guide to the borrower's counsel's opinion and the guide to the operator's counsel's opinion. HUD determined that a separate set of instructions for the master tenant's counsel's opinion was not necessary at this time.

HUD–91725–ORCF: Guide for Opinion of Borrower's Counsel

Comment: A commenter suggested having a description of the docket searches attached to the opinion as an exhibit.

HUD Response: HUD has determined that because the searches are submitted at a prior stage in processing, a description of the searches need not be attached to the opinion.

Comment: A commenter suggested that HUD add an assumption that formerly was included in the multifamily program's opinion of borrower's counsel, as follows: ''The Mortgagor has title or other interest in each item of (i) real and (ii) tangible and intangible personal property (''Personalty'') comprising the Property in which a security interest is purported to be granted under the Loan Documents.''

HUD Response: HUD declines to adopt this change. As noted by the commenter, it is no longer a provision in the multifamily rental project documents and is not appropriate for inclusion in the healthcare facility documents.

Comment: Several commenters suggested revisions to the list of documents so that documents are listed appropriately for the opinions to which they relate and so that inappropriate documents are not listed.

HUD Response: HUD generally agreed with these comments and appropriate changes are reflected in the redlined documents posted on HUD's Web site at the address set forth in the introduction to this notice. However, HUD also determined that where certain changes were not accepted, consistency with the opinion required for multifamily program was an overriding consideration.

IV. Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in this notice have been submitted to OMB for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, 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 public reporting burden for this new collection of information is estimated to include:

New form number	Form name	Number of respondents	Freq. of resp.	Resp. per annum	Avg. burden per hour per resp.	Annual burden hours	Avg. hourly cost per resp.	Annual cost
Lender Narratives								
HUD–9001–ORCF	Lender Narrative 223a7—Main	30	2.5	75	22.00	1650	$75	$123,750
HUD–9001a–ORCF	Lender Narrative 223a7—Addenda—PCNA	30	2.5	75	1.50	113	75	8,438
HUD–9001b–ORCF	Lender Narrative 223a7.223d.232i—Addendum—ALTA/ACSM Land Title Survey.	30	2.5	75	0.25	19	75	1,406
HUD–9001c–ORCF	Lender Narrative 223a7—Addendum—Environmental.	30	2.5	75	0.25	19	75	1,406
HUD–9001d–ORCF	Lender Narrative 223a7—Addendum—Other Existing Eligible Indebtedness.	30	2.5	75	0.25	19	75	1,406
HUD–9001e–ORCF	Lender Narrative 223a7.223d.232i—Addendum—Principal of Borrower.	30	2.5	75	0.50	38	75	2,813
HUD–9001f–ORCF	Lender Narrative 223a7.223d.232i—Addendum—Operator.	20	2.5	50	0.50	25	75	1,875
HUD–9001g–ORCF	Lender Narrative 223a7.223d.232i—Addendum—Management Agent.	12	2.5	30	0.50	15	75	1,125
HUD–9001h–ORCF	Lender Narrative 223a7.223d.232i—Addendum—Transfer of Physical Assets.	30	2.5	75	0.50	38	75	2,813
HUD–9001i–ORCF	Lender Narrative 223a7.223d.232i—Addendum—AR Financing.	30	2.5	75	0.25	19	75	1,406
HUD–9002–ORCF	Lender Narrative 223f	30	7.5	225	70.00	15750	75	1,181,250
HUD–9003–ORCF	Lender Narrative 241a	4	1	4	73.33	293	75	22,000
HUD–9004–ORCF	Lender Narrative—New Construction—Single Stage.	10	2	20	86.67	1733	75	130,000
HUD–9005–ORCF	Lender Narrative—New Construction—2 Stage Initial Submittal.	10	2	20	63.33	1267	75	95,000

New form number	Form name	Number of respondents	Freq. of resp.	Resp. per annum	Avg. burden per hour per resp.	Annual burden hours	Avg. hourly cost per resp.	Annual cost
HUD–9005a–ORCF	Lender Narrative—New Construction—2 Stage Final Submittal.	10	2	20	53.33	1067	75	80,000
HUD–9006–ORCF	Lender Narrative—Substantial Rehabilitation—Single Stage.	4	1	4	93.33	373	75	28,000
HUD–9007–ORCF	Lender Narrative—Substantial Rehabilitation—2 Stage Initial Submittal.	4	1	4	70.00	280	75	21,000
HUD–9007a–ORCF	Lender Narrative—Substantial Rehabilitation—2 Stage Final Submittal.	4	1	4	70.00	280	75	21,000
HUD–9008–ORCF	Lender Narrative—Blended Rate—Single Stage	4	1	4	70.00	280	62	17,267
HUD–90025–ORCF	Lender Narrative—Blended Rate—2 Stage Initial Submittal.	4	1	4	70.00	280	75	21,000
HUD–90025a–ORCF	Lender Narrative—Blended Rate—2 Stage Final Submittal.	4	1	4	70.00	280	75	21,000
HUD–9009–ORCF	Lender Narrative 232(i)—Fire Safety Equipment Installation, without Existing HUD Insured Mortgage.	5	2	10	0.67	7	62	411
HUD–90010–ORCF	Lender Narrative 232(i)—Fire Safety Equipment Installation, with Existing HUD Insured Mortgage.	5	2	10	0.67	7	62	411
HUD–90011–ORCF	Lender Narrative 223(d)—Operating Loss Loan	1	2	2	0.67	1	62	82
HUD–9444–ORCF	Lender Narrative Cost Certification Supplement	2	2	4	6.67	27	75	2,000
	Production Certifications							
HUD–90012–ORCF	Consolidated Certification—Lender	30	2.5	75	0.58	44	$67	$2,917
HUD–90013–ORCF	Consolidated Certification—Borrower	77	1	77	1.33	103	75	7,700
HUD–90014–ORCF	Consolidated Certification—Principal of the Borrower.	38	2	76	1.33	101	75	7,600
HUD–90015–ORCF	Consolidated Certification—Operator	35	2	70	1.33	93	75	7,000
HUD–90016–ORCF	Consolidated Certification—Parent of Operator	35	2	70	1.33	93	75	7,000
HUD–90017–ORCF	Consolidated Certification—Management Agent	35	2	70	1.33	93	75	7,000
HUD–90018–ORCF	Consolidated Certification—Contractors	4	1	4	1.33	5	75	400
HUD–90019–ORCF	Auditor Certification	3	1	3	0.58	2	67	117
HUD–90022–ORCF	Certification for Electronic Submittal	35	10	350	0.28	99	67	6,611
HUD–9445–ORCF	Certification of Outstanding Obligations	35	10	350	1.25	438	83	36,458
HUD–91118–ORCF	Borrower's Certification—Completion of Critical Repairs.	240	1	240	0.58	140	75	10,500
HUD–92434–ORCF	Lender Certification	35	10	350	0.75	263	75	19,688
HUD–91130–ORCF	Building Code Certification	26	2	52	0.33	17	83	1,444
	Construction Documents							
HUD–91123–ORCF	Design Professional's Certification of Liability Insurance.	26	2	52	0.33	17	$83	$1,444
HUD–91124–ORCF	Design Architect Certification	26	2	52	0.33	17	83	1,444
HUD–91127–ORCF	Financial Statement Certification GC	26	2	52	0.37	19	67	1,271
HUD–92408–ORCF	HUD Amendment to B108	26	2	52	0.28	15	75	1,105
HUD–95379–ORCF	HUD Representative's Trip Report	26	28	728	0.83	607	75	45,500
HUD–91129–ORCF	Lender Certification for New Construction Cost Certifications.	10	5.2	52	3.33	173	75	13,000
HUD–9442–ORCF	Memo for Post-Commitment Early Start of Construction Request.	3	2	6	0.70	4	75	315
HUD–92415–ORCF	Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance (Post-Commitment Early Start of Construction).	3	2	6	0.30	2	83	150
HUD–93305–ORCF	Agreement and Certification	10	5.2	52	0.50	26	75	1,950
HUD–92441–ORCF	Building Loan Agreement	10	5.2	52	1.00	52	75	3,900
HUD–92441a–ORCF	Building Loan Agreement Supplemental	10	5.2	52	1.00	52	75	3,900
HUD–92450–ORCF	Completion Assurance	10	5.2	52	0.50	26	75	1,950
HUD–92442–ORCF	Construction Contract	10	5.2	52	1.00	52	75	3,900
HUD–92554–ORCF	Supplementary Conditions of the Contract for Construction.	10	5.2	52	0.20	10	217	2,253
HUD–92456–ORCF	Escrow Agreement for Incomplete Construction	3	2	6	0.50	3	75	225
HUD–92479–ORCF	Offsite Bond—Dual Obligee	5	3	15	0.50	8	75	563
HUD–92452A–ORCF	Payment Bond	5	5.2	26	0.50	13	75	975
HUD–92452–ORCF	Performance Bond—Dual Obligee	5	5.2	26	0.50	13	217	2,817
HUD–92455–ORCF	Request for Endorsement	10	5.2	52	0.75	39	75	2,925
HUD–92023–ORCF	Request for Final Endorsement	10	5.2	52	1.00	52	75	3,900
HUD–92412–ORCF	Working Capital Escrow	10	5.2	52	0.50	26	75	1,950
HUD–91125–ORCF	Staffing Schedule	30	5.83	175	1.00	175	62	10,792
	Additional ORCF Documents							
HUD–91708–ORCF	Agreement for Payment of Real Property Taxes	1	1	1	0.67	1	$83	$56
HUD–92576A–ORCF	Certificate of Need for Health Facility	3	2	6	0.30	2	83	150
HUD–90024–ORCF	Contact Sheet	35	10	350	0.67	233	67	15,556
HUD–91126–ORCF	Financial Statement Certification	150	7	1050	0.37	385	67	25,667
HUD–91116–ORCF	Addendum to Operating Lease	30	6.5	195	0.50	98	217	21,125
HUD–941–ORCF	Lenders FHA Number Request Form	30	11.7	351	0.37	129	62	7,937
HUD–92264a–ORCF	Maximum Insurable Loan Calculation	30	11.7	351	1.25	439	83	36,562.5

New form number	Form name	Number of respondents	Freq. of resp.	Resp. per annum	Avg. burden per hour per resp.	Annual burden hours	Avg. hourly cost per resp.	Annual cost
HUD–2–ORCF	Request for Waiver of Housing Directive	20	8	160	1.00	160	75	12,000
HUD–91119–ORCF	Schedule of Facilities Owned Operated or Managed.	35	10	350	1.33	467	75	35,000
HUD–91110–ORCF	Subordination, Non-Disturbance and Attornment Agreement of Operating Lease (SNDA).	30	11.7	351	2.33	819	233	191,100
HUD–91111–ORCF	Survey Instructions and Borrower's Certification	180	1.5	270	0.53	144	83	12,000
HUD–91112–ORCF	Request of Overpayment of Firm Application Exam Fee.	15	5.13	76.95	0.50	38	67	2,565
HUD–9839–ORCF	Management Certification—Residential Care Facility.	5	1	5	0.50	3	75	188
HUD–92466–ORCF	Healthcare Regulatory Agreement—Borrower	35	10	350	0.83	292	217	63,194
HUD–92466A–ORCF	Healthcare Regulatory Agreement—Operator	10	2	20	0.83	17	217	3,611
HUD–94000–ORCF	Security Instrument/Mortgage/Deed of Trust	35	10	350	1.00	350	217	75,833
HUD–92070–ORCF	Lease Addendum	2	1	2	0.50	1	217	217
HUD–94001–ORCF	Healthcare Facility Note	35	10	350	1.00	350	75	26,250
HUD–91710–ORCF	Residual Receipts Note—Non Profit Mortgagor	5	2	10	0.50	5	75	375
HUD–92420–ORCF	Subordination Agreement—Financing	7	2	14	0.50	7	217	1,517
HUD–92223–ORCF	Surplus Cash Note	7	2	14	0.50	7	75	525
HUD–2205A–ORCF	Borrower's Certificate of Actual Cost	30	7.5	225	3.5	788	75	59,100
HUD–92323–ORCF	Operator Security Agreement	30	6.5	195	2.00	390	200	78,000
Escrow Documents								
HUD–91128–ORCF	Initial Operating Deficit Escrow Calculation Template.	11	5	55	1.25	69	$83	$5,729
HUD–92414–ORCF	Latent Defects Escrow	20	12	240	0.50	120	75	9,000
HUD–9443–ORCF	Minor Moveable Escrow	26	2	52	0.92	48	83	3,972
HUD–92476–ORCF	Escrow Agreement Noncritical Deferred Repairs	20	12	240	0.50	120	75	9,000
HUD–92476B–ORCF	Escrow Agreement for Operating Deficits	12	4.8	57.6	0.50	29	75	2,160
HUD–92464–ORCF	Request Approval Advance of Escrow Funds	35	15	525	1.00	525	75	39,375
Asset Management Documents								
HUD–92266–ORCF	Application for Transfer of Physical Assets (TPA).	25	2	50	1.17	58	$83	$4,861
HUD–93332–ORCF	Certification of Exigent Health & Safety (EH&S) Issues.	456	1	456	0.75	342	75	25,650
HUD–93333–ORCF	Certification Physical Condition in Compliance	208	1	208	0.50	104	83	8,667
HUD–93486–ORCF	Computation of Surplus Cash	70	1	10	0.25	18	62	1,085
HUD–9250–ORCF	Funds Authorizations	500	5.6	2800	1.00	2800	75	210,000
HUD–9250A–ORCF	Mortgagor Certification and Request Detail	15	2	30	1.00	30	75	2,250
HUD–92228–ORCF	Model Form Bill of Sale and Assignment	20	2	40	0.67	27	83	2,222
HUD–92117–ORCF	Borrower's Certification—Completion of Non-Critical Repairs.	250	2	500	0.58	292	75	21,875
HUD–92417–ORCF	Personal Financial and Credit Statement	175	6	1050	3.50	3675	83	306,250
HUD–93479–ORCF	Monthly Report for Establishing Net Income	60	2	120	1.17	140	75	10,500
HUD–93479A–ORCF	Schedule of Disbursements	60	12	720	1.00	720	75	54,000
HUD–93479B–ORCF	Schedule of Accounts Payable	60	12	720	1.00	720	75	54,000
Accounts Receivable Documents								
HUD–90020–ORCF	A/R Financing Certification	50	3	150	0.67	100	$217	$21,667
HUD–92322–ORCF	Intercreditor Agreement (for AR Financed Projects).	30	5	150	2.00	300	200	60,000
Master Lease Documents								
HUD–92211–ORCF	Master Lease Addendum	5	5	25	1.00	25	$217	$5,417
HUD–92331–ORCF	Cross-Default Guaranty of Subtenants	30	5.83	175	1.00	175	217	37,895
HUD–92333–ORCF	Master Lease SNDA	30	5.83	175	1.00	175	217	37,895
HUD–92335–ORCF	Guide for Opinion of Master Tenant's Counsel	30	5.83	175	1.00	175	217	37,895
HUD–92337–ORCF	Healthcare Regulatory Agreement—master tenant.	30	5.83	175	2.00	350	217	75,790
HUD–92339–ORCF	Master Lease Estoppel Agreement	30	5.83	175	0.50	87	217	18,948
HUD–92340–ORCF	Master Tenant Security Agreement	30	5.83	175	1.00	175	217	37,895
Additional Legal Documents								
HUD–91117–ORCF	Operator Estoppel Certificate	100	2	200	0.75	150	$275	$41,250
HUD–91725–INST–ORCF	Instructions to Guide for Opinion of Borrower's and Operator's Counsel.	35	10	350	2.00	700	217	151,667
HUD–91725–CERT–ORCF	Exhibit A to Opinion of Borrower's Counsel—Certification.	35	10	350	2.00	700	217	151,667
HUD–91725–ORCF	Guide for Opinion of Borrower's Counsel	35	10	350	2.00	700	217	151,667
HUD–92325–ORCF	Guide for Opinion of Operator's Counsel and Certification.	30	6.5	195	3.00	585	200	117,000
Totals		4,568	539	20,263	8	46,131	105	4,393,301

The hourly rate is an estimate based on average annual salaries for lenders and attorneys.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by *December 21, 2012.* Comments must refer to the proposal by name and docket number (FR–5354–N–02) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, and

Paperwork Reduction Act Program Manager, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4178, Washington, DC 20410.

Dated: November 15, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–28308 Filed 11–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2012–N249; FXES11130200000–134–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before December 21, 2012.

ADDRESSES: Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM at (505) 248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6651.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits. A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–85077A

Applicant: ZARA Environmental, Inc., Manchaca, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species within Texas:

- Barton Springs salamander (*Eurycea sosorum*)
- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-capped vireo (*Vireo atricapilla*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Comal Springs dryopid beetle (*Stygoparnus comalensis*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (*Rhadine exilis)*
- Ground beetle *(Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Peck's Cave amphipod (*Stygobromus pecki*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- San Marcos salamander (*Eurycea nana*)
- Texas blind salamander (*Typhlomolge rathbuni*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta (=Leptoneta) myopica*)

Permit TE–103076

Applicant: Transcon Environmental, Mesa, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*) within California, Colorado, Nevada, New Mexico, and Texas.

Permit TE–798998

Applicant: Horizon Environmental Services, Inc., Austin, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to allow handling and relocating of interior least tern (*Sternula antillarum athalassos*) chicks during constructions projects for Texas Department of Transportation projects within Red River County, Texas and McCurtain County, Oklahoma.

Permit TE–815409

Applicant: New Mexico Department of Game and Fish, Santa Fe, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys, camera surveys, scat collection, and genetic analysis for jaguar (*Pathera onca*) within New Mexico.

Permit TE–88512A

Applicant: New Mexico Department of Transportation—Environmental Bureau, Santa Fe, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit TE–205904

Applicant: Heritage Environmental Consultants, Denver, Colorado.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of black-footed ferret (*Mustela nigripes*) within Arizona, New Mexico, Colorado, Utah, Wyoming, Kansans and Nebraska; Preble's meadow jumping mouse (*Zapus hudonius preblei*) within Colorado; and southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico and Arizona.

Permit TE–88519A

Applicant: U.S. Forest Service Lincoln National Forest, Alamogordo, New Mexico.

Applicant requests a new permit for Sacramento prickly-poppy (*Aregemone pinnatisecta*) to collect, store, and transport seeds, plant materials, and whole plants; establish a seed production garden; establish educational displays; establish a seed production plot in cooperation with Los Lunas Plant Materials Center; grow individuals for transport to the Los Lunas Plant Materials Center; and transplant cultivated plants and seed within potential range on Forest Service lands within New Mexico.

Permit TE–205717

Applicant: Valerie Collins, San Antonio, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Texas:

- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-capped vireo (*Vireo atricapilla*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (*Rhadine exilis)*
- Ground beetle *(Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Houston toad (*Bufo houstonensis*)
- Interior least tern (*Sterna antillarum*)
- Jaguarundi (*Herpailurus yagouaroundi*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla's Cave meshweaver (*Cicurina madla*)
- Northern aplomado falcon (*Falco femoralis*)
- Ocelot (*Leopardus pardalis*)
- Piping plover (*Charadrius melodus*)
- Red-cockaded woodpecker (*Picoides borealis*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Texas trailing phlox (*Phlox nivalis* ssp. *texensis*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta (=Leptoneta) myopica*)

Permit TE–89061A

Applicant: Arizona State University of Life Sciences, Tempe, Arizona.

Applicant requests a new permit for research and recovery purposes for Kearney's blue state (*Amsonia kearneyana*) to conduct presence/absence surveys, conduct microclimate analysis, and to germinate in the wild with seed donated by Desert Botanical Garden (Phoenix, Arizona) within Brown Canyon, Pima County, Arizona.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: November 15, 2012.

Michelle Shaughnessy,

Regional Director, Southwest Region.

[FR Doc. 2012–28287 Filed 11–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N270; FXES11130300000F3–134–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite

public comment before issuing these permits.

DATES: We must receive any written comments on or before December 21, 2012.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES.**

Permit Applications

Permit Application Number: TE38856A

Applicant: Skelly & Loy, Inc., Harrisburg, PA.

The applicant requests a permit renewal to take (capture and release) the Indiana bats (*Myotis sodalis*), gray bat (*Myotis grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) throughout the ranges of the species. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE89557A

Applicant: URS Corporation, Cleveland, OH.

The applicant requests a permit to take (capture and release) the following endangered mussel species: Clubshell (*Pleurobema clava*), sheepnose (*Plethobasus cyphyus*), spectaclecase (*Cumberlandia monodonta*), fanshell (*Cyprogenia stegaria*), snuffbox (*Epioblasma triquetra*), Higgins' eye pearlymussel (*Lampsilis higginsii*), fat pocketbook (*Potamilus capax*), pink mucket pearlymussel (*Lampsilis abrupta*), and rayed bean (*Villosa fabalis*). Proposed activities would occur throughout the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin and include presence/absence surveys to enhance the recovery and survival of the species in the wild.

Permit Application Number: TE89559A

Applicant: URS Corporation, Cleveland, OH.

The applicant requests a permit to take (capture and release) the Indiana bat throughout Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities are for the documentation of presence/probable absence of the species and documentation of habitat use to enhance the recovery and survival of the species in the wild.

Permit Application Number: TE105320

Applicant: Tragus Environmental Consulting, Inc., Akron, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats throughout the ranges of the species. Proposed activities are for the enhancement of recovery and survival of the species in the wild.

Permit Application Number: TE206781

Applicant: Ecological Specialists, Inc., O'Fallon, MO.

The applicant requests a permit renewal, with amendment, to take (capture and release; capture and relocate) endangered mussels throughout the States of Arkansas, Iowa, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Oklahoma, Ohio, South Dakota, Tennessee, Virginia, Wisconsin, and West Virginia. The following mussel species are included: Clubshell, dwarf wedgemussel (*Alasmidonta heterodon*), fanshell, fat pocketbook, Higgins' eye pearlymussel, northern riffleshell (*Epioblasma torulosa rangiana*), orange-foot pimpleback (*Plethobasus cooperianus*), Ouachita rock pocketbook (*Arkansia wheeleri*), pink mucket pearlymussel, rayed bean, ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), scaleshell (*Leptodea leptodon*), winged mapleleaf (*Quadrula fragosa*), spectaclecase, spectacled pocketbook (*Lampsilis streckeri*), sheepnose, and snuffbox. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE07730A

Applicant: Redwing Ecological Services, Inc.

The applicant requests a permit renewal, with amendment, to take (capture and release) the following listed species throughout their ranges, within the States of Kentucky, Illinois, Indiana, Iowa, Minnesota, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin: Palezone shiner (*Notropis albizonatus*), blackside dace (*Phoxinus cumberlandensis*), relict darter (*Etheostoma chienense*), tuxedo darter (*Etheostoma lemniscatum*), cumberland darter (*Etheostoma susanae*), scioto madtom (*Noturus trautmani*), pallid sturgeon (*Scaphirrhynchus albus*), cumberland elktoe (*Alasmidonta atropurpurea*), fanshell, dromedary pearlymussel (*Dromus dromas*), cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*Epioblasma capsaeformis*), tan riffleshell (*Epioblasma florentina walkeri*), catspaw (*Epioblasma obliquata obliquata*), White catspaw (*Epioblasma obliquata perobliqua*), northern riffleshell, tubercled blossom (*Epioblasma torulosa torulosa*), cracking pearlymussel (*Hemistena lata*), pink mucket, Higgins' eye pearlymussel, scaleshell, ring pink, littlewing pearlymussel (*Pegias fabula*), white wartyback (*Plethobasus cicatricosus*), orangefoot pimpleback, clubshell, rough pigtoe, fat pocketbook, winged mapleleaf, cumberland bean (*Villosa trabalis*), spectaclecase, snuffbox, sheepnose, and rayed bean. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE89558A

Applicant: Shannon E. Romeling, Valdez, NM.

The applicant requests a permit to take (capture and release) the Indiana bat, gray bat, Virginia big-eared bat, and Ozark big-eared bat (*Corynorhinus townsendii ingens*) throughout the ranges of the species. Proposed activities are for the documentation of presence/probable absence of the species and documentation of habitat use to enhance the recovery and survival of the species in the wild.

Permit Application Number: TE06809A

Applicant: U.S. Forest Service, Northern Research Station (Dr. Sybill Amelon, P.I.), Columbia, MO.

The applicant requests a permit amendment to take (collect) gray bats in Missouri for scientific purposes in the interest of recovery of the species through study of white-nose syndrome in the species.

Permit Application Number: TE38785A

Applicant: Merrill B. Tawse, Mansfield, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats throughout the range of the species. Proposed activities are for the

documentation of presence/probable absence of the species and documentation of habitat use to enhance the recovery and survival of the species in the wild.

Permit Application Number: TE31310A

Applicant: Minnesota Pollution Control Agency, St. Paul, MN.

The applicant requests a permit renewal to take (capture and release) the Topeka shiner (*Notropis topeka*) within the State of Minnesota. Proposed activities are for the purpose of population monitoring to enhance the recovery and survival of the species in the wild.

Permit Application Number: TE206783

Applicant: Marlo M. Perdicas, Marshallville, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats throughout the ranges of the species. Proposed activities are for the documentation of presence/probable absence of the species and documentation of habitat use to enhance the recovery and survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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: November 8, 2012.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2012–28300 Filed 11–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2012–N268; FXFR13350700640–134–FF07J00000]

North Slope Federal Subsistence Regional Advisory Council Meeting

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting (teleconference).

SUMMARY: This notice informs the public that the North Slope Federal Subsistence Regional Advisory Council (Council) will hold a public meeting by teleconference on December 7, 2013. The public is invited to participate and to provide oral testimony. The purpose of the Council is to provide recommendations and information to the Federal Subsistence Board, to review policies and management plans, and to provide a public forum for subsistence issues.

DATES: The teleconference will take place on December 7, 2013, at 9 a.m. For how to participate, please see **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, by U.S. mail c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503; by telephone at (907) 786–3888; or via email at *subsistence@fws.gov.* For questions specific to National Forest System lands, please contact Steve Kessler, Subsistence Program Leader, by U.S. mail at USDA, Forest Service, 3301 C Street, Suite 202, Anchorage, AK 99503; by telephone at (907) 743–9461; or via email at *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the North Slope Federal Subsistence Regional Advisory Council will meet to review the draft Memorandum of Understanding between the Federal Subsistence Board and State of Alaska and to form other recommendations on fish and wildlife issues. This meeting is a follow-up to the Council's August 14, 2012, meeting, which made recommendations on changes to the regulations for the subsistence taking of fish to the Federal Subsistence Board and to address subsistence issues concerning the region. To participate, call toll free 1–866–560–5984. When prompted, enter the following passcode: 12960066.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: November 15, 2012.

Peter J. Probasco,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: November 15, 2012.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2012–28297 Filed 11–20–12; 8:45 am]

BILLING CODE 4310–55–P 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2012–N267; FXFR13350700640–134–FF07J00000]

Bristol Bay Federal Subsistence Regional Advisory Council Meeting

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting (teleconference).

SUMMARY: This notice informs the public that the Bristol Bay Federal Subsistence Regional Advisory Council (Council) will hold a public meeting by teleconference on December 3, 2012. The public is invited to participate and to provide oral testimony. The purpose of the Council is to provide recommendations and information to the Federal Subsistence Board, to review policies and management plans, and to provide a public forum for subsistence issues.

DATES: The teleconference will take place on December 3, 2012, at 9 a.m. For how to participate, please see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, by U.S. mail c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503; by telephone at (907) 786–3888; or via email at *subsistence@fws.gov.* For questions specific to National Forest System lands, please contact Steve Kessler, Subsistence Program Leader, by U.S. mail at USDA, Forest Service, 3301 C Street, Suite 202, Anchorage, AK 99503; by telephone at (907) 743–9461; or via email at *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Bristol Bay Federal Subsistence Regional Advisory Council will meet to discuss appointments to the Aniakchak National Monument Subsistence Resource Commission. This meeting is a follow-up to the Council's October 24–25, 2012, meeting which made recommendations on changes to the regulations for the subsistence taking of fish to the Federal Subsistence Board and to address subsistence issues concerning the region. To participate, call toll free 1–866–916–7020. When prompted, enter the following passcode: 37311548.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: November 1, 2012.

Peter J. Probasco,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: November 1, 2012.

Calvin Casipit,

Acting Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2012–28296 Filed 11–20–12; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000–L14100000–BJ0000]

Notice of Filing of Plat of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Notice of Filing of Plat of Survey; Alaska.

Survey Desriptions: The plat representing the survey of U.S. Survey No. 14200, Alaska, located on Baranof Island, situated within unsurveyed T. 60 S., R. 65 E., Copper River Meridian, Alaska.

DATES: The plat of survey described above is scheduled to be officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, December 21, 2012.

ADDRESSES: Bureau of Land Management, Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Michael H. Schoder, Chief Cadastral Surveyor, Division of Cadastral Survey, BLM-Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599; Tel: 907–271–5481; fax: 907–271–4549; email: *mschoder@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, seven 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 survey plat will be available for inspection in the Public Information Center, Alaska State Office, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska 99513–7599; telephone (907) 271–5960. Copies may be obtained from this office for a minimum recovery fee.

If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against this survey must file a written response with the Alaska State Director, Bureau of Land Management, stating that they wish to protest.

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.

A statement of reasons for a protest may be filed with the notice of protest to the State Director; the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

Authority: 43 U.S.C. 3; 53.

Dated: November 15, 2012.

Joseph P. Burns,

Chief Cadastral Surveyor, Alaska (Acting).

[FR Doc. 2012–28288 Filed 11–20–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On November 13, 2012, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Columbia in the lawsuit entitled *United States* v. *NST, Inc. and Yuan Cheng International Group, Inc.,* Civil Action No. CV–12–1836.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for the importation and sale of highway motorcycles, recreational vehicles, and engines in violation of certification and labeling requirements of the Clean Air Act and its regulations. The complaint also alleges violations of the Clean Air Act's information collection requirements. The consent decree requires defendants and two executives of the companies to pay a civil penalty of $50,000 (which amount was based on an assessment of ability to pay) and, for a period of ten years, not to import vehicles and engines unless they have first entered into a compliance plan with the Environmental Protection Agency.

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 *United States* v. *NST, Inc. and Yuan Cheng International Group, Inc.,* D.J. Ref. No. 90–5–2–1–10317. 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 e-mail ..	*pubcomment-ees.enrd@usdoj.gov.*
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 $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Karen S. Dworkin,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–28232 Filed 11–20–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0076]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Relief of Disabilities

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 22, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Essam Rabadi, Chief, Firearms Operations Division, 99 New York Avenue NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Relief of Disabilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection: Any person prohibited from shipping or transporting any explosive in or affecting interstate or foreign commerce or from receiving or possessing any explosive which has been shipped or transported in or affecting interstate or foreign commerce may make application for relief from disabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 1 minute to support documentation for relief.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual total burden associated with this collection is 1 hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 15, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28225 Filed 11–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0094]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Certification of Qualifying State Relief From Disabilities Program

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 22, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Taylor, Firearms Industry Programs Branch at *fipb-informationcollection@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Qualifying State Relief from Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3210.12. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local or Tribal Government. Other: None.

Need for Collection: The form is used by a State to certify to the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) that it has established a qualifying mental health relief from firearms disabilities program that satisfies certain minimum criteria under Section 105 of the National Instant Check System Improvement Act. Changes to the form include changing the form submission address and requesting the citation for the relief program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will complete a 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 13 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 15, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–28226 Filed 11–20–12; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Follow-Up Survey Information for Green Jobs and Health Care Impact Evaluation, American Recovery Reinvestment Act Grants

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''Follow-Up Survey Information for Green Jobs and Health Care Impact Evaluation, American Recovery Reinvestment Act Grants,'' 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 December 21, 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: 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: In July, 2011, the OMB approved a baseline data collection ICR for the American Recovery Reinvestment Act (ARRA) Green Jobs and Health Care Grants Impact Evaluation (OMB 1205–0486), and in March, 2012, the OMB approved a subsequent ICR for a process study including site visits and focus groups (OMB 1205–0487). This new ICR is limited to follow-up interviews planned for all study participants 18 months and 36 months after the baseline collection. The overall aim of this evaluation is to determine the extent to which enrollees achieve increases in employment, earnings, and career advancement because of their participation in the training provided by Pathways Out of Poverty and Healthcare Sector and other High Growth and Emerging Industry grantees and to identify promising best practices and strategies for replication.

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. For additional information, see the related notice published in the **Federal Register** on April 12, 2012 (77 FR 22001).

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 ICR Reference Number 201209–1205–004. 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: Follow-Up Survey Information for Green Jobs and Health

Care Impact Evaluation, American Recovery Reinvestment Act Grants.

OMB ICR Reference Number: 201209–1205–004.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 4,024.

Total Estimated Number of Responses: 4,024.

Total Estimated Annual Burden Hours: 2,213.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 6, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–28254 Filed 11–20–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Occupational Code Assignment, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the 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 [44 U.S.C. 3506(c)(2)(A)]. This program helps 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 requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about the Occupational Code Assignment Form (ETA 741), which expires on March 31, 2013. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: *http://www.onetcenter.org/ombclearance.html*.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 22, 2013.

ADDRESSES: Submit written comments to Lauren Fairley-Wright, Office of Workforce Investment, Employment and Training Administration, Mail Stop C–4526, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3731. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3015. Email: *wright.lauren@dol.gov*. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Code Assignment form (ETA 741) was developed as a public service to the users of the Occupational Information Network (O*NET), in an effort to help them in obtaining occupational codes and titles for jobs that they are unable to locate in O*NET. The O*NET system classifies nearly all jobs in the United States economy. However, new specialties are constantly evolving and emerging. The use of the OCA is voluntary and is provided (1) as a uniform format to the public and private sector to submit information in order to receive assistance in identifying an occupational code, (2) to provide input to a database of alternative (lay) titles to facilitate searches for occupational information in the O*NET Web sites including O*NET OnLine (*http://online.onetcenter.org*), My Next Move (*www.MyNextMove.gov*) and My Next Move for Veterans (*www.MyNextMove.org/vets*) O*NET Code Connector (*www.onetcodeconnector.org*), as well as America's Career InfoNet (*www.acinet.org*), and (3) to assist the O*NET system in identifying potential occupations that may need to be included in future O*NET data collection efforts.

The OCA process is designed to help the occupational information user relate an occupational specialty or a job title to an occupational code and title within the framework of the Standard Occupational Classification (SOC) based O*NET system. The O*NET–SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. In addition, O*NET occupation have associated data on the importance and level of a range of occupational characteristics and requirements, including Knowledge, Skills, Abilities, Tasks and Work Activities. Since the O*NET–SOC system is based on the 2010 SOC system, identifying an O*NET–SOC code and title also facilitates linkage to national, state, and local occupational employment and wage estimates.

II. Review Focus

The Department is particularly interested in comments which:

- 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 submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Title: Occupational Code Assignment.

OMB Number: 1205–0137.

Affected Public: Federal government, state and local government, business or other for-profit/non-profit institutions, and individuals.

Form(s): ETA–741.

Total Annual Respondents: 14.

Annual Frequency: On occasion.

SUMMARY OF ANNUAL BURDEN FOR THE OCCUPATIONAL CODE ASSIGNMENT

Form	Requests per year [1]	Hours/ request [2]	Hours burden used	Salary expenditure used [3] (hours × hourly income)
OCA—Part A	14	.5	7.0	$333.62

[1] Estimate based on average for January 2010 through September 2012.
[2] Estimates on OCA form—Part A = 30 minutes.
[3] Salary based on America's Career InfoNet data for Human Resource Manager, median income = $47.66/hour.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Average Time per Response: 30 minutes for the OCA Part A; 40 minutes for the OCA Part A and OCA Request for Additional Information combined.

Estimated Total Burden Hours: 7.0

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Signed in Washington, DC, this 1st day of November 2012.

Jane Oates,

Assistant Secretary for Employment and Training, U.S. Department of Labor.

[FR Doc. 2012–28227 Filed 11–20–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–100]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed revisions to an existing Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the National Aeronautics and Space Administration is issuing public notice of its intention to revise a previously noticed system of records Earth Observing System Data and Information System (EOSDIS) User Information/GSFC 51EUI. This notice publishes updates of this system of records as set forth below under the caption **SUPPLEMENTARY INFORMATION.**

DATES: Submit comments on or before 60 calendar days from the date of this publication.

ADDRESSES: Patti Stockman, NASA Privacy Act Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Washington, DC 20546–0001, 202–358–4787, *NASA–PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti Stockman, 202–358–4787, *NASA–PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: Revisions of this system of records include addition of locations and associated subsystem managers; and update of Routine Uses to include a new Routine Use.''

SYSTEM NUMBER:

GSFC 51EUID.

SYSTEM NAME:

Earth Observing System Data and Information System (EOSDIS) User Information.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Twelve DAACs locations, Clearing House (middleware system), Earth Science Data and Information System (ESDIS) Metrics System (system that gathers various metrics for EOSDIS) and the Land Atmosphere Near Real-time Capability for EOS (LANCE) as listed below:

1. Goddard Earth Sciences (GES) Data and Information Services Center (DISC) DAAC at Location 4 as set forth in Appendix A.

2. Level-1 Atmosphere Archive and Distribution System (LAADS) at Location 4 as set forth in Appendix A.

3. Ocean Biology Processing Group (OBPG) at Location 4 as set forth in Appendix A.

4. Crustal Dynamics Data and Information System (CDDIS) at Location 4 as set forth in Appendix A.

5. Atmospheric Science Data Center (ASDC) DAAC at Location 7 as set forth in Appendix A.

6. Global Hydrology Resource Center (GHRC) DAAC at Location 9 as set forth in Appendix A.

7. Physical Oceanography Distributed Active Archive Center (PO.DAAC) at Location 10 as set forth in Appendix A.

8. Alaska Satellite Facility SAR Data Center DAAC, University of Alaska, Fairbanks, AK 99775–7320.

9. Land Processes Distributed Active Archive Center (LP DAAC), Earth Resources Observation and Science (EROS), 47914 252nd Street, Sioux Falls, SD 57918–0001.

10. National Snow and Ice Data Center DAAC, University of Colorado, Boulder, CO 80309.

11. Oak Ridge National Laboratory DAAC, Oak Ridge, TN 37381–6407.

12. Socioeconomic Data and Applications Center, Center for International Earth Science Information Network (CIESIN) at Columbia University, Palisades, NY 10964.

13. EOS Clearing House (ECHO) at Location 4 as set forth in Appendix A.

14. ESDIS Metrics System (EMS) at Location 4 as set forth in Appendix A.

15. Land Atmosphere Near Real-time Capability for EOS (LANCE) at Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from the NASA, university, and research communities, as well as the general public, who request satellite data or other data products from any of the EOSDIS DAACs indicated above, or individuals who register to save their data search parameters for reuse in the future.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of information obtained from individual users that enables those users to receive notices of improved or altered data and services, as well as actual science data from EOSDIS, most often via on-line mechanisms. Records include an individual's name and business contact information consisting of mailing addresses, telephone numbers and email addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

51 U.S.C. 20113(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for

which the Agency collected the information. The records and information in these records may be disclosed:

(1) To government contractors conducting OMB-approved annual user satisfaction surveys collecting user feedback for aggregating reports to OMB and enabling NASA to improve its systems, processes, and services to the user community;

(2) To the European Space Agency (ESA) through public posting on a NASA Web site of ESA scientific data users' professional information such as their name, address, and organizational affiliation to achieve ESA member nation awareness of the breadth of their scientific data use (this applies to ESA scientific data hosted by NASA); and

(3) In accordance with NASA standard routine uses set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records at all the entities named in section titled System Location are stored in electronic form.

RETRIEVABILITY:

User account records are typically indexed and retrieved by user's name.

SAFEGUARDS:

The records are in commercial data base management systems that are password-protected for access by only key authorized employees with appropriately configured system roles. Approved security plans for each of the 15 entities listed in the section titled System Location have been established in accordance with OMB Circular A–130, Management of Federal Information Resources. The aggregation of these plans constitutes the security plan for EOSDIS. Individuals will have access to the system only in accordance with approved authentication methods. With the exception of the records of ESA scientific data users' information posted in accordance with Routine Use (3) above, all specific user information kept in our systems is managed according to NASA guidelines for managing sensitive information. Paper and electronic copies are kept offline in locked cabinets. This information is updated on a yearly basis, and superseded records deleted.

RETENTION AND DISPOSAL:

The EOSDIS Project has a plan under configuration control according to which the original data are deleted in accordance with NASA Records Retention Schedule 2, Item 15A.3. Only aggregated statistics on those original records are kept. The DAACs reauthorize specific users' information on an approved basis and user information is deleted when no longer needed in accordance with NASA Records Retention Schedule 2, Item 19A. Mailing lists containing user information are maintained in order to permit distribution of newsletters to users and are disposed of according to the NASA Records Retention Schedule 1, Item 88.

SYSTEM MANAGERS AND ADDRESSES:

System Manager: 423/Science Operations Office Manager, ESDIS Project, Location 4 as set forth in Appendix A.

Subsystem Managers: DAAC Managers at each of the locations 1–12 whose addresses are listed under item System Location above; and 423/ECHO Manager, 423/EMS Manager, and 423/LANCE Manager, all at Location 4 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals inquiring about their records should contact the System Manager at the address given above and provide their name and email address. The System Manager can be reached by phone at (301) 614–5048.

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the address provided or by phone at (301) 614–5048.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records and procedures for contesting the contents, and for appealing initial determinations are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

The information is received electronically or via telephone directly from users needing to obtain or access NASA's Earth science data products.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Deborah Diaz,

Deputy Chief Information Officer.

[FR Doc. 2012–28342 Filed 11–20–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION (NSF)

National Science Board

Sunshine Act Meeting Notice

This meeting, previously noticed on November 16, 2012, has been Cancelled.

The National Science Board's *ad hoc* Committee on Honorary Awards, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Tuesday, November 20, 2012, at 1:30 p.m. EST.

SUBJECT MATTER: Discussion of candidates for the 2013 Vannevar Bush Award and 2013 National Science Board Public Service Award.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Ann Ferrante, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2012–28439 Filed 11–19–12; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Conference on Geographic Information Systems (GIS) in Transportation Safety

The National Transportation Safety Board will hold a public conference on the use of the Geographic Information Systems (GIS) in transportation safety on December 4–5, 2012. GIS is a rapidly expanding group of technologies and analytical techniques that uses geographically referenced data to support complex data integration, advanced statistical analysis, precise investigation, and effective visualization of data. The meeting will bring researchers and practitioners in transportation safety and GIS together to discuss how GIS data, technologies, and techniques are applied to improve

transportation safety. They will identify emerging themes, current challenges, and potential solutions in using GIS in transportation safety. The meeting will include eight panels, with experts from government agencies, research institutes, non-profit organizations, and industry covering all modes of transportation. A preliminary program agenda, list of participants and how to register for the event can be found at the following Web site: *http://www.ntsb.gov/news/events/2012/GIS/index.html.*

The registration is free, however, due to the capacity of the venue, registration is required. Please register with the NTSB's Training Center. In the event that you need to cancel your registration, please email *studentservices@ntsb.gov.*

The Conference will be held Tuesday, December 4, 2012 from 9:00 a.m. to 5:00 p.m. and Wednesday, December 5, 2012 from 9:00 a.m. to 4:30 p.m. in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza, SW. Washington DC.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Friday, November 30, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov.*

For More Information Contact: Ivan Cheung at (202) 314–6570 or by email at *ivan.cheung@ntsb.gov.*

For Media Information Contact: Eric Weiss at (202) 314–6143 or by email at *eric.weiss@ntsb.gov.*

Dated: Friday, November 16, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–28320 Filed 11–20–12; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 6–8, 2012, 11545 Rockville Pike, Rockville, Maryland.

Thursday, December 6, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–9:15 a.m.: Discussion of Topics for Meeting with the Commission (Open)—The Committee will discuss the following topics for its meeting with the Commission: (1) Overview, (2) Revision of 10 CFR Part 20 for Conformance with International Commission on Radiological Protection Recommendations (SECY–12–0064), (3) Venting Systems for Boiling Water Reactors (BWRs) with Mark I and Mark II Containment Designs, and (4) Economic Consequences within the NRC Regulatory Framework (SECY–12–0110).

9:30 a.m.–11:30 a.m.: Meeting with the Commission (Open)—The Committee will discuss topics of mutual interest with the NRC Commission.

12:45 p.m.–12:50 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

12:50 p.m.–2:15 p.m.: Design Specific Review Standard (DSRS) for Instrumentation and Control (I&C) of the Babcock & Wilcox (B&W) mPower Reactor Design (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the development of a DSRS in support of the staff's review of the I&C portion of the proposed mPower reactor design being developed by B&W.

2:30 p.m.–3:30 p.m.: Spent Fuel Transportation Risk Assessment (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a revised assessment of the risk associated with transportation of spent fuel.

3:45 p.m.–4:45 p.m.: Draft Final Regulatory Guide (RG) 4.22, ''Decommissioning Planning During Operations'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a draft final RG 4.22, ''Decommissioning Planning During Operations.''

4:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, December 7, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Guidance on Treatment of Probabilistic Risk Assessment (PRA) Uncertainties (Open)—The Committee will hear presentations by and hold discussions with representatives of the industry and the NRC staff regarding the development of guidance on the treatment of uncertainties associated with the use of PRAs in risk-informed applications.

9:45 a.m.–11:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

11:15 a.m.–11:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

11:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting.

Saturday, December 8, 2012 Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days

before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. 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 Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: November 15, 2012.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2012–28307 Filed 11–20–12; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Notice; December 6, 2012 Board of Directors Meeting

TIME AND DATE: Thursday, December 6, 2012, 10 a.m. (OPEN Portion) 10:15 a.m. (CLOSED Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.)

Matters To Be Considered

1. President's Report

2. Minutes of the Open Session of the September 13, 2012 Board of Directors Meeting

Further Matters To Be Considered (Closed to the Public 10:15 a.m.)

1. Finance Project—Nigeria

2. Finance Project –Africa

3. Finance Project—Russia

4. Minutes of the Closed Session of the September 13, 2012 Board of Directors Meeting

5. Reports

6. Pending Major Projects

Written summaries of the projects to be presented have be posted on OPIC's web site.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: November 19, 2012.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2012–28416 Filed 11–19–12; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68239; File No. SR–NYSEARCA–2012–125]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(x) To Clarify That When There Is an Early Scheduled Close, the 3:45 p.m. ET Time Specified in the Rule Is Adjusted to 15 Minutes Before the Early Scheduled Close

November 15, 2012

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 6, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(x) to clarify that when there is an early scheduled close, the 3:45 p.m. ET time specified in the rule is adjusted to 15 minutes before the early scheduled close. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(x) to clarify that when there is an early scheduled close, the 3:45 p.m. ET time specified in the rule is adjusted to 15 minutes before the early scheduled close.

NYSE Arca Equities Rule 7.31(x) defines the Exchange's Primary Only Order (''PO Order''), which is a market or limit order to be routed to the primary market. The rule currently provides that PO Orders routed to the New York Stock Exchange LLC (''NYSE'') or NYSE MKT LLC (''NYSE MKT'') that are designated as Market on Close (''MOC'') or Limit on Close (''LOC'') may not be electronically cancelled or reduced in size after 3:45 p.m. ET and that any electronic submissions after 3:45 p.m. ET will be automatically rejected.

The 3:45 p.m. ET time specified in NYSE Arca Equities Rule 7.31(x) is based on NYSE Rule 123C and NYSE MKT Rule 123C—Equities requirements governing the entry and cancellation of MOC and LOC Orders after 3:45 p.m. ET. In the case of an early scheduled close, NYSE and NYSE MKT use a time based on 15 minutes before the early scheduled close instead of the 3:45 p.m. time specified in the rule.[4]

The Exchange proposes to clarify NYSE Arca Equities Rule 7.31(x) to similarly provide that in the case of an early scheduled close, the 3:45 p.m. ET time would instead be 15 minutes before the early scheduled close. In addition, because the rules of NYSE MKT regarding the designation ''DNS'' are the same as the rules of the NYSE, the Exchange proposes to further clarify the rule to add references to NYSE MKT in addition to the existing references to NYSE when discussing routing PO Orders to the NYSE.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. In particular, the Exchange believes that the proposed rule change to clarify that the 3:45 p.m. ET time specified in NYSE Arca Equities Rule 7.31(x) is adjusted in the case of an early scheduled close removes impediments to and perfects the mechanism of a free and open market and national market system because it provides transparency in Exchange rules of how times are adjusted in NYSE Arca Equities Rule 7.31(x) in the case of an early scheduled close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. NYSE Arca believes that because the proposed rule change proposes to clarify NYSE Arca Equities Rule 7.31(x), the public will benefit from immediate implementation of the rule due to the additional transparency to the rule. NYSE Arca also believes that adding clarity to its rules before the next early scheduled close, November 23, 2012, could reduce any potential confusion regarding how NYSE Arca treats the routing of PO Orders designated as MOC or LOC orders on that day. The Commission believes that adding clarity to NYSE Arca's rules before the next early scheduled close on November 23, 2012 could reduce potential confusion. Therefore, the Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission is hereby waiving the 30-day operative delay.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File

[4] The Exchange notes that the NYSE and NYSE MKT have filed rule proposals to amend their respective rules to clarify that when the scheduled close of trading is before 4:00 p.m., the times specified in NYSE Rule 123C and NYSE MKT Rule 123C—Equities shall be adjusted based on the early closing time, and specifically, that references to 3:45 p.m. shall mean 15 minutes before the early scheduled close. *See* SR–NYSE–2012–62 and SR–NYSEMKT–2012–63.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Number SR–NYSEARCA–2012–125 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–NYSE–2012–125. 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 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 offices 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–NYSE–2012–125, and should be submitted on or before December 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28259 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68241; File No. SR–CBOE–2012–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 2, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 5, 2007, CBOE established an Order Router Subsidy Program (''ORS Program'' or ''Program'') in which CBOE may enter into subsidy arrangements with CBOE Trading Permit Holders (each, a ''Participating TPH'') that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[3] The Exchange later extended this program to enable CBOE to establish such subsidy arrangements with broker-dealers that are not CBOE TPHs (each a ''Participating Non-CBOE TPH'') and to permit Participating TPHs and Non-CBOE TPH's [sic] to receive subsidy payments for providing order routing functionality to broker-dealers who are not CBOE TPHs.[4] (The term ''Participant'' as used in this filing refers to either a Participating TPH or a Participating Non-CBOE TPH). To qualify for the subsidy arrangement, a Participant's order routing functionality has to: (i) Enable the electronic routing of orders to all of the U.S. options exchanges, including CBOE; (ii) provide current consolidated market data from the U.S. options exchanges; and (iii) be capable of interfacing with CBOE's API to access current CBOE trade engine functionality. The routing system also needs to cause CBOE to be the default destination exchange for individually executed marketable orders if CBOE is at the national best bid or offer (''NBBO''), regardless of size or time, but allow any user to manually override CBOE as the default destination on an order-by-order basis. The order routing functionality is required to incorporate a function allowing orders at a specified price to be sent to multiple exchanges with a single click (a ''sweep function'') and the sweep function would need to be configured to cause an order to be sent to CBOE for up to the full size quoted by CBOE if CBOE is at the NBBO. Any CBOE TPH or broker-dealer that is not a CBOE TPH is permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies CBOE that it appears to be robust and reliable. The Participant is solely responsible for implementing and operating its system.

Participants will receive a payment from CBOE for every executed contract for orders routed to CBOE through that participating CBOE TPH or Non-CBOE TPH's system to subsidize their costs

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 55629 (April 13, 2007) 72 FR 19992 (April 20, 2007) (SR–CBOE–2007–34). Additionally, the description of the current program was clarified in SR–CBOE–2008–27. *See* Securities Exchange Act Release No. 57498 (March 14, 2008), 73 FR 15018 (March 20, 2008) (SR–CBOE–2008–27).

[4] *See* Securities Exchange Act Release No. 63631 (January 3, 2011) 76 FR 1203 (January 7, 2011) (SR–CBOE–2010–117).

associated with providing order routing functionalities. The payment is $.04 per executed contract for orders routed to CBOE through a Participant's system.[5] CBOE does not make payments under this Program with respect to executed contracts in single-listed options classes traded on CBOE, or with respect to complex orders or spread orders. The Participants have to agree that they are not entitled to receive any other revenue for the use of its system, specifically with respect to orders routed to CBOE.[6] Participants are not precluded, however, from receiving payment for order flow if they choose to do so.

Under the program, a Participant may also elect to have CBOE perform certain additional marketing services on its behalf. These services consist of including the Participant's functionality in the general marketing activities of CBOE's marketing staff. CBOE permits a Participant electing to have CBOE perform these services to place CBOE's ''HyTS'' trademark on its order routing functionality in a manner satisfactory to CBOE. If a Participant elects to have CBOE perform these services, the amount that CBOE pays the Participant for orders routed to CBOE through the Participant's system is reduced from $0.04 per executed contract to $0.03 per executed contract.[7] The minimum term of these services is one year, after which a Participant can terminate the marketing services effective at the end of a calendar month.

A Participant can also elect to have CBOE perform the service of billing other CBOE TPHs with respect to the use of the Participant's router. A Participant that elects to have CBOE perform this service pays CBOE a service fee of one percent of the fees collected by CBOE for that TPH. A Participant can terminate this service at the end of any calendar month.

Nothing about the subsidy arrangement relieves any CBOE TPH or non-CBOE TPH broker-dealer that is using an order routing functionality whose provider is participating in the Program from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, both a CBOE TPH and a non-CBOE TPH have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. Moreover, any user, whether or not a CBOE TPH, needs to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

The Exchange, at the time the Program was established, did not include the ORS Program in the Fees Schedule. The Exchange now proposes to codify the ORS Program in the Fees Schedule. No substantive changes to the ORS Program are being made by this proposal.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Codifying in the Fees Schedule the ORS Program, in which CBOE may enter into subsidy arrangements with CBOE TPHs and Non-CBOE TPHs that provide certain order routing functionalities to other CBOE TPHs or Non- CBOE TPH broker dealers and/or use such functionalities themselves provides additional transparency and allows market participants to easily discern the subsidies and/or fees that result from such arrangements. This will eliminate any potential confusion, thereby removing a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–107. 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

[5] *See* Securities Exchange Act Release No. 62432 (July 1, 2010), 75 FR 39602 (July 9, 2010) (SR–CBOE–2010–66).

[6] This requirement would not prevent the participating member from charging fees (for example, a monthly fee) for the general use of its order routing system. Nor would it prevent the participating member from charging fees or commissions in accordance with its general practices with respect to transactions effected through its system.

[7] *See* Securities Exchange Act Release No. 62432 (July 1, 2010), 75 FR 39602 (July 9, 2010 (SR–CBOE–2010–66).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–107, and should be submitted on or before December 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28261 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68240; File No. SR–ISE–2012–88]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

November 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 6, 2012, the International Securities Exchange, LLC (the ''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in 93 options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[4] and in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5] The Exchange also currently assesses maker/taker fees and rebates for certain regular orders in 62 option classes (''Special Non-Select Penny Pilot Symbols'').[6]

The Exchange currently applies maker and taker fees and rebates to regular orders in the Special Non-Select Penny Pilot Symbols. Specifically, the Exchange applies the following maker fees and rebates for orders that trade against Priority and Non-Priority Customer orders:

- For Market Maker,[7] Firm Proprietary/Broker-Dealer and Professional Customer[8] orders, a maker fee of $0.35 per contract;
- For Non-ISE Market Maker[9] orders, a maker fee of $0.40 per contract;
- For Priority Customer[10] orders, a maker rebate of $0.25 per contract.

Additionally, the Exchange applies the following taker fees and rebates for orders that trade against Non-Priority Customer orders:

- For Market Maker orders, a taker fee of $0.20 per contract;
- For Non-ISE Market Maker orders, a taker fee of $0.35 per contract;
- For Firm Proprietary/Broker-Dealer and Professional Customer orders, a taker fee of $0.25 per contract;
- For Priority Customer orders, a taker rebate of $0.32 per contract.

The Exchange also currently applies the following taker fees for orders that trade against Priority Customer orders:

- For Market Maker orders, a taker fee of $0.32 per contract;
- For Non-ISE Market Maker orders, a taker fee of $0.40 per contract;
- For Firm Proprietary/Broker-Dealer and Professional Customer orders, a taker fee of $0.35 per contract;
- For Priority Customer orders, a taker fee of $0.00 per contract.

Additionally, the Exchange provides Market Makers with a two-cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers add or remove liquidity in the Special Non- Select Penny Pilot Symbols. The Exchange also currently charges a fee of $0.20 per contract to all market participants [sic] for Crossing Orders in the Special Non-Select Penny

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR–ISE–2012–17); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); and 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR–ISE–2012–35); 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE- 2012–63) and 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71).

[6] The Special Non-Select Penny Pilot Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees. *See* Exchange Act Release Nos. 67201 (June 14, 2012), 77 FR 37082 (June 20, 2012) (SR–ISE–2012–49) and 67627 (August 9, 2012), 77 FR 49046 (August 15, 2012) (SR–ISE–2012–70).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. See ISE Rule 100(a)(25).

[8] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another options exchange.

[10] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

Pilot Symbols, and a fee of $0.40 per contract to all market participants for Responses to Crossing Orders in the Special Non-Select Penny Pilot Symbols. Finally, the Exchange also currently provides a rebate of $0.25 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order, and a rebate of $0.15 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks.

The purpose of this proposed rule change is to remove the Special Non-Select Penny Pilot Symbols category from the Schedule of Fees in its entirety and to move the Special Non-Select Penny Pilot Symbols into the Select Symbols category, such that the fees applicable to the Select Symbols will now be applied to the 62 options classes that had been categorized as Special Non-Select Penny Pilot Symbols. The Exchange is proposing this change in order to attract additional order flow to the Exchange.

Specifically, the Exchange proposes to remove the following sixty-five (65) symbols from the list of Special Non-Select Penny Pilot Symbols and add sixty-two (62) of them to the list of Select Symbols: [11] ACI, AGNC, AMLN, AMZN, ANR, APA, ARNA, ATPG, AUY, BAX, BTU, CLF, COP, CRM, CVX, DAL, DD, DE, DIS, DOW, EBAY, FDX, GLW, GM, GMCR, GS, HD, HGSI, JCP, JOY, KBH, KGC, LULU, MA, MBI, MCP, MDT, MMR, MOS, MRK, NKE, PEP, QQQ, S, SD, SDS, SHLD, SINA, SIRI, SLW, SSO, TZA, UNP, UPS, USB, UTX, VLO, WAG, WDC, WLT, WYNN, XHB, XLK, XLU and ZNGA.[12] Additionally, the Exchange is proposing to delete all references to Special Non-Select Penny Pilot Symbols and its accompanying notes as this category will no longer exist.

With this proposed rule change, the 62 symbols noted above will now be subject to the fees and rebates for Select Symbols. The Exchange currently charges the following maker fees and rebates for Select Symbols: for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.10 per contract; for Priority Customer orders, $0.00 per contract and for Market Maker Plus orders, a rebate of $0.10 per contract. The Exchange also currently charges the following taker fees for Select Symbols: For Market Maker and Market Maker Plus [13] orders, $0.32 per contract; for Non-ISE Market Maker orders, $0.36 per contract; for Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.33 per contract; and for Priority Customer orders, $0.25 per contract.

The Exchange currently charges Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customers a fee of $0.20 per contract ($0.00 per contract for Priority Customers) for Crossing Orders in the Select Symbols, and a fee of $0.40 per contract to all market participants for Responses to Crossing Orders in the Select Symbols. Finally, the Exchange also currently provides a rebate of $0.25 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order, and a rebate of $0.15 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks.

With this proposed rule change, non-Priority Customer market participants will generally pay lower taker fees as the taker fees charged for Special Non-Select Penny Pilot Symbols were marginally higher that the taker fees charged by the Exchange for Select Symbols. Specifically, the taker fee for Select Symbols is lower in most cases than the taker fee the Exchange charged market participants when trading against Priority Customers in the Special Non-Select Penny Pilot Symbols. The Exchange notes, however, that the taker fees for Select Symbols are nominally higher than the taker fees charged by the Exchange to market participants when trading against Non-Priority Customers. Further, with this proposed rule change, the taker fee charged to Priority Customer orders will also increase as the taker fee for Priority Customer orders in the Select Symbols is $0.25 per contract while Priority Customer orders in the Special Non-Penny Pilot Symbols received a rebate for both making and taking liquidity. Priority Customer orders that add liquidity will not pay a fee or receive a rebate consistent with the fees and rebates applicable to Select Symbols.

With this proposed rule change, non-Priority Customers will also pay a lower maker fee as the maker fee charged for Special Non-Select Penny Pilot Symbols were higher than the maker fees charged by the Exchange for Select Symbols. The Exchange notes, however, that while Priority Customer orders in the Special Non-Select Penny Pilot Symbols received a rebate when trading against other Priority Customer orders and Non-Priority Customers, this rebate will no longer be payable. With this proposed rule change, Priority Customer orders in the symbols that are subject to this proposed rule change will not be charged a maker fee.

Also, with this proposed rule change, the fee for Crossing Orders and Responses to Crossing Orders will remain at $0.20 per contract ($0.00 per contract for Priority Customers) and $0.40 per contract, respectively. Further, the rebate for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order will also remain at $0.25 per contract as will the rebate for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. That rebate will also remain at $0.15 per contract.

Further, the Exchange currently provides a $0.20 per contract fee credit to Primary Market Makers (PMM) for execution of Priority Customer orders in the Special Non-Select Penny Pilot Symbols—for classes in which it serves as a PMM—that send an Intermarket Sweep Order to other exchanges. This credit is applied regardless of the transaction fee charged by a destination market. For Select Symbols, this credit is equal to the fee charged by a destination market and the symbols that are subject to this proposed rule change will now be provided with a credit that that is equal to the fee charged by a destination market.

[11] Due to corporate actions, AMLN, ATPG and HGSI are no longer traded and thus are being removed from the Schedule of Fees.

[12] [sic]

[13] In order to promote and encourage liquidity in the Select Symbols, the Exchange currently offers a $0.10 per contract rebate to Market Makers if the quotes they sent to the Exchange qualify the Market Maker to become a Market Maker Plus. A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium for all expiration months in that symbol during the current trading month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

The Exchange also currently provides a $0.20 per contract credit for responses to flash orders in the Special Non-Select Penny Pilot Symbols when trading against Professional Customers. For Select Symbols, the per contract fee credit for responses to flash orders is $0.10 per contract when trading Priority Customers, $0.12 per contract when trading against Preferenced Priority Customers and $0.10 per contract when trading against Professional Customers. The symbols that are subject to this proposed rule change will now be provided the rebate at levels that are currently in place for Select Symbols, as described above.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in November 2012 prior to the effective date of this filing members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in November 2012 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act [15] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove the Special Non-Select Penny Pilot Symbols from its Schedule of Fees and add those symbols to the list of Select Symbols to increase order flow to the Exchange. Select Symbol pricing has proven beneficial for the Exchange and its participants and the Exchange believes that moving these symbols to Select Symbols pricing would enhance liquidity and participation in the 62 symbols. Additionally, removing the Special Non-Select Penny Pilot Symbols and adding those names to Select Symbols would standardize ISE fees.

With this proposed rule change, non-Priority Customer market participants will generally pay lower taker fees as the taker fees charged for Special Non-Select Penny Pilot Symbols were marginally higher that the taker fees charged by the Exchange for Select Symbols. Specifically, the taker fee for Select Symbols is lower in most cases than the taker fee the Exchange charged market participants when trading against Priority Customers in the Special Non-Select Penny Pilot Symbols. The Exchange notes, however, that the taker fees for Select Symbols are nominally higher than the taker fees charged by the Exchange to market participants when trading against Non-Priority Customers. Further, with this proposed rule change, the taker fee charged to Priority Customer orders will also increase as the taker fee for Priority Customer orders in the Select Symbols is $0.25 per contract while Priority Customer orders in the Special Non-Penny Pilot Symbols received a rebate for both making and taking liquidity. Priority Customer orders that add liquidity will not pay a fee or receive a rebate consistent with the fees and rebates applicable to Select Symbols.

With this proposed rule change, non-Priority Customers will also pay a lower maker fee as the maker fee charged for Special Non-Select Penny Pilot Symbols were higher than the maker fees charged by the Exchange for Select Symbols. The Exchange notes, however, that while Priority Customer orders in the Special Non-Select Penny Pilot Symbols received a rebate when trading against other Priority Customer orders and Non-Priority Customers, this rebate will no longer be payable. With this proposed rule change, Priority Customer orders in the symbols that are subject to this proposed rule change will not be charged a maker fee.

With this proposed rule change, market participants will generally pay lower taker fees and lower maker fees while the fees for Crossing Orders and Responses to Crossing Orders will remain the same. Further, with this proposed rule change, the break-up rebates for contracts submitted to the Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism will also remain unchanged. With this proposed rule change, the Exchange will no longer pay certain rebates that were previously applicable as the Exchange believes incenting market participants with rebates is no longer necessary to attract order flow in the symbols that are subject to this proposed rule change.

The Exchange believes that the proposed changes are non-discriminatory because the proposal simply collapses a category of fees into an existing category thereby applying fees currently in effect to these additional symbols. Further, the Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Special Non-Select Penny Pilot Symbols to the Select Symbols because the fees applicable to the Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

The Exchange believes it remains an attractive venue for market participants to trade as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade at favorable prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

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–ISE–2012–88 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–ISE–2012–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–88 and should be submitted on or before December 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28260 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68242; File No. SR–CBOE–2012–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Weekly Options Program

November 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 November 9, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rules 5.5(d) and 24.9(a)(2)(A) to expand the number of expirations available under the Short Term Option Series Program (''Weeklys Program'' or ''Weekly option''), to allow for the Exchange to delist any Weekly option series that do not have open interest and to expand the number of series per class permitted in Weekly options under limited circumstances. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This is a competitive filing that is based on a recently approved filings submitted by NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT, LLC (''NYSE MKT'').[3]

The purpose of this proposal is to amend CBOE Rules 5.5(d) and 24.9(a)(2)(A) to provide for the ability to open up to five consecutive expirations under the Short Term Option Series Program (''Weeklys Program'' or ''Weekly options'') for trading on the Exchange, to allow for the Exchange to delist any Weekly option series that does not have open interest and to expand the number of series per class permitted in Weekly options under limited circumstances when there are no series at least 10% but not more than 30% away from the current price/value of the underlying security/index.[4]

Currently, the Exchange may select up to thirty (30) currently listed option classes on which options may be opened in the Weeklys Program and the Exchange may also match any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.[5] For each option class eligible for participation in the Weeklys Program, the Exchange may open up to thirty (30) Weekly option series for each expiration date in that class.

This proposal seeks to allow the Exchange to open Weekly option series for up to five (5) consecutive week expirations. The Exchange intends to add a maximum of five (5) consecutive week expirations under the Weeklys Program; however, it will not add a Weekly option expiration in the same week that a monthly option series expires or, in the case of Quarterly Option Series (''QOS'') or Quarterly Index Expirations (''QIXs''), on an expiration that coincides with an expiration of QOS or QIXs on the same class. In other words, the total number of consecutive expirations will be five

[3] *See* Securities Exchange Act Release Nos. 68190 (November 8, 2012) (order approving SR–NYSEArca–2012–95) (''NYSE Arca filing'') and 68191 (November 8, 2012) (order approving SR–NYSEMKT–2012–42) (''NYSE MKT filing'').

[4] On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63). The Weeklys Program was made permanent on April 27, 2009. *See* Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018).

[5] *See* CBOE Rules 5.5(d)(1) and 24.9(a)(2)(A)(i).

(5), including any existing monthly or quarterly expirations.[6] This change is being proposed notwithstanding the current cap of 30 series per class under the Weeklys Program.

The Exchange notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. The Exchange believes that the current proposed revision to the Weeklys Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of expirations that participate in the Weeklys Program.

In addition, to provide for circumstances where the underlying security or index has moved such that there are no series that are at least 10% above or below the current price or value of the underlying security or index, the Exchange is proposing to add new subparagraphs (6) and (vi) to CBOE Rules 5.5(d) and 24.9(a)(2)(A), respectively, to provide that the Exchange would delist series with no open interest in both the call and the put series having a: (i) strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week, so as to list series that are at least 10% but not more than 30% above or below the current price or value of the underlying security or index. Further, in the event that all existing series have open interest and there are no series at least 10% above or below the current price or value of the underlying security or index, the Exchange may list additional series, in excess of the 30 series per class allowed currently under CBOE Rules 5.5(d)(1) and 24.9(a)(2)(A)(i), that are at least 10% and not more than 30% above or below the current price or value of the underlying security or index.

The Exchange believes that it is important to allow investors to roll existing option positions and to ensure that there are always series at least 10% but not more than 30% above or below the current price or value of the underlying security or index will allow investors the flexibility they need to roll existing positions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that expanding the Weeklys Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Weeklys Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of expirations. The Exchange believes that the ability to delist series with no open interest in both the call and the put series will benefit investors by devoting the current cap in the number of series to those series that are more closely tailored to the investment decisions and hedging decisions of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that proposal is a competitive filing. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission and permit such exchanges to open up to five consecutive expirations under their respective Short Term Option Series Programs as well as allow for the exchanges to delist any Weekly option series that do not have open interest and expand the number of series per class permitted in Weekly options under limited circumstances.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] For example, if quarterly options expire week 1 and monthly options expire week 3 from now, the proposal would allow the following expirations: week 1 quarterly option, week 2 Weekly option, week 3 monthly option, week 4 Weekly option, and week 5 Weekly option. If quarterly options expire week 3 and monthly options expire week 5, the following expirations would be allowed: week 1 Weekly option, week 2 Weekly option, week 3 quarterly option, week 4 Weekly option, and week 5 monthly option.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

[11] *See supra* note 3.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–CBOE–2012–110 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–110 and should be submitted on or before December 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28262 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68246; File No. SR–CBOE–2012–068]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Withdrawal of a Proposed Rule Change To Amend the Customer Large Trade Discount

November 15, 2012.

On July 11, 2012, Chicago Board Options Exchange, Incorporated (''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Customer Large Trade Discount. Notice of the proposed rule change was published in the **Federal Register** on July 26, 2012.[3] On September 6, 2012, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposal.[4] The Commission received no comment letters on the proposed rule change. On November 14, 2012, CBOE withdrew the proposed rule change (SR–CBOE–2012–068).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28264 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67481 (July 20, 2012), 77 FR 43879 (July 26, 2012).

[4] *See* Securities Exchange Act Release No. 67794 (September 6, 2012), 77 FR 56247 (September 12, 2012).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68247; File No. SR–ISE–2012–22]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options on the ISE Max SPY Index

November 15, 2012.

On March 9, 2012, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder[2] to list and trade options on the ISE Max SPY Index. The proposed rule change was published for comment in the **Federal Register** on March 22, 2012.[3] The Commission initially received three comment letters on the proposed rule change.[4] On May 1, 2012, the Commission extended the time period for Commission action to June 20, 2012.[5] On May 4, 2012, the Exchange submitted a response to the comment letters[6] and filed Amendment No. 1 to the proposed rule change.[7] The Commission subsequently received three additional comment letters[8] and a second response letter from the Exchange.[9] On June 20, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[10] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66614 (March 16, 2012), 77 FR 16883.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, NYSE Euronext, dated April 2, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill Companies, Inc. (''McGraw-Hill''), dated April 11, 2012; and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated (''CBOE''), dated April 13, 2012.

[5] *See* Securities Exchange Act Release No. 66889 (May 1, 2012), 77 FR 26812 (May 7, 2012).

[6] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated May 4, 2012.

[7] *See* Order Instituting Proceedings, *infra* note 10, at note 7 (describing Amendment No. 1).

[8] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Edward T. Tilly, President and Chief Operating Officer, CBOE, dated June 7, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated June 18, 2012; and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated June 19, 2012.

[9] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated June 15, 2012.

[10] *See* Securities Exchange Act Release No. 67225 (June 20, 2012), 77 FR 38100 (June 26, 2012) (''Order Instituting Proceedings'').

Commission thereafter received six comment letters [11] and two response letters from the Exchange.[12] On September 14, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[13] The Commission thereafter received two additional comment letters.[14] On November 13, 2012, the Exchange withdrew the proposed rule change, as modified by Amendment No. 1 (SR–ISE–2012–22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28265 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68238; File No. SR–NASDAQ–2012–128]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exemption to the Direct Registration Program Requirement to All Foreign Issuers Rather Than Only Foreign Private Issuers

November 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 7, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by the Exchange. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder so that the proposed rule change was effective upon filing with the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to expand the exemption to the Direct Registration Program requirement under Nasdaq Rules 5210(c) and 5255(c) so that it applies to all foreign issuers rather than foreign private issuers only. If the Commission waives the pre-operative delay provided for in Rule 19b–4(f)(6),[3] Nasdaq proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Nasdaq Rules 5210(c) and 5255 provide that all securities listed on Nasdaq (except securities which are book-entry only) must be eligible for a Direct Registration Program [5] (''DRS'') operated by a clearing agency registered under Section 17A of the Act.[6] When this requirement was initially adopted, Nasdaq recognized that the laws or regulations of certain foreign countries might make it impossible for companies incorporated in those countries to comply. Consequently, the current rule permits a foreign private issuer to follow its home country practice in lieu of this requirement when prohibited from complying by a law or regulation in its home country.[7]

Nasdaq now proposes to amend this exemption to extend its application to all ''foreign issuers'' as that term is used in Securities Exchange Act Rule 3b–4 [8] rather than only to foreign private issuers. Nasdaq believes this amendment is necessary because the same legal or regulatory impediments to DRS eligibility exist for a foreign issuer which is incorporated in a foreign jurisdiction but which does not qualify for foreign private issuer status as is the case for a foreign private issuer incorporated in the same jurisdiction which is currently eligible to utilize the existing exemption. Absent this extension of the scope of the exemption, the DRS eligibility requirement would render it impossible for a foreign issuer to list if it was not a foreign private issuer but was incorporated in a foreign jurisdiction whose law or regulation made compliance with the DRS requirement impossible. Nasdaq believes that the proposed rule change is appropriate in light of the specific and discrete problem faced by foreign issuers that are not foreign private issuers but who are prohibited by home country law or regulation from becoming DRS eligible. As under the current exemption, the foreign issuer will have to submit to Nasdaq a written statement from an independent counsel in the company's home country certifying that a law or regulation in the home country prohibits compliance with the DRS requirement in order to utilize the exemption.

Nasdaq Rule 5615 provides limited exemptions with respect to certain corporate governance and reporting requirements for foreign private issuers. The proposed rule change does not expand the scope of such relief to

---

[11] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated August 6, 2012; John L. Jacobs, Executive Vice President, NASDAQ OMX Global Index Group, NASDAQ OMX Group, Inc., dated August 10, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated August 10, 2012; Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 10, 2012; John V. O'Hanlon, Dechert LLP, on behalf of the Index Industry Association, dated August 10, 2012; and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 27, 2012.

[12] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary, ISE, dated August 10, 2012 and August 27, 2012.

[13] *See* Securities Exchange Act Release No. 67865 (September 14, 2012), 77 FR 58432 (September 20, 2012).

[14] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill, dated November 5, 2012 and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated November 7, 2012.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6).

[3] 17 CFR 240.19b–4(f)(6).

[4] The Commission has modified the text of the summaries prepared by Nasdaq.

[5] The Direct Registration Program is more often referred to in the securities industry as the Direct Registration System or ''DRS.''

[6] 15 U.S.C. 78q–1.

[7] *See* Securities Exchange Act Release No. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) (order approving SR–NASDAQ–2006–008). *See also* Exchange Act Release No. 58125 (July 9, 2008), 73 FR 42389 (July 21, 2008) (order approving SR–NASDAQ–2008–031).

[8] Exchange Act Rule 3b–4 defines the term ''foreign issuer'' as any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country. 17 CFR 240.3b–4.

foreign issuers that do not qualify for foreign private issuer status. To minimize confusion about the availability of such exemptions to foreign issuers that do not qualify for foreign private issuer status, the proposed rule change will relocate the procedural requirements to utilize the exemption from Rule 5615 and IM–5615 to Rules 5210(c) and 5255 and conform the language used in Rules 5210(c) and 5255 to describe the exemption.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with section 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination in 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 is consistent with the investor protection objectives of the Act in that it will provide a very limited exemption to Nasdaq's DRS eligibility requirements for foreign issuers that provide a letter from home country counsel certifying that compliance with that requirement is prohibited by home country law or regulation. Further, the proposed rule change should facilitate cooperation and coordination among clearing agencies, transfer agents, and broker-dealers by explaining the basis upon which certain foreign issuers are not required to participate in DRS. This, in turn, should facilitate better efficiency in the clearance and settlement of securities transactions involving the securities of these foreign issuers and should facilitate better efficiency in the transfer of such securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposed 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 relating to the proposed rule change were neither solicited nor received. Nasdaq will notify the Commission of any written comments received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f)(6) of Rule 19b–4 thereunder,[12] in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has provided the Commission of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2012–128 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 submission should refer to File Number SR–NASDAQ–2012–128. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of Nasdaq and on Nasdaq's Web site at *http://www.nasdaq.cchwallstreet.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–128 and should be submitted on or before December 12, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28299 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68245; File No. SR–FICC–2012–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Enhancements That the Mortgage-Backed Securities Division Intends To Implement to Its Services and Certain Other Clarifications and Corrections to Its Rules

November 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 November 6, 2012, the Fixed Income Clearing Corporation (''FICC'' or the ''Corporation'') 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 FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule changes to the Rules of the Mortgage-Backed Securities Division (''MBSD'') of FICC relate to enhancements that MBSD intends to implement to its services and certain other clarifications and corrections to its Rules. As noted below, some of the proposed changes do not require revisions to the MBSD Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes relate to certain enhancements that MBSD intends to implement to its services. In addition, FICC proposes to make certain corrections and clarifications to the MBSD Rules. The proposed changes are described below.

1. Expansion of Pool Netting To Include Pool Instructs From the Previous Settlement Months

MBSD proposes to further extend pool netting benefits to its members by capturing Pool Instructs[4] submitted for allocations made after the traded pool's settlement month has passed. The proposed changes allow more activity into the pool net which results in fewer settlements.

Currently, MBSD's pool netting process only nets Pool Instructs for the current delivery date if their corresponding contractual settlement dates (''CSD'') are also in the current month.[5] For example, with respect to a delivery date of August 14, 2012, MBSD's pool netting process would only net Pool Instructs having a CSD ranging from August 1, 2012 through August 14, 2012 and having a delivery date of August 14, 2012. As such, only Pool Instructs having a CSD in the current month will be included in pool netting.

The proposed new process will net Pool Instructs from previous settlement months that are submitted for delivery dates in the current month. For example, if we assume that today is August 13, 2012, and a member submits multiple Pool Instructs all having a CSD equal to July 12, 2012 and a delivery date equal to August 14, 2012, on the evening of August 13th, these Pool Instructs would be netted against each other to arrive at a single pool net settlement position for the July 12, 2012 CSD and August 14th delivery date.

The proposed changes do not require revisions to the text of the MBSD Rules.

2. Notification of Settlement for Specified Pool Trades

A Notification of Settlement (''NOS'') is an instruction submitted to the Corporation by a purchasing or selling clearing member which reflects the settlement of a Settlement Balance Order Trade, Trade-for-Trade Transaction or Specified Pool Trade (''SPT'').[6] MBSD is proposing to change the manner in which NOS processing occurs for SPTs so that it follows similar processing rules as those applied to NOS for Settlement Balance Order Trades and Trade-for-Trade Transactions.

Currently, MBSD Rule 10 Section 2 states that the trade details for a NOS submitted by both parties of a SPT must fully match in order for the clearance of the SPTs to be reflected on the member's Purchase and Sale Report[7] *or* both parties must submit a cancellation of the transaction in order for the transaction to be deleted from each party's respective Open Commitment Report.[8]

MBSD proposes to enhance the NOS for SPTs by no longer requiring the current face value submitted on each member's NOS to exactly match the current face value of the SPT. Instead, members will have the ability to submit and match multiple NOS to reduce the SPT current face until it is fully settled. For example, if a SPT has a current face value of $125MM and the pool number of the trade has a factor of 0.975, FICC will accept either (a) one piece of NOS for $125,000,000 *or* (b) three pieces of NOS for $48,750,000, $48,750,000 and $27,500,000. The current face values equal an original face settlement value of $50,000,000, $50,000,000 and $28,205,128.

In addition to the above, MBSD will apply a tolerance of ± $1 when matching buy and sell NOS for SPT trades to account for differences in rounding conventions used by members to convert original face to current face on their NOS.

The proposed changes will make NOS for SPTs similar to NOS for Settlement Balance Order Trades and Trade-for-Trade Transactions whereby matching is permitted within a tolerance and multiple NOS may be submitted and matched separately until the trade is fully settled.

The proposed changes require revisions to the text of the MBSD Rules.

3. Comparison of Dummy Pool Number to Valid Pool Number

FICC supports the submission of a defined generic or ''dummy'' pool

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] A Pool Instruct is an input used by a member to submit pool details directly into the Real-Time Trade Matching ® (''RTTM®'') system for bilateral matching and assignment to a corresponding open TBA position as a prerequisite to the pool netting process.

[5] *See* MBSD Rule 8 Section 3.

[6] *See* MBSD Rule 1, Definitions.

[7] ''Purchase and Sale Report'' is defined as the report furnished by the Corporation reflecting a member's Compared Trades in Eligible Securities.'' *See* MBSD Rule 1, Definitions.

[8] ''Open Commitment Report'' is defined as the report furnished by the Corporation to members reflecting such member's open commitments in the Clearing System. *See* MBSD Rule 1, Definitions.

number on NOS instead of a valid pool number. A dummy pool is a standard convention used by members when the actual pool number is not readily available to some members. Currently, the pool number is a matching criterion on NOS. Consequently, if one member submits a dummy pool number and the other enters a valid pool number the NOS will not compare even though all of the other matching criteria are the same. In an effort to address this, FICC is proposing to change its processing in order to allow matching of NOS when all mandatory terms compare and one member submits a dummy pool number and the other member submits a valid pool.

The proposed changes do not require revisions to the text of the MBSD Rules.

4. Automatically Marking Certain Open TBA Trades as Fully Settled

Mortgage-backed securities trades settle with an industry-accepted variance of 0.01% (*i.e.,* $100 per $1MM). When FICC applies NOS to open trades, it does so using the upper limit of the variance to ensure that trades are not marked as fully settled until all NOS have been received and processed by FICC. However, because trades may settle using any value within the variance, FICC's processing may leave residual trade amounts open on its books for trades that have actually been fully settled. To address this, FICC is proposing to automatically generate internal NOS which will mark the residual trade as fully settled. The FICC generated NOS will occur on the last business day of each month, in every instance where a member has a To-Be-Announced (''TBA'') trade with an open par that falls below an established threshold. The threshold is initially contemplated to be $1000 par, however, this may be modified following member feedback. All changes to the threshold will be provided in advance to members via Important Notice.

The proposed changes require revisions to the text of the MBSD Rules.

5. Corrections and Clarification to the MBSD Rules

The MBSD Rules define the term ''Fully Compared'' as ''* * *trade input submitted by a Broker matches trade input submitted by each Dealer on whose behalf the Broker is acting the Net Position Match Mode.'' [9] The phrase ''in accordance with'' was inadvertently deleted from this definition when it was revised in connection with Amendment No. 1 to SR–FICC–2008–01.[10] FICC proposes to restore this phrase so that the definition states the following: ''* * * trade input submitted by a Broker matches trade input submitted by each Dealer on whose behalf the Broker is acting in accordance with the Net Position Match Mode.''

In the second to last paragraph of MBSD Rule 2A Section 1, there is a sentence which states that the Corporation will determine whether the applicants in ''categories (g and i)'' of the referenced Section will be designated as tier one or tier two members. FICC proposes to correct the typographical error in the cross-reference so that it instead references ''categories (g) and (i).''

Implementation

FICC proposes to implement the proposed changes relating to the MBSD enhancements during the first quarter of 2013 pending rule filing approval from the Securities and Exchange Commission (the ''Commission''). The proposed changes relating to the clarifications and corrections of the referenced rules will be effective immediately upon receipt of rule filing approval.

FICC believes that the proposed rule changes are consistent with Section 17A of the Act, and the rules and regulations thereunder, because (1) the expansion of the pool netting system extends the netting benefits to clearing members by capturing allocations made after the traded pools current settlement month, (2) the change in NOS processing for SPTs creates efficiency through the standardization of NOS processing for TBA trades, (3) automatically marking certain TBA trades as fully settled improves the monitoring and reporting of trade settlement status and (4) allowing the comparison of dummy Pool number to valid pool number provides for timelier matching of NOS. Each of these enhancements creates a more efficient netting system which promotes the prompt and accurate clearance and settlement for securities transactions. Furthermore, the clarifications and corrections to the MBSD Rules ensure that the Rules are accurate.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- 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–FICC–2012–07 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–FICC–2012–07. 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

[9] *See* MBSD Rule 1, Definitions.

[10] Securities Exchange Act Release No. 34–66550 (March 9, 2012); 77 FR 15155 (March 14, 2012).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/SR_FICC_2012_07.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2012–07 in the caption above and should be submitted on or before December 12, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–28263 Filed 11–20–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13365 and #13366]

New York Disaster Number NY–00130

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4085–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 and continuing.

Effective Date: 11/10/2012.

Physical Loan Application Deadline Date: 12/31/2012.

EIDL Loan Application Deadline Date: 07/31/2013.

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 NEW YORK, dated 10/30/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Orange, Putnam, Sullivan, Ulster.

Contiguous Counties: (Economic Injury Loans Only):

New York: Columbia, Delaware, Dutchess, Greene.

New Jersey: Sussex.

Pennsylvania: Pike, Wayne.

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. 2012–28237 Filed 11–20–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13378 and #13379]

Rhode Island Disaster Number RI–00011

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Rhode Island (FEMA–4089–DR), dated 11/03/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 10/31/2012.

Effective Date: 11/10/2012.

Physical Loan Application Deadline Date: 01/02/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

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 President's major disaster declaration for Private Non-Profit organizations in the State of RHODE ISLAND, dated 11/03/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Kent.

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. 2012–28239 Filed 11–20–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8090]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation's meeting location on December 10–11, 2012 has changed from that provided in the previous **Federal Register** Notice at 77 FR 5292, February 2, 2012. The new location will be at the National Archives in College Park, MD on December 10, 2012; and in room 1205 of the Harry S. Truman building of Main State on December 11, 2012. The Committee's sessions in the morning and afternoon of Monday, December 10, 2012 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

The Committee will meet in open session from 11:00 a.m. until 12:00 noon on Tuesday, December 11, 2012, in the Department of State, 2201 ''C'' Street NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series.

Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend the meeting on December 11, 2012, RSVP to Colby Prevost, Office of the Historian (202–663–1147) no later than December 6, 2012. When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/

[11] 17 CFR 200.30–3(a)(12).

state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Colby Prevost for acceptable alternative forms of picture identification.

In addition, any requests for reasonable accommodation should be made no later than December 4 for the December 11th meeting. Requests for reasonable accommodation received after those dates will be considered, but might be impossible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf*, for additional information.

Questions concerning the meeting should be directed to Stephen P. Randolph, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (email *history@state.gov*).

Dated: November 13, 2012

Stephen P. Randolph,

Executive Secretary, Advisory Committee on Historical, Diplomatic Documentation, Department of State.

[FR Doc. 2012–28324 Filed 11–20–12; 8:45 am]

BILLING CODE 4710–11–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting; Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, December 10, 2012 at 9:30 a.m. The meeting will be held at the New Mexico Supreme Court, in Santa Fe, New Mexico. The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2013, and other business. All portions of this meeting are open to the public.

ADDRESSES: New Mexico Supreme Court, 237 Don Gaspar Ave., Santa Fe, NM 87501, 505–827–4860.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2012–28294 Filed 11–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on December 6, 2012, at 1:00 p.m.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 8th floor, Conference Room 8 A/B/C.

FOR FURTHER INFORMATION CONTACT: Renee Butner, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–5093; fax (202) 267–5075; email *Renee.Butner@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Aviation Rulemaking Advisory Committee taking place on December 6, 2012, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The Agenda includes:

1. FACA Overview
2. ARAC Charter and Member Expectations
3. Recommendation Reports
   a. Rulemaking Prioritization Working Group (RPWG) Recommendation Report (ARAC)
   b. Avionics Systems Harmonization Working Group—Low Speed Alerting, Phase 2 Recommendation Report (TAE)
4. Status Reports From Active Working Groups
   a. Airman Testing Standards and Training Working Group (ARAC)
   b. Flight Controls Harmonization Working Group (TAE)
   c. Airworthiness Assurance Working Group (TAE)
5. New Tasks
   a. Engine Bird Ingestions Requirements—Revision of Section 33.76
   b. Transport Airplane Performance and Handling Characteristics
6. Status Report from the FAA
   a. Process Improvement Working Group (PIWG)

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by November 29. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by November 29 to present oral statements at the meeting. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 15, 2012.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2012–28292 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0129]

Agency Information Collection Activities; Extension of an Approved Information Collection Request; Training Certification for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. On May 17, 2012, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. The agency received no comments in response to this notice.

DATES: Please send your comments by December 21, 2012. OMB must receive

your comments by this date to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2012–0129. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oria_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office Information and Regulatory Affairs, Office of Management and Budget, docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590–0001. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators.

OMB Control Number: 2126–0028.

Type of Request: Extension of a currently-approved ICR.

Respondents: Entry-level CDL drivers.

Estimated Number of Respondents: 397,500.

Estimated Time per Response: 10 minutes.

Expiration Date: November 30, 2012.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 66,250 hours. FMCSA estimates that an entry-level driver requires approximately 10 minutes to complete the tasks necessary to comply with the regulation. Those tasks are photocopying the training certificate, giving the photocopy to the motor carrier employer, and placing the original of the certificate in a personal file. Therefore, the annual burden for all entry-level drivers is 66,250 hours [397,500 × 10/60 minutes to respond = 66,250 hours].

Background

The Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31301 *et seq.*) established the CDL program and directed the Federal Highway Administration (FHWA), FMCSA's predecessor agency, to establish minimum qualifications for issuance of a CDL. After public notice and an opportunity for comment, the FHWA established driver knowledge-and-skills standards. The Agency required the States to ensure by testing that each CDL applicant meets these standards before issuing a CDL to the applicant.

In 1985, the FHWA published ''Model Curriculum for Training Tractor-Trailer Drivers'' (Model Curriculum). In the years following, the FHWA did not mandate driver training for three principal reasons. First, the Agency did not believe it could justify the use of the considerable Agency resources that would be required to develop and sustain a nationwide, comprehensive driver-training program. Second, the FHWA believed that the level of safety of entry-level drivers would soon be improving because the States were nearing the deadline for enforcing the new mandatory CDL-licensing knowledge-and-skills standards. Third, many truck-driving schools were strengthening their training curricula in light of the new Model Curriculum (''Truck Safety: Information on Driver Training,'' Report of the U.S. General Accounting Office, GAO/RCED–89–163, August 1989, pages 4 and 5).

In 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240, December 18, 1991) directed the FHWA to ''commence a rulemaking proceeding on the need to require training of all entry-level drivers of CMVs'' [Section 4007(a)(2)]. On June 21, 1993, the FHWA issued an advance notice of proposed rulemaking entitled, ''Training for All Entry-Level Drivers of Commercial Motor Vehicles (CMVs)'' (58 FR 33874). The Agency also began a study of the effectiveness of the driver training currently being received by entry-level CMV drivers. The results of the study were published in 1997 under the title ''Adequacy of Commercial Motor Vehicle Driver Training'' (Adequacy Report), which is available under FMCSA Docket 1997–2199 at the Federal eRulemaking Portal (*www.regulations.gov*) described above. The study found that CMV drivers (i.e. drivers of heavy trucks, motorcoaches, and school buses) were not receiving adequate entry-level training.

On August 15, 2003, FMCSA published a notice of proposed rulemaking (NPRM) entitled, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (68 FR 48863). The Agency proposed mandatory training for entry-level CMV operators hauling property (not passengers), thereby addressing the vast majority of the CMV drivers identified by the Adequacy Report. FMCSA proposed entry-level training on four topics it believed would provide the greatest benefit to the safety of CMV operations: Driver qualifications, hours-of-service of drivers, driver wellness and whistle-blower protection. On May 21, 2004, after a period of public comment, FMCSA published a rule prohibiting a motor carrier from allowing an entry-level driver employee to operate a CMV transporting property until he or she provided the carrier with a duly-executed certificate indicating that he or she had been trained in the four subject areas noted above (69 FR 2004). The rule became effective on July 20, 2004. Training providers were required to provide a certificate to each driver trainee receiving the requisite training.

In 2005, the U.S. Court of Appeals for the District of Columbia Circuit held that FMCSA failed to consider important factors identified by the Adequacy Report in developing its entry-level driver-training rule. While the Court left the 2004 rule in place, it also directed the Agency to give the rule further consideration consistent with its decision. On December 26, 2007, FMCSA proposed revised minimum standards for the mandatory training of entry-level CDL drivers (72 FR 73226). The Agency has analyzed the public comments received in response to the notice, and is continuing to develop a final rule on this subject.

Definitions

(1) ''Federal Motor Carrier Safety Regulations'' (FMCSRs) are parts 350–399 of volume 49 of the Code of Federal Regulations. (2) ''Commercial motor vehicle'' (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—(a) has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds), or (b) has a GVWR of 11,794 or more kilograms (26,001 pounds or more), or (c) is designed to transport 16 or more passengers, including the driver, or (d) is of any size and is used in the transportation of hazardous materials as defined in 49 CFR 383.5 (49 CFR 383.5). The definition of CMV found at 49 CFR 390.5 of the FMCSRs is not applicable to this notice. (3) ''Commercial Driver's License (CDL) Driver'' means the

operator of a CMV because such operators must possess a valid commercial driver's license (CDL)(Section 383.23(a)(2)). (4) ''Entry-level CDL Driver'' means a driver with less than one year of experience operating a CMV with a CDL (49 CFR 380.502(b)).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: November 8, 2012.

Kelly Leone,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2012–28306 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC): Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Meeting of Motor Carrier Safety Advisory Committee (MCSAC).

SUMMARY: FMCSA announces that its Motor Carrier Safety Advisory Committee (MCSAC) will meet from Monday–Wednesday, December 3–5, 2012, in Alexandria, VA. On Monday, December 3, the Agency will assign the MCSAC a new task concerning entry-level driver training (ELDT) and provide briefings on previous rulemaking actions, research and data analyses on the issue, and the ELDT provision in the recently enacted Moving Ahead for Progress in the 21st Century (MAP–21) Surface Transportation Act. On Tuesday, December 4, the MCSAC will receive staff-level briefings from the DOT Office of the Inspector General (OIG) and General Accountability Office (GAO) on their oversight responsibilities with regard to the DOT and MCSAC. On Wednesday, the MCSAC's Compliance, Safety, Accountability (CSA) Subcommittee will be provided with presentations and a panel discussion from researchers and data analyst concerning the CSA Safety Measurement System and will continue its deliberations. Meetings are open to the public for their entirety and there will be a public comment period at the end of each day.

Times and Dates: The meeting will be held Monday–Tuesday, December 3–4, 2012, from 8:30 a.m. to 5 p.m., Eastern Daylight Time (E.D.T.), and on Wednesday, December 5, 2012, from 8:30 a.m. to 3:00 p.m., E.D.T. The meetings will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 in the Washington and Jefferson Rooms on the 2nd floor. The Hilton Alexandria Old Town is located across the street from the King Street Metro station.

Copies of all MCSAC Task Statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mcsac.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals with Disabilities:

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elizabeth Turner at (617) 494–2068, *elizabeth.turner@dot.gov,* by Tuesday, November 27, 2012.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Tuesday, November 27, 2012, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

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

Issued on: November 15, 2012 .

Larry W. Minor

Associate Administrator for Policy.

[FR Doc. 2012–28336 Filed 11–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0006–N–16]

Notice and Request for Comments

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on September 20, 2012.

DATES: Comments must be submitted on or before December 21, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493–6353), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 20, 2012, FRA published a 60-day notice in the **Federal Register** soliciting comments on ICR that the agency was seeking OMB approval. 75 FR 58439. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Survey of Northeast Regional and Intercity household Travel Attitudes and Behavior.

OMB Control Number: None.

Type of Request: New Information Collection Requirement.

Affected Public: Members of the general public between the ages of 18 and 74 who have Northeast intercity or regional travel experience during the 12 months prior to interview.

Estimated Number of Respondents: up to 22,500 for phase 1; up to 15,000 for phase 2

Abstract: FRA proposes to collect information from the public to determine current intercity and regional travel behavior of Northeast residents. The information collected will include frequency of trips, origin and destination, modes of travel (and class of service if applicable), trip purpose, party size, trip costs, and other trip characteristics. It will also ask for travel preferences under alternative choice scenarios that include different and new modes, classes of service, costs, and amenities.

The proposed information collection will be conducted in two phases. The first phase (Phase 1 Survey) will be conducted by telephone, using computer-assisted telephone interviewing (CATI). A dual frame sample design with be used including both landlines and cell phones. The Phase 1 Survey will obtain basic travel information and invite just those who experienced a qualifying intercity or regional travel trip to provide more detailed travel information and choice preferences in a second phase. The Phase 1 Survey interview is estimated to take five (5) minutes to complete. The second phase (Phase 2 Survey), which will immediately follow the first, will be administered by web (except in cases when easy web access is not possible and the participant needs a mailed paper survey). The Phase 2 Survey will ask more detailed questions about one randomly selected trip that the respondent reported in the first phase of the survey. In addition, it will ask the travel preference questions. The Phase 2 Survey is estimated to take 15 minutes to complete.

The Northeast faces major congestion and capacity constraints that, if not addressed, will have the potential to curtail future mobility and economic growth in the region. Thus, FRA established the Northeast Corridor (NEC) Future Program to develop a Passenger Rail Corridor Investment Plan (PRCIP) for the Northeast region. The PRCIP will address the larger goals of improving mobility, effectively serving travel demand, supporting economic development, reducing growth in carbon emissions and dependence of foreign oil, and contributing to improved land utilization. The PRCIP requires the development and evaluation of improved transportation alternatives for the Northeast. In support of preparing the PRCIP, this data collection is needed to build a model for estimating market demand for transportation in the Northeast and to evaluate how travelers would respond to alternative transportation service options.

While there are certain publicly available data that can assist in analyzing the Northeast travel market during the early phases of the project when alternatives are evaluated using coarse screening tools, more detailed data will be needed to support development of the detailed PRCIP. Currently available data include airline ticket data, Amtrak ticket data, and commuter rail ticket data. But these data sources do not contain information on the characteristics of the traveler (such as age, income, or vehicle ownership), trip purpose, detail on party size, or actual origins and destinations. Importantly, there is no current information on the number of intercity trips taken by automobile in the Northeast. Further, there is not currently a sufficient information source for traveler preferences regarding new transportation services that might be developed as part of the PRCIP.

Form Number(s): FRA F222.

Annual Estimated Burden Hours: 5,625 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on November 15, 2012.

Michael Logue,

Associate Administrator for Administration, Federal Railroad Administration.

[FR Doc. 2012–28421 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability for Public Review of the Draft Tier 1 Environmental Impact Statement for the Chicago, IL, to Omaha, NE, Regional Passenger Rail System Study

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

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: FRA is issuing this Notice to advise the public that a Draft Tier 1 Environmental Impact Statement (Tier 1 EIS) has been prepared for the Chicago to Omaha Regional Passenger Rail System Planning Study (Study). The Tier 1 EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); FRA's Procedures for Considering Environmental Impacts (Environmental Procedures); and guidelines published by the Council on Environmental Quality (CEQ) on implementing NEPA. The Study includes both a Tier 1 EIS and a Service Development Plan. FRA is the lead federal agency and the Iowa Department of Transportation (Iowa DOT) is the joint-lead state agency for the environmental review process. For passenger rail projects, this Tier 1 EIS focuses on broad corridor and service level issues, while subsequent Tier 2 analyses will focus on the details of a specific project or action.

Iowa DOT proposes to establish high-speed passenger rail service between Chicago, Illinois, through Iowa, to Omaha, Nebraska. The proposed project would provide an alternative to automobile, bus, and air travel by decreasing travel times, increasing frequency of service, improving reliability (particularly in inclement weather), providing an efficient transportation option, and providing amenities to improve passenger ride quality and comfort. The project would also promote environmental benefits, including reduced air pollutant emissions, improved land use options, and fewer adverse impacts to the surrounding habitat and water resources.

The Tier 1 EIS presents the proposed project's purpose and need, identifies reasonable alternatives, describes the affected environment, and analyzes the potential environmental impacts of the alternatives considered, including the no-build alternative.

DATES: Written comments on the Draft Tier 1 EIS should be provided within the 45-day comment period to Iowa DOT on or before Wednesday, December 26, 2012. Public hearings are scheduled to occur in early December 2012 in Chicago, Illinois, and in Des Moines and Council Bluffs, Iowa. For further details, please reference the Study's Web site at: *www.iowadot.gov/chicagotoomaha/.*

ADDRESSES: Comments or additional information on the Tier 1 EIS can be submitted in multiple ways: Mailed directly to Amanda Martin, Freight and Passenger Rail Policy Coordinator, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; submitted electronically through the Chicago to Omaha Regional Passenger Rail System Planning Study Web site at *www.iowadot.gov/chicagotoomaha;* submitted electronically to *email@chicagotoomaha.com* with ''Draft EIS'' in the Subject line; recorded at the Study's toll-free information line at 800–488–7119; or provided orally or in writing at the in-person open house public hearing.

FOR FURTHER INFORMATION CONTACT: Andréa Martin, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Avenue Southeast, (Mail Stop 20), Washington, DC 20590, telephone (202) 493–6201; or Amanda Martin, Freight and Passenger Rail Policy Coordinator, Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, telephone (515) 239–1653.

SUPPLEMENTARY INFORMATION: The Chicago to Omaha regional intercity passenger rail corridor extends from Chicago Union Station, in downtown Chicago, Illinois on the east to a terminal in Omaha, Nebraska on the west. In Illinois, the Study area extends west from Chicago Union Station (the hub for the Midwest Regional Rail Initiative) for approximately 200 miles to the Mississippi River near Moline, Illinois, and continues west for approximately 300 miles across the entire state of Iowa to the Missouri River, a distance of approximately 500 miles. The Study area terminates in Omaha, which is located at the Missouri River, the eastern border of the state of Nebraska.

The Chicago to Omaha Regional Passenger Rail System would provide a competitive passenger rail transportation option between Chicago and Omaha to help meet current and future demand for travel in the Study area. The need stems from travel demand and increasing congestion, resulting from population growth and changing demographics along the corridor from Chicago, Illinois to Omaha, Nebraska, as well as the lack of competitive and attractive travel alternatives to highway and air transportation. The proposed improvements of the preferred alternative meet the purpose and need criteria by: decreasing travel times; increasing frequency of service; improving service reliability; providing safe and efficient service; providing amenities to improve passenger ride quality and comfort; and promoting environmental benefits (reduced air pollutant emissions, improved land use options, and fewer adverse impacts to the surrounding habitat and water resources).

The Tier 1 EIS is available for review online at FRA's Web site *www.fra.dot.gov* and Iowa DOT's Web site at *www.iowadot.gov/chicagotoomaha.* The document is also available at 113 libraries located along the corridor in Illinois, Iowa, and Nebraska. For a full list of these viewing locations visit the Chicago to Omaha Regional Passenger Rail System Planning Study Web site at *www.iowadot.gov/chicagotoomaha.*

Issued in Washington, DC, on November 15, 2012.

Corey W. Hill,

Director, Office of Passenger and Freight Programs .

[FR Doc. 2012–28302 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of a Final Tier 1 Environmental Impact Statement, for the Chicago, IL to St. Louis, MO High Speed Rail Corridor Program and Tier 2 Evaluation for the Springfield Rail Improvements Project

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

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: FRA is issuing this notice to advise the public that a Final Environmental Impact Statement (Final EIS) has been prepared for the Chicago, Illinois to St. Louis, Missouri High Speed Rail Corridor Program. The Final EIS includes a Tier 1 corridor evaluation for the Chicago, Illinois to St. Louis, Missouri high-speed rail corridor and a Tier 2 project-level evaluation for the portion of the high-speed rail corridor in Springfield, Illinois. FRA is the lead federal agency and the Illinois Department of Transportation (IDOT) is

the joint-lead state agency for the environmental review process.

IDOT proposes to improve high speed passenger rail service between Chicago, Illinois and St. Louis, Missouri, including the rail lines through Springfield, Illinois. The proposal includes the development of double track along the railroad corridor to improve high-speed passenger service reliability and safety, and to increase the number of trips between Chicago and St. Louis, as well as improvements to railroad crossings, signals, and stations.

The Final EIS presents the Program's purpose and need, identifies all reasonable alternatives, describes the affected environment, analyzes the potential environmental impacts of all the reasonable alternatives and the No-Build Alternative, and identifies the Preferred Alternative and appropriate mitigation measures to minimize the potential environmental impacts.

DATES: FRA will issue a final decision on the proposal after the 30 day wait period which concludes on December 10, 2012, established by Environmental Protection Agency's publication of the notice of availability of the EIS in the **Federal Register**.

ADDRESSES: Copies of the Final EIS have been sent to affected Federal, State, and local government agencies, stakeholders, and are also available for public review at IDOT, 505 North MacArthur Boulevard, Springfield, Illinois 62702 and online at FRA's Web site: *http://www.fra.dot.gov* and IDOT's Web site: *http://www.idothsr.org.*

FOR FURTHER INFORMATION CONTACT: Andrea E. Martin, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., MS–20, Washington, DC 20590; email: *andrea.martin@dot.gov;* telephone: 202–493–6201 or Joseph E. Shacter, Director, Division of Public and Intermodal Transportation, Illinois Department of Transportation, 100 West Randolph Street, Suite 6–600, Chicago, Illinois 60601; email: *Joseph.Shacter@Illinois.gov;* telephone: 312–793–2116.

SUPPLEMENTARY INFORMATION: The proposed Program would include the development of a double track and railroad crossings, signals, and stations along a preferred route of existing railroad corridors between Chicago, Illinois and St. Louis, Missouri, to improve high-speed passenger service reliability and safety, and increase the number of trips. This Program of improvements would be in addition to those associated with FRA studies within the Chicago to St. Louis Corridor previously conducted from 2004 and 2011 and being implemented by IDOT.

The Final EIS identifies and evaluates the environmental and transportation impacts for corridor capacity enhancements, including double track. The current Chicago to St. Louis Corridor operates predominantly on a single track that is shared by both traditional freight and Amtrak passenger rail service.

A tiered environmental process was used to evaluate the proposed Program. A tiered environmental process is a phased environmental review used in the development of complex projects. Under this process, the Tier 1 EIS addresses broad, corridor issues and alternatives. Tier 2 environmental documents address individual component projects of the Selected Alternative carried forward from the Tier 1 environmental process. Concurrently with this Tier 1 study of the full Chicago to St. Louis Corridor, IDOT and FRA conducted a Tier 2 evaluation for the portion of the High-Speed Rail Corridor in Springfield, IL.

In June 2012, IDOT circulated the Draft Tier 1 EIS for a 45-day public and agency review and comment period pursuant to 40 CFR 1502.9(b). The Draft Tier 1 EIS analyzed a No-Build Alternative and various Build Alternatives. IDOT and FRA convened public hearings in August 2012 in Chicago, Joliet, Springfield, Bloomington, and Alton, Illinois.

The IDOT and FRA considered the entire record and compared the potential environmental impacts of the Tier 1 Build Alternatives, as well as impacts of the No-Build Alternative, in order to select the Preferred Alternative. The Preferred Alternative follows the existing Amtrak passenger corridor, except through Springfield and north of Joliet. Between Chicago and Joliet, the Preferred Alternative follows the Metra Rock Island District line from Joliet Union Station to the Norfolk Southern (NS) line near 40th Street in Chicago, the NS to Amtrak south of Union Station, and Amtrak owned tracks to Union Station. The Preferred Alternative allows for eight daily round trips at 110 miles per hour (mph) on two tracks.

Other improvements also identified in the Final EIS include sidings, pedestrian grade separations at the stations, and grade separations along major roadways. Individual component projects along the corridor would be advanced and studied in greater detail as future Tier 2 project-level evaluations, as part of the tiered environmental review process.

A Tier 2 project-level evaluation for improvements in Springfield is also included within the Final EIS. The Springfield Rail Improvements Project has been advanced concurrently as a component of the overall corridor program. The Tier 2 evaluation further considers the environmental and transportation impacts of alternatives following different rail routes through the City of Springfield, Illinois. The evaluation addresses safety, noise, and traffic delays that would result from increased volumes of both passenger and freight rail traffic on the three north-south rail corridors that pass through the City of Springfield. In Springfield (as identified in the Tier 2 project-level evaluation), the Preferred Alternative is to shift Union Pacific (UP) freight as well as new and existing Amtrak passenger trains to an expanded NS corridor along Tenth Street.

This Final EIS has been prepared in compliance with the provisions of Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR part 1500 *et seq.*), and FRA's Procedures for Considering Environmental Impacts (64 FR 28545; May 26, 1999).

Issued in Washington, DC, on November 15, 2012.

Corey W. Hill,

Director, Office of Passenger and Freight Programs.

[FR Doc. 2012–28301 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–13398]

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 16, 2012, the Hillsborough Area Regional Transit Authority (HART) 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 for continued operation of its TECO Line Streetcar System at a ''limited connection'' with a railroad operated by CSX Transportation (CSX).

In its petition, HART seeks to extend the terms and conditions of its Shared Use waiver (originally granted by FRA's Railroad Safety Board (Board) on October 18, 2002, and extended on July 14, 2006) for operation of its TECO Trolley across the 14th Street automatic interlocking at-grade rail-rail diamond crossing with CSX in Tampa, FL.

On January 11, 2011, HART requested an extension of the terms and conditions of its Shared Use waiver for operation of its TECO Trolley. The Board granted HART's request for an extension of the relief for a period of only 18 months, citing deficiencies found during recent FRA inspections. FRA granted the 18-month extension on the condition that HART remedies the deficiencies and conducts, at the least, quarterly meetings to review operations at this crossing with CSX and the Florida Department of Transportation. FRA would continue to review its operation, and HART could apply for another extension prior to the end of that time period. HART states in its current petition letter that during two FRA inspections, no deficiencies in its operation were found, and requests a 5-year extension of the original waiver.

For the reasons stated above, HART explained that its 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 (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 January 7, 2013 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 November 15, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–28351 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0083]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated October 5, 2012, New Jersey Transit (NJ Transit) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations at 49 CFR part 218, Railroad Operating Practices. FRA assigned the petition Docket Number FRA–2012–0083.

NJ Transit owns and operates service on the Pascack Valley Line, which runs from Spring Valley, NY to Hoboken, NJ. Commuter rail service for the three stations in New York State (Spring Valley, Pearl River, and Nanuet) is provided under contract with Metro-North Railroad. Woodbine Yard, located in Spring Valley, NY, has been in service long before NJ Transit became operational on January 1, 1983. The yard consists of three tracks terminating at the end of the 31-mile Pascack Valley Line. In 2003, the yard was expanded and updated to make room for additional commuter rail service on the line. All three tracks were extended to the maximum distance allowed by the available land for train storage and use by mechanical personnel for inspection, servicing, and repairs that require Blue Signal Protection.

The current Mechanical Department workforce at this facility includes approximately 24 employees inspecting, servicing, and repairing approximately 10 trains per day. The allotted times for servicing equipment are restricted due to train availability, time of day, and train scheduling requirements. Currently, all three tracks are used for inspection, servicing, and repairs that require Blue Signal Protection. The maximum track space on each track is being used to accommodate the current length of the train consists. However, complying with the current regulations requiring derails to be placed 150 feet away from equipment requiring Blue Signal Protection will restrict the train lengths that can be placed on a given track. In addition, lining and locking a track switch away from the track being protected will restrict the amount of equipment that can be simultaneously inspected, serviced, or repaired.

Based on the situation described above, NJ Transit seeks a waiver from 49 CFR Section 218.29(c)(1) for Woodbine Yard in Spring Valley, NY. This section requires that derails protecting tracks under Blue Signal Protection be placed ''no less than 150 feet'' from equipment and locked ''with an effective locking device.'' The combination of the yard layout at Spring Valley and equipment track occupancy is such that meeting this requirement is impractical. In addition, the layout of switches to individual tracks is such that the use of the method of lining switches against movement as provided by Section 218.27(b) is also impractical due to track configuration and the necessity to inspect, service, and repair equipment on the adjacent tracks simultaneously. In lieu of Section 218.29(c)(1), NJ Transit requests that FRA grant permission to NJ Transit to use Section 218.29(a)(4) that permits the placement of derails at least 50 feet from the end

of the equipment requiring Blue Signal Protection if the speed within the area is restricted to not more than 5 mph.

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 January 7, 2013 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 November 15, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–28349 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0071]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 4, 2012, Capital Metropolitan Transportation Authority (CMTY) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations at 49 CFR part 222. FRA assigned the petition Docket Number FRA–2012–0071.

CMTY, with the support of the City of Austin, TX, is seeking a waiver from the requirements of 49 CFR 222.21(a) that require CMTY trains to sound their locomotive horn in a specific manner (two long, one short, and one long blast) as they approach and enter public highway-rail grade crossings. Specifically, CMTY requests that it is granted permission to sound the engine bell in lieu of the horn as trains approach the public highway-rail grade crossing at Red River Street (USDOT #765738S). The grade crossing in question is a single-track grade crossing located within yard limits on CMTY. The petition letter indicates that from March 2010 to June 7, 2012, CMTY has operated over 16,000 trains through the Red River intersection without any reported incidents involving trains, pedestrians, or automobiles. CMTY states that it is requesting this waiver to provide noise relief to downtown residents, convention center visitors, the adjacent hotel, and downtown businesses, while maintaining the safety of an audible warning by ringing the bell.

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 Ave. 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 January 7, 2013 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 November 15, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–28348 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0069]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 26,

2012, Midwest Rail d.b.a. Toledo Lake Erie and Western Railway (TLEW) 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 223—Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses. FRA assigned the petition Docket Number FRA–2012–0083.

Specifically, TLEW seeks a waiver of compliance from the requirements of 49 CFR 223.11—*Requirements for existing locomotives* and 49 CFR 223.13—*Requirements for existing cabooses.* TLEW has petitioned FRA for a waiver for one American Locomotive Company Model S–4, 1000-horsepower diesel electric locomotive numbered 5109 (TLEW 5109). This locomotive was built for the Chesapeake and Ohio Railroad in 1954. The locomotive is equipped with standard window material that is shatter resistant. All windows of TLEW 5109 are in excellent shape with unobstructed visibility. The locomotive will be used for both excursion passenger and freight service.

TLEW also seeks a waiver for Caboose TLEW 475, which is a steel caboose, Association of American Railroads-type M930, built in 1962, and equipped with shatter-resistant glazing. The existing window framing on this caboose is not compatible with the required FRA Type I and II glazing. Other than the glazing, the caboose meets all other FRA safety requirements. The caboose will be used for both excursion passenger and freight trains where reverse movements are required. It will provide a safe platform for crewmembers to ride and protect the movements through the rural and wooded areas of operation.

Midwest Rail is committed to operating freight and tourist/excursion rail service from Waterville, Milepost (MP) 13.2, to Grand Rapids, OH, MP 25.0, and then return; a one-way distance of 11.8 miles. The line is located in a rural area, between the communities of Waterville and Grand Rapids, with a combined population of less than 7,000. There are no overhead bridge structures or areas of elevation along the railroad that would allow objects to be thrown from above. Based on historical information provided from the prior operator of this line, there have been no reports of vandalism, objects thrown, or other acts of malicious destruction to railroad equipment during operation in the last 10 years. The maximum authorized speed for freight and excursion movements will not exceed 15 mph. Locomotive TLEW 5109 is primarily used in yard switching service. TLEW states that the railroad is private and does not currently operate any trains.

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 January 7, 2013 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 November 15, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–28350 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0059]

Request for Comments on a Renewal of a Previously Approved Information Collection: Production Plan Reports

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 12, 2012 (77 FR 35110). No comments were received.

DATES: Comments must be submitted on or before December 21, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Katz, Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Programs, NVS–132, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Phone: (202) 366–4936.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR Parts 531 and 533 Passenger Car Average Fuel Economy Standards—Model Years 2016–2025; Light Truck Average Fuel Economy Standards—Model Years 2016–2025; Production Plan Data.

OMB Control Number: 2127–0655.

Type of Request: Renewal of a previously approved information collection.

Abstract: In this collection of information, NHTSA is requesting updated future product plans from vehicle manufacturers, as well as production data through the recent past, including data about engines and transmissions for model year MY 2012 through MY 2025 passenger cars and light trucks and the assumptions underlying those plans.

NHTSA requests information for MYs 2012–2025 to aid NHTSA in developing a realistic forecast of the MY 2016–2025 vehicle market. Information regarding earlier model years may help the agency to better account for cumulative effects such as volume and time-based

reductions in costs, and also may help to reveal product mix and technology application trends during model years for which the agency is currently receiving actual corporate average fuel economy (CAFE) compliance data. Information regarding later model years helps the agency gain a better understanding of how manufacturers' plans through MY 2025 relate to their longer-term expectations regarding Energy Independence and Security Act requirements, market trends and prospects for more advanced technologies.

NHTSA will also consider information from model years before and after MYs 2016–2025 when reviewing manufacturers' planned schedules for redesigning and freshening their products in order to examine how manufacturers anticipate tying technology introduction to product design schedules. In addition, the agency is requesting information regarding manufacturers' estimates of the future vehicle population, and fuel economy improvements and incremental costs attributed to this notice.

Affected Public: Automobile manufacturers.

Number of Respondents: 30.

Number of Responses: 30.

Total Annual Burden Hours: Reports are requested from each of the thirty automotive manufacturers. For each manufacturer who supplies product plan reports, NHTSA has made available a product plan template, which can be found at: *http://www.nhtsa.gov/Laws+&+Regulations/CAFE+-+Fuel+Economy/Current+and+past+product+plan+requests.*

NHTSA currently has a clearance for 16,000 hours, based on reports being received from 22 manufacturers. Including reports from eight additional manufacturers, most of which produce approximately 500 vehicles per year, results in an additional reporting burden of 500 hours. Adding that burden to the existing burden of 16,000, results in a total reporting burden of 16,500 hours. The information requested in the templates may change from request to request as new fuel economy technologies are implemented, which may increase the amount of information requested, and as older technologies are phased out, which may decrease the amount of information requested. Therefore, the time needed to complete the templates may vary for each product plan request. Although the reporting burden may not be precisely 16,500 hours for each specific product plan request, NHTSA believes that, based on prior experience, that this burden is representative and accurate for the purposes of this clearance.

Frequency of Collection: Manufacturer product plans are requested each time that NHTSA initiates a rulemaking for light-duty fuel economy standards. These standards may be issued for a one to five year time frame; thus, manufacturers would be expected to provide these reports every one to five years. Recent NHTSA rulemakings have typically ranged between three and five years. NHTSA generally requests product plans prior to issuing a notice of proposed rulemaking and prior to the issuance of a final rule. Since the gap between the two rules generally is less than a year, manufacturers would be expected to provide two reports for each rulemaking cycle.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

AUTHORITY: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued on: November 15, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–28305 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0301; Notice No. 12–10]

Assessment of Hazardous Materials Incident Data Collection, Analysis, Reporting, and Use

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

ACTION: Notice.

SUMMARY: This notice is a request for comments and information to be used for an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials. This notice is being conducted in support of the ''Moving Ahead for Progress in the 21st Century'' (MAP–21) Act.

DATES: Comments must be received by December 28, 2012.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2012–12–10) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: 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 document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Mr. David Lehman or Ms. Yolanda Braxton, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–1074.

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA, and its predecessor agency the Research and Special Programs

Administration (RSPA), have collected hazardous materials incident reports for over 40 years. The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) establish requirements for an immediate report (see § 171.15) and a detailed incident report (Form DOT F5800.1; see § 171.16). Over 500,000 detailed incident reports have been collected over time. The incident data and information is generally used by PHMSA to:

1. Evaluate regulatory effectiveness;
2. Determine the need for regulatory changes to address changing transportation safety problems;
3. Identify major problem or risk areas that should receive priority attention;
4. Chart trends;
5. Identify problems and training inadequacies;
6. Evaluate packages and packaging;
7. Assess ways to reduce releases;
8. Aid the targeting of enforcement activities; and
9. Assist in evaluating fitness for special permits and approvals.

II. Purpose of This Notice

Section 33006(a) of MAP–21 (Pub. L. 112–141 § 33006(a), 126 Stat. 835, July 6, 2012) requires the Department to conduct an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials.

Section 33006(b) requires the Department to rely on the results of the assessment to develop an action plan and timeline for improving the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials.

The provisions of MAP–21 set an expedited timeline, with the assessment due not later than six months after the date of enactment (§ 33006(a)) and the action plan due three months after (§ 33006(b)). Upon completion of the action plan and timeline the agency has fifteen days to submit them to Congress (§ 33006(c)).

In this notice, PHMSA is soliciting information, comments, and inputs related to the required elements of the assessment contained in MAP–21. Specifically, please provide comments on your view of the methods used by PHMSA to collect, analyze, report, and use data. Also, please provide comments on the adequacy of and suggestions for improvement to:

1. Information requested on the accident and incident reporting forms required to be submitted to PHMSA;
2. Methods used by PHMSA to verify that the information provided on such forms is accurate and complete;
3. Accident and incident reporting requirements, including whether such requirements should be expanded to include shippers and consignees of hazardous materials;
4. Resources of PHMSA related to data collection, analysis, and reporting, including staff and information technology; and
5. The database used by PHMSA for recording and reporting such accidents and incidents, including the ability of users to adequately search the database and find information.

Issued in Washington, DC, on November 15, 2012 under authority delegated in 49 CFR Part 1.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–28245 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0126; Notice No. 12–12]

Advisory Notice: Notice of Intent To Provide Compliance Date Extension for Air-Passenger Notification of Hazardous Material Restrictions

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

ACTION: Advisory notice.

SUMMARY: PHMSA and the Federal Aviation Administration's (FAA) Office of Security and Hazardous Materials Safety hereby provide notification of our intent to extend the compliance date for certain provisions adopted in a January 19, 2011 final rule (PHMSA–2009–0126; 76 FR 3308) by no less than one year beyond the current January 1, 2013 compliance date in a future rulemaking action. This notice is intended to provide the widest dissemination of our planned future action to all potentially affected parties and to allow for development of a collaborative approach to implementing air-passenger notifications between interested government, commercial, and private entities.

FOR FURTHER INFORMATION CONTACT: Michael Stevens, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Standards and Rulemaking Division (PHH–10), (202) 366–8553, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 175.25 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) prescribes the requirements for air-passenger notification of hazardous materials restrictions. One primary purpose for this regulation is to enhance public safety awareness regarding the carriage of hazardous materials onboard aircraft, either as carry-on items or in checked baggage. Improved public safety awareness facilitates passenger compliance with applicable regulatory requirements, thus enhancing overall aviation safety by reducing the likelihood of inappropriate items being transported onboard aircraft. On January 19, 2011, PHMSA amended 49 CFR 175.25 (PHMSA–2009–0126; 76 FR 3308). The amendments included requirements for passenger notification during ticket purchase and flight check-in, and are effective January 1, 2013. While PHMSA has the primary responsibility for issuing 49 CFR regulations, the FAA has primary responsibility for overseeing compliance with these regulations as they pertain to air transport. Since publication of the January 19, 2011 final rule, PHMSA and the FAA have received numerous inquiries regarding specific interpretations of the amended requirements and the acceptability of certain means of compliance with the revised regulations. This notice responds to administrative appeals that request up to a two-year extension of the compliance date of the adopted passenger notification provisions under § 175.25 of the HMR.

II. Public Meeting

Subsequent to issuance of the January 19, 2011 final rule, PHMSA and the FAA received numerous written and oral comments requesting additional time for affected entities to implement the new provisions in a more effective and cooperative manner. As a result, a public meeting was held on August 16, 2012, in Washington, DC, to discuss issues and concerns of participants and regulators alike. Consequently, PHMSA and the FAA jointly announced that we seek further collaboration with the air-passenger transportation community in defining what constitutes compliance with the new provisions, to reduce or eliminate any ambiguities, and to bring more transparency to the process.

III. Conclusion

PHMSA and FAA agree that delaying the full compliance date of revised § 175.25 is warranted, particularly if a

delay supports the implementation of more effective methods for increasing passenger awareness of, and compliance with, the HMR. Additionally, we acknowledge that better notification of industry stakeholders is necessary if we wish to gain widespread support of the collaborative approach to implementing effective and value-added solutions as discussed during the August 16, 2012 public meeting.

Therefore, PHMSA and FAA are providing this notification of our intent to extend in a future rulemaking action, the compliance date by no less than one year, beyond the current January 1, 2013 compliance date. We look forward to collaborating with all interested parties as we move forward to address this issue and enhance aviation safety.

Issued in Washington, DC on November 15, 2012 under authority delegated in 49 CFR Part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–28252 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0247; Notice No. 12–09]

International Standards on the Transport of Dangerous Goods; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting in preparation for the 42nd session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held December 3 to 11, 2012, in Geneva, Switzerland. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda.

Information Regarding The UNSCOE TDG Public Meeting:

DATES: Wednesday, November 28, 2012; 9:00 a.m.–12:00 noon.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, Conference Rooms 8–10, 1200 New Jersey Avenue SE., Washington, DC 20590.

Registration: It is requested that attendees pre-register for this meeting by completing the form at *http://www.phmsa.dot.gov/hazmat/regs/international.* Failure to pre-register may delay your access to the building. Participants attending in person are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Conference Call Capability/Live Meeting Information: Conference call-in and ''live meeting'' capability will be provided for this meeting. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international.*

FOR FURTHER INFORMATION CONTACT: Vincent Babich or Kevin Leary, Office of Hazardous Materials Safety, International Standards, Department of Transportation, Washington, DC 20590; (202) 366–8553.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to prepare for the 42nd session of the UNSCOE TDG. The 42nd session of the UNSCOE TDG is the final meeting scheduled for the 2011–2012 biennium. The UNSCOE will consider proposals for the 18th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations which will be implemented within relevant domestic, regional, and international regulations from January 1, 2015. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3age.html.*

General topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters
- Listing, classification and packing
- Electric storage systems
- Miscellaneous proposals of amendments to the Model Regulations
- Cooperation with the International Atomic Energy Agency (IAEA)
- Global harmonization of transport of dangerous goods regulations
- New proposals for amendments to the Model Regulations
- Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

Since this is the final session of the UNSCOE TDG for the current biennium, the Sub-Committee will establish its work plan for the 2013–2014 biennium during this meeting. PHMSA is soliciting comments and input for the 2013–2014 biennium work plan.

Following the 42nd session of the UNSCOE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.* PHMSA's site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UNSCOE TDG and related matters.

Issued in Washington, DC, on November 15, 2012 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–28253 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0280; Notice No. 12–11]

Safety Advisory Notice: Safety Advisory for Shippers and Carriers of Air Bags

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

ACTION: Safety Advisory Notice.

SUMMARY: PHMSA has been alerted by the National Highway Traffic Safety Administration (NHTSA) that counterfeit air bags have been sold as replacement parts to consumers and repair professionals. These counterfeit products may contain unapproved explosives and thus pose additional transportation risks when compared to air bags manufactured through legitimate means. Therefore, PHMSA is issuing this Safety Advisory Notice to (1) notify shippers and carriers of problems involving counterfeit air bags; (2) provide guidance on the proper classification of air bags; (3) specify provisions applicable to devices containing unapproved explosives; and (4) provide the next steps that PHMSA will take to address this problem. Consumers or repair professionals who suspect they have a counterfeit air bag should contact a call center established by their auto manufacturer. A list of these call centers and other additional information, including the list of vehicles that may contain counterfeit air bags, can be found at *www.SaferCar.gov.*

FOR FURTHER INFORMATION CONTACT: Field Operations Division, Office of Hazardous Materials Safety, (202) 366–

4700, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA was recently advised by NHTSA that consumers and repair professionals may face a potential safety risk involving the sale of counterfeit air bags for use as replacement parts. Some of these devices look nearly identical to legitimate products, including the branding of certain major automakers. While NHTSA is not aware of any fatalities or injuries that have resulted from counterfeit equipment, their testing has shown malfunctioning ranging from non-deployment of the air bag to the expulsion of metal shrapnel during deployment. NHTSA estimates this problem affects a minute percent of vehicles in the U.S. vehicle fleet. NHTSA described the risk in a press release as ''only vehicles which have had an air bag replaced within the past three years by a repair shop that is not part of a new car dealership may be at risk.'' NHTSA's press release is available at the following URL: *http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/Safety+Advisory:+NHTSA+Alerting+Consumers+to+Dangers+of+Counterfeit+Air+Bags.*

II. Current Regulatory Requirements

Many air bags incorporate a pyrotechnic device, known as an initiator or electric match, consisting of an electrical conductor cocooned in combustible material. A current pulse heats up the conductor, which in turn ignites the combustible material and the reaction causes gases that fill the air bag. Air bags that deploy a pyrotechnic device meet the definition of an explosive for which PHMSA has regulatory authority. These air bags must be approved by PHMSA before the air bag is authorized for transportation in commerce. An air bag without an approval, including a counterfeit air bag, is considered a forbidden explosive as specified in § 173.54(a) of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) and may not be offered for transportation or transported in commerce.

The classification and packing group requirements contained in the HMR provide for the safe transportation of properly manufactured and approved air bag products. In addition to classification by the shipper, each air bag is required to acquire approval by the Associate Administrator for Hazardous Materials Safety (§ 173.166(b)). This approval is a mechanism of ensuring that these products, which contain pyrotechnic initiators, meet the appropriate safety standards.

An approved airbag may be shipped under the description ''UN3268, Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners, 9, PGIII.'' The air bag must be in rigid, outer packaging that meets the general packaging requirements of part 173, packaging specification requirements of part 178, and is designed and constructed to prevent movement of the articles and inadvertent operation. Authorized packagings are as follows: 1A2, 1B2, 1G or 1H2 drums; 3A2 or 3H2 jerricans; and 4C1, 4C2, 4D, 4F, 4G or 4H2 boxes. Shipments of Class 9 air bags are required to display a Class 9 label, according to § 173.166(f). In addition, as stated in § 173.166(c), when offered for transportation, shipping papers accompanying an air bag must contain the EX number or product code for each approved device.

III. PHMSA Guidance for Unapproved Explosives

PHMSA recognizes the increased transportation hazards presented by the shipping of suspected counterfeit devices and potentially unapproved explosives. Suspected counterfeit air bags are subject to approval by the Associate Administrator for Hazardous Materials Safety as explosive devices, using the classification criteria in § 173.56. In accordance with § 173.54(a) a forbidden explosive is an explosive that has not been approved as specified in § 173.56. Therefore, per § 173.21(b), the offering for transportation or transportation of an unapproved explosive is forbidden by the HMR.

Information regarding training as well as guidance documents regarding the requirements of the HMR can be found on PHMSA's Hazardous Materials Safety Web site at *http://www.phmsa.dot.gov/hazmat.* The HMR are also accessible through our Web site, and answers to specific questions regarding the HMR may be obtained from the Hazardous Materials Information Center at 1–800–467–4922 (in Washington, DC, call 202–366–4488).

IV. Next Steps

PHMSA and NHTSA are continuing to work with our partners at the U.S. Customs and Border Protection's Commercial Targeting and Analysis Center to identify and target potential manufacturers and importers of these unapproved devices in order to prevent the entry of unsafe products into the U.S. PHMSA continues to work with the regulated community to assess and monitor concerns related to the reverse logistics of these devices. In an effort to further the investigation on the sale of counterfeit air bags, if a shipper or carrier believes they are in possession of an unapproved device, please contact the Hazardous Materials Information Center at 1–800–467–4922 (in Washington, DC, call 202–366–4488).

Issued in Washington, DC, on November 14, 2012, under authority delegated in 49 CFR Part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–28238 Filed 11–20–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35688]

Transco Railway Products Inc.—Acquisition and Operation Exemption—D&W Railroad LLC

Transco Railway Products Inc. (Transco), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from D&W Railroad LLC (D&W) and to operate approximately 23 miles of tracks in Oelwein, Iowa. The tracks consist of: (1) A series of approximately 24 parallel, stub-ended track segments (identified as the ''Stub-ended Tracks''); (2) track segments that connect to the D&W main line, which segments include three parallel tracks northeast of the Stub-ended Tracks (identified as Track Nos. 0, 1, and 2), and tracks identified as the ''Depress Track,'' the ''Back Lead,'' and the ''Freight Track'' (the Freight Track leads to Transco's facility in Oelwein); and (3) track segments identified as the ''Round House Track'' and the ''Diesel Track'' (each of which connects to the Freight Track), and the ''Crossover Track'' (which connects the Freight Track to the Back Lead track).[1] The tracks are located west of the main line, north of Fourth Street SW., and south of 50th Street.

The transaction may not be consummated prior to December 5, 2012 (30 days after the notice of exemption was filed).

Transco certifies that its projected annual revenues would not exceed that

[1] Concurrently with its verified notice of exemption, Transco filed a motion to dismiss the notice, alleging that it does not need Board authority to acquire and operate over the subject tracks because the tracks are excepted yard track, pursuant to 49 U.S.C. 10906. Transco's motion to dismiss will be addressed in a subsequent Board decision.

which would qualify it as a Class III rail carrier, and further states that its projected annual revenue would not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 28, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35688, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Nardi, 1300 19th Street NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 15, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–28289 Filed 11–20–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35691]

Western Carolina Railway Service Corporation, Steven C. Hawkins and Cheryl R. Hawkins—Continuance in Control Exemption—Aiken Railway Company, LLC

Western Carolina Railway Service Corporation (WCRS) and Steven C. Hawkins and Cheryl R. Hawkins (the Hawkins) (collectively, Applicants) have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of noncarrier Aiken Railway Company, LLC (AIKR), upon AIKR's becoming a Class III rail carrier.

This transaction is related to a notice of exemption filed on October 31, 2012, in which AIKR seeks to lease from Norfolk Southern Railway Company and to operate two segments of rail line as follows: (1) the SA Line extending 12.45 miles between milepost SA 63.45 at or near Warrenville, S.C., and milepost SA 51.0 at or near Oakwood, S.C.; and (2) the AB Line extending 6.45 miles between milepost AB 23.75 at or near Aiken, S.C., and milepost AB 17.3 at or near Seclay, S.C. *Aiken Ry.—Lease and Operation Exemption—Lines of Norfolk S. Ry. in Aiken Cnty., S.C.,* Docket No. FD 35665.

The Hawkins, noncarrier individuals, own a controlling share of voting stock in WCRS, a noncarrier corporation. In turn, WCRS wholly owns Greenville & Western Railway Company, LLC, a Class III rail carrier.

The transaction may be consummated on or after December 5, 2012 (30 days after the notice of exemption was filed).[1] The effective date of the related lease and operation exemption in Docket No. FD 35665 is November 30, 2012. WCRS and the Hawkins are reminded that they are not authorized to control AIKR until the continuance in control exemption becomes effective.

Applicants represent that: (1) The lines to be acquired by AIKR do not connect with any railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the lines with other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than November 28, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35691, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on J. Marshall Lawson, 4840 Forest Drive, Suite 6B, PMB–295, Columbia, SC 29206–4810.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: November 16, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–28328 Filed 11–20–12; 8:45 am]

BILLING CODE 4915–01–P

[1] Applicants requested that the Board expedite this transaction by making the effective date of the exemption December 1, 2012, to coincide with AIKR's proposed date to commence operations. Applicants have not, however, justified moving the effective date up four days.

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Capability

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Capability (''Council'') will convene for an open meeting on November 28, 2012, at the Department of Treasury, 1500 Pennsylvania Avenue NW., Washington DC, beginning at 8:00 a.m. Eastern Time. The meeting will be open to the public. The Council will: (1) Receive reports from the Council's subcommittees (Underserved and Community Empowerment, Research and Evaluation, Partnerships, and Youth) on their progress; (2) discuss recommendations made by the subcommittees and (3) receive a status report on the implementation of the previous recommendations of the Council.

DATES: The meeting will be held on November 28, 2012, at 8:00 a.m. Eastern Time.

Submission of Written Statements: The public is invited to submit written statements to the Council. Written statements should be sent by any one of the following methods:

Electronic Statements

Email: *pacfc@treasury.gov*; or

Paper Statements

Send paper statements to the Department of the Treasury, Office of Consumer Policy, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington DC, 20220.

In general, the Department will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and photocopying in the Department's library located at Room

1428, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington DC, 20220. The library is open on official business days between the hours of 10:00 a.m. and 5:00 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Louisa Quittman, Director, Financial Education, Office of Consumer Policy, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington DC, 20220, at (202) 622–5770 or *pacfc@treasury.gov.*

SUPPLEMENTARY INFORMATION: On January 29, 2010, the President signed Executive Order 13530, creating the Council to assist the American people in understanding financial matters and making informed financial decisions, thereby contributing to financial stability. The Council is composed of two *ex officio* Federal officials and 15 non-governmental members appointed by the President with relevant backgrounds, such as financial services, consumer protection, financial access, and education. The role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance individuals' and families' financial capability. The Council held its first meeting on November 30, 2010. At that meeting, the Chair recommended the establishment of five subcommittees to focus on the following strategic areas: Financial Access (later renamed Underserved and Community Empowerment), Research and Evaluation, Partnerships, and Youth. The Council met again on April 21, 2011; July 12, 2011; November 8, 2011; January 19, 2012, April 9, 2012, and July 16, 2012. At the January 19, 2012, meeting, the Council presented an Interim Report to the President, which can be found at: *http://www.treasury.gov/resource-center/financial-education/Documents/PACFC%20Interim%20Report%2001-18-12%20Final.pdf.*

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Louisa Quittman, Designated Federal Officer of the Council, has ordered publication of this notice that the Council will convene its eighth meeting on November 28, 2012, at the Department of Treasury, 1500 Pennsylvania Avenue NW., Washington DC, beginning at 8:00 a.m. Eastern Time. The meeting will be open to the public. Members of the public who plan to attend the meeting must RSVP with their name, organization represented (if any), phone number, and email address. To register, please go to *www.treasury.gov,* click on Resource Center, then Office of Consumer Policy, and then on the President's Advisory Council on Financial Capability by 5:00 p.m. Eastern Time on November 19, 2012. For entry into the building on the date of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo. Due to the significant logistical difficulties of convening the members of the committee, the meeting has been scheduled with less than 15 days notice (see 41 CFR 102–3.150(b)).

The purpose of the meeting is to receive an update from the Council's subcommittees on their progress; discuss recommendations made by the subcommittees; and receive a status report on the implementation of the previous recommendations of the Council.

Dated: November 14, 2012.

Rebecca Ewing,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2012–28311 Filed 11–20–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice and Request for Comments

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)). The IRS is soliciting comments concerning information collection requirements related to Notice 2012–48, Tribal Economic Development Bonds.

DATES: Written comments should be received on or before January 22, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of 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: Tribal Economic Development Bonds.

OMB Number: 1545–2233.

Notice Number: Notice 2012–48.

Abstract: This Notice solicits applications for the reallocation of available amounts of national bond issuance authority limitation for tribal economic development bonds (''Tribal Economic Development Bonds'') that were previously allocated to eligible issuers by the Internal Revenue Service (''IRS'') and that have not been used. This Notice also provides related guidance on: (1) The application requirements and forms for requests for volume cap allocations, and (2) the method that the IRS and the Department of the Treasury will use to allocate the volume cap.

Current Actions: There are no changes being made to the burden previously requested at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Tribal governments.

Estimated Number of Respondents: 143.

Estimated Average Time per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 1,000.

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 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: November 15, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–28244 Filed 11–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in New York, NY.

DATES: The meeting will be held December 6, 2012.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on December 6, 2012, at 290 Broadway, Foley Square, New York, New York 10007 at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Ruth M. Vriend, C:AP:SO:ART, 1111 Constitution Ave. NW., Washington, DC 20024. Telephone (202) 435–5739 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on December 6, 2012, at 290 Broadway, Foley Square at 9:30 a.m., New York, NY 10007.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Chris Wagner,

Chief, Appeals.

[FR Doc. 2012–28243 Filed 11–20–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 225 November 21, 2012

Part II

Federal Communications Commission

47 CFR Parts 1, 27, and 73
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27, and 73

[Docket No. 12–268; FCC 12–118]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Notice of Proposed Rulemaking, ''Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions'' (*NPRM*), released October 2, 2012, the Commission considers matters related to the implementation of Congress's mandate to conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).

DATES: Comments for this proceeding are due on or before December 21, 2012; reply comments are due on or before February 19, 2012. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 22, 2013.

ADDRESSES: You may submit comments, identified by Docket No. 12–268 and/or FCC 12–118, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail.) All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov* and also to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: For further information about this NPRM, please contact Jennifer Manner at (202) 418–3619, *Jennifer.Manner@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918, or via email at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 12–118, Docket No. 12–268, adopted on September 28, 2012, and released on October 2, 2012. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at FCC Headquarters building located at 445 12th Street SW., Room TW–A325, Washington, DC 20054. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in this section (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed revised information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due January 22, 2013. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Numbers: 3060–XXXX.

Title: Reimbursement of Repacking Expenses, Section 73.3700, FCC Form 399.

Form Numbers: FCC Form 399.

Type of Review: New collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 4,166 respondents; 4,166 responses.

Estimated Hours per Response: 0.5–2 hours.

Frequency of Response: One time reporting requirement; On occasion reporting requirement.

Total Annual Burden: 7,124 hours.

Total Annual Cost: $249,600.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, eligible stations (full power and Class A television) that are repacked and multichannel video programming distributors (MPVDs) that incur expenses as a result of repacking will be eligible for reimbursement. The *Incentive Auction NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—All effected entities will be required to file FCC Form 399. It is proposed that stations and MVPDs will have the option of choosing to either be reimbursed with an advance payment based on estimated expenses or reimbursed for their actual, documented expenses. Stations and MVPDs will have to submit a reimbursement request and those requesting advance payments will have to later certify that all funds were properly expended.

OMB Control Numbers: 3060–XXXX.

Title: Channel Sharing Agreements, Section 73.3700.

Form Numbers: Not applicable.

Type of Review: New collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 2,254 respondents; 2,254 responses.

Estimated Hours per Response: 1 hr.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 2,254 hours.

Total Annual Cost: $1,217,400.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that channel sharing bidders be required to include certain terms in their channel sharing agreements (CSAs) and to file their CSAs with the Commission. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Channel sharing bidders be required to include certain terms in their CSAs and to file their CSAs with the Commission.

OMB Control Numbers: 3060–XXXX.

Title: Band Transition Activity Station Report, Section 73.3700; FCC Form 390.

Form Numbers: FCC Form 390.

Type of Review: New collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 4,508 respondents; 4,508 responses.

Estimated Hours per Response: 1–85 hours.

Frequency of Response: On occasion reporting requirement; one time reporting requirement.

Total Annual Burden: 87,719 hours.

Total Annual Cost: $134,400.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, stations that are repacked to new channel assignments will be required to conduct consumer education, including on-air announcements of their new channel assignments, and to submit a Form 390 to report on their activities. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Stations that are repacked to new channel assignments will be required to conduct consumer

education, including on-air announcements of their new channel assignments, and to submit a Form 390 to report on their activities.

OMB Control Numbers: 3060–XXXX.

Title: MVPD Notice, Section 73.3700.

Form Numbers: Not applicable.

Type of Review: New collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 2,254 respondents; 2,254 responses.

Estimated Hours per Response: 1–2 hours.

Frequency of Response: One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 4,283 hours.

Total Annual Cost: $135,000.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, stations that are repacked to new channel assignments will be required to provide notice to multichannel video programming distributors (MVPDs) so that MVPDs can make the necessary changes to their channel lineups. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—The MVPD Notice would be provided in the form of a letter by stations to the MVPD and would need to contain certain information.

OMB Control Numbers: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301; 47 CFR Section 73.3700.

Form Numbers: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 6,387 respondents; 9,823 responses.

Estimated Hours per Response: 1–6.25 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 31,195 hours.

Total Annual Cost: $107,372,573.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, all repacked full power television stations will need to file FCC Form 301 for their new channel facility. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Repacked full power television stations will need to file FCC Form 301 for their new channel facility.

OMB Control Numbers: 3060–0932.

Title: Application for Authority to Construct or Make Changes in a Class A Television Broadcast Station, FCC Form 301–CA; 47 CFR Section 74.793(d); 47 CFR Section 73.3700.

Form Numbers: FCC Form 301–CA.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 871 respondents; 871 responses.

Estimated Hours per Response: 2.50–7 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 8,275 hours.

Total Annual Cost: $5,483,360.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM),* FCC 12–118, released by the Commission on October 2, 2012,, it is proposed that, following the completion of the incentive auction process, all repacked Class A television stations will need to file FCC Form 301–CA for their new channel facility. The *Incentive Auction NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Repacked Class A television stations will need to file FCC Form 301–CA for their new channel facility.

OMB Control Numbers: 3060–0928.

Title: Application for Class A Television Broadcast Station Construction Permit or License, FCC Form 302–CA; 47 CFR Section 73.3700.

Form Numbers: FCC Form 302–CA.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 521 respondents; 521 responses.

Estimated Hours per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; one time reporting requirement.

Total Annual Burden: 1,042 hours.

Total Annual Cost: $148,485.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, all channel sharing Class A stations will need to file FCC Form 302–CA for their shared channel facility. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Channel sharing Class A stations will need to file FCC Form 302–CA for their shared channel facility.

OMB Control Numbers: 3060–0837.

Title: Application for DTV Broadcast Station License, FCC Form 302–DTV; 47 CFR Section 73.3700.

Form Numbers: FCC Form 302–DTV.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 2,083 respondents; 2,083 responses.

Estimated Hours per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement.

Total Annual Burden: 2,561 hours.

Total Annual Cost: $1,132,555.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 303, and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, all channel sharing full power educational stations will need to file FCC Form 302–DTV for their shared channel facility. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Channel sharing stations will need to file FCC Form 302–DTV for their shared channel facility.

OMB Control Numbers: 3060–0029.

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; 47 CFR Section 73.3700.

Form Numbers: FCC Form 340.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 3,161 respondents; 3,161 responses.

Estimated Hours per Response: 1–6 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 7,746 hours.

Total Annual Cost: $30,058,700.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, all repacked full power noncommercial educational stations will need to file FCC Form 340 for their new channel facility. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Repacked noncommercial educational stations will need to file FCC Form 340 for their new channel facility.

OMB Control Numbers: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station, FCC Form 346; 47 CFR Section 74.793(d); Section 73.3700, LPTV Repacking Displacement Application.

Form Numbers: FCC Form 346.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 9,600 respondents; 9,600 responses.

Estimated Hours per Response: 2.5–9.5 hours.

Frequency of Response: One time reporting requirement; On occasion time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 30,720 hours.

Total Annual Cost: $15,844,800.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, low power television stations and TV translator stations may be displaced from their current operating channel and will be afforded an opportunity to file a displacement application on FCC Form 346. The *NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Following the completion of the incentive auction process, low power television stations and TV translator stations may be displaced from their current operating channel and will be afforded an opportunity to file a displacement application on FCC Form 346. There is no change in the FCC Form 346 as a result of the proposed rulemaking being adopted by the Commission.

OMB Control Numbers: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; FCC Form 337; Section 73.3700, Service Rule Waiver in Lieu of Reimbursement.

Form Numbers: FCC Form 337.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 7,424 respondents; 7,424 responses.

Estimated Hours per Response: 0.5–4 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement.

Total Annual Burden: 7,124 hours.

Total Annual Cost: $2,382,585.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, released by the Commission on October 2, 2012, it is proposed that, following the completion of the incentive auction process, eligible stations that are repacked to new channel assignments may request a waiver of the service rules in lieu of seeking reimbursement of their repacking expenses by submitting an informal filing. In addition, stations that need additional time to relocate to their new channel assignments may be required to submit a request for extension of time (FCC Form 337), tolling notification, or request for Special Temporary Authority (STA). The *Incentive Auction NPRM* adopts the following proposed information collection requirements:

47 CFR 73.3700—Entities seeking a service rule waiver in lieu of reimbursement would be required to file a request for waiver using the informal filing system. Stations needing additional time to construct would required to submit a request for extension of time (FCC Form 337), tolling notification, or request for Special Temporary Authority (STA).

There is no change in the FCC Form 337 as a result of the proposed rulemaking being adopted by the Commission.

OMB Control Number: 3060–XXXX.

Title: Sections 1.946, 1.949, 27.10, 27.12, 27.17, etc.—Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions—NPRM, FCC 12–118.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents: 101 respondents; 101 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion and once every 10 year reporting requirements, recordkeeping requirements, and other third party disclosure requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 310(b) of the Communications Act of 1934, as amended.

Total Annual Burden: 31 hours.

Total Annual Cost: $0.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission seeks Office of Management and Budget approval for this new information collection for a full three-year clearance. On September 28, 2012, the FCC adopted an Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking (*NPRM*), FCC 12–118, GN Docket No. 12–268.

The following is a description of each Wireless Broadband Service Rules section public reporting requirements for Licensees in the 600 MHz Band in the *NPRM:*

Section 1.946(d) requires 600 MHz licensees to file a construction notification and certify that they have met the applicable performance benchmarks.

Section 1.949 requires 600 MHz licensees to file license renewal applications. Included in the application should be a detailed description of the: (1) Provision of service during the entire license period; (2) level and quality of service provided; (3) date service commenced; (4) whether service was ever interrupted; (5) the duration of any interruption or outage; (6) the extent to which service is provided in rural areas; (7) access to spectrum and service provided to qualifying tribal lands; and (8) any other factors associated with the level of service to the public.

Section 27.10(d) requires 600 MHz licensees to notify the Commission within 30 days if a 600 MHz licensee changes, or adds to, the carrier status on its license.

Section 27.12 requires 600 MHz licensees to comply with certain foreign ownership reporting requirements.

Section 27.17 requires 600 MHz licensees to notify the Commission within 10 days if they permanently discontinue service by filing FCC Forms 601 or 605 and requesting license cancellation.

30 Day Notice Requirement requires 600 MHz licensees, along with TV broadcasters in the 470–698 MHz band, to provide thirty days' notice to all incumbent fixed Broadcast Auxiliary Service (BAS) operations within interference range prior to commencing operations in the vicinity.

The Commission will use the information to ensure 600 MHz licensees' compliance with required filings of notifications, certifications, regulatory status changes, and meeting applicable performance benchmarks. Also, such information will be used to minimize interference, verify whether 600 MHz applicants are legally and technically qualified to hold licenses and to determine compliance with Commission's rules. Any submissions made through the Universal Licensing System (ULS) must be filed electronically.

These proposals are designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which broadband deployment would be able to develop through the application of standard terrestrial wireless rules. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control Number: 3060–XXXX.

Title: Application by a Broadcast Licensee to Participate in a Broadcast Spectrum Incentive Auction (BSIA), FCC Form 177; and Section 1.22002 (NPRM).

Form Number: FCC Form 177.

Type of Review: New collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 2,254 respondents; 2,254 responses.

Estimated Hours per Response: 3 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 6,762 hours.

Total Annual Cost: N/A.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i) and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Pursuant to statute, pending the effective date of related license reassignments and spectrum reallocations, the Commission will take all reasonable steps necessary to protect the confidentiality of Commission-held data of a broadcast licensee participating in the broadcast spectrum incentive auction. The NPRM proposed adopting the following rule to comply with this mandate: 47 CFR 1.22006.

Privacy Act Assessment: N/A.

Needs and Uses: The Notice of Proposed Rulemaking, FCC 12–118, released October 2, 2012 (*NPRM*) proposes that any broadcast licensee choosing to participate in the broadcast spectrum incentive auction must provide information to demonstrate that it is legally, technically, and financially qualified to participate.

The *NPRM* proposed adopting the following rules regarding the collection of information collection from such parties: 47 CFR 1.22000 and 1.22004.

Information collection on the form will include information regarding the relevant broadcast license, information regarding parties with an ownership interest in the license, and if applicable, information regarding any agreement that the applicant may have to share a broadcast channel in the event that it relinquishes some of its spectrum usage rights through the auction.

OMB Control Number: 3060–0600.

Title: Application to Participate in a FCC Auction; FCC Form 175; 47 CFR Sections 1.2105, 1.2110 and 1.2112.

Form Number: FCC Form 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 500 respondents; 500 responses.

Estimated Hours per Response: 90 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 750 hours.

Total Annual Cost: N/A.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection

is contained in sections 154(i) and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information. Applicants may request confidential treatment of information collected in FCC Form 175 pursuant to 47 CFR 0.459 of the FCC's rules.

Privacy Act Assessment: N/A.

Needs and Uses: The Notice of Proposed Rulemaking, FCC 12–118, released October 2, 2012 (*NPRM*) proposes that any party applying to participate in any auction specified by statute must certify that it is not barred by the applicable statutory prohibition against specified parties participating in the auction. The *NPRM* proposed to adopting the following subparagraph to Commission rule 1.2105 regarding the collection of information collection from such parties: 47 CFR 1.2105(a)(2)(xii).

The Commission will revise the FCC Form 175, if the proposal is adopted, to require a party to certify compliance with the statutory requirement prior to submitting the Form.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In its Notice of Proposed Rulemaking, ''*Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions''* (*NPRM*), the Commission considers matters related to the implementation of Congress's mandate to conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, §§ 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act).

2. Congress's passage of the Spectrum Act set the stage for this proceeding and further expanded the Commission's ability to facilitate technological and economic growth. Wireless broadband is now a key component of economic growth, job creation and global competitiveness, and the explosive growth of wireless broadband services has created increased demand for wireless spectrum. Government entities and private industry alike have recognized the urgent need for more spectrum for wireless broadband services, and have been working to increase the availability of spectrum for these valuable uses. As part of the American Recovery and Reinvestment Act of 2009, Congress directed the FCC to develop a ''national broadband plan'' to ensure that every American has ''access to broadband capability.'' The resulting National Broadband Plan emphasized the indispensable importance of wireless spectrum in achieving Congress's broadband goals, recommending that the Commission make 300 megahertz of spectrum available for mobile broadband use within five years, including by reallocating a portion of the broadcast television spectrum.

3. The Spectrum Act authorizes the Commission to conduct incentive auctions in which licensees may voluntarily relinquish their spectrum usage rights in order to permit the assignment by auction of new initial licenses subject to flexible use service rules, in exchange for a portion of the resulting auction proceeds. Section 6403 of the Spectrum Act, which is not codified in the Communications Act, requires the Commission to conduct an incentive auction of the broadcast television spectrum and includes specific requirements and safeguards for the required auction.

4. The purpose of the *NPRM* is to develop rules and policies for the incentive auction process. The incentive auction will have three major pieces: (1) A ''reverse auction'' in which broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or ''repacking'' of the broadcast television bands in order to free up a portion of the ultra-high frequency (UHF) band for other uses; and (3) a ''forward auction'' of initial licenses for flexible use of the newly available spectrum—the ''600 MHz band.''

II. Proposed Auction Design

5. On October 2, 2012 the Commission released a Notice of Proposed Rulemaking, ''*Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions''* (*NPRM*), proposing rules and seeking comment on a variety of issues related to the implementation of the congressionally mandated incentive auction of broadcast television spectrum. An incentive auction is a voluntary, market-based means of repurposing spectrum by encouraging licensees to voluntarily relinquish spectrum usage rights in exchange for a share of the proceeds from an auction of new licenses to use the repurposed spectrum. The broadcast incentive auction will have three major pieces: (1) A ''reverse auction'' in which broadcast television licensees submit bids to voluntarily relinquish spectrum usage rights in exchange for payments; (2) a reorganization or ''repacking'' of the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for other uses; and (3) a ''forward auction'' of initial licenses for flexible use of the newly available spectrum in the UHF band.

6. In the *Incentive Auction NPRM,* the Commission addresses auction design issues for the broadcast television spectrum incentive auction. The reverse and forward auctions present different challenges, but both can be discussed in terms of three basic auction design elements: (1) Bid collection procedures that determine how bids in the auction are gathered, (2) assignment procedures that determine which bids are accepted, and (3) pricing procedures that determine what each bidder pays, or in the case of the reverse auction, receives in payment. The other major component of the incentive auction, the repacking, will help to determine which reverse auction bids the Commission accepts and, therefore, is discussed in connection with reverse auction assignment procedures.

7. The Commission discusses these auction design issues at a high level and seeks comment on them. The Commission invites broadcasters' input on how to design the incentive auction so as to facilitate their participation and make it as easy as possible for them to submit successful bids, as well as how to structure the auction and repacking to take into account the interests of broadcasters that will not participate in the auction. In considering the auction design issues, the Commission also asks commenters to keep in mind their interrelated nature, as well as the different trade-offs they pose.

A. Reverse Auction and Broadcaster Repacking

8. The reverse auction will collect information about the price at which broadcast television spectrum can be cleared. This information, together with information from the forward auction, will enable the Commission to identify a set of bidders that would voluntarily relinquish spectrum usage rights and the compensation each would receive. In economic terms, the reverse auction is the supply side of the market for repurposed broadcast television spectrum. The reverse auction will incorporate three basic auction design elements: it will collect bids, determine which bids are accepted as winning bids, and determine the payments made for those winning bids. The determination of which bids will be accepted depends, in part, on the repacking.

1. Bid Collection Procedures

9. The *Incentive Auction NPRM* discusses two options for the first auction design element that is, collecting bids to voluntarily relinquish spectrum usage rights in the reverse auction. These relinquishments may include going off the air, sharing a channel, or moving to a lower broadcast television band. The first option is a single round sealed bid procedure, in which bidders would specify, during a single bidding round, the payment they would be willing to accept in exchange for relinquishing various spectrum usage rights.

10. The second option is a multiple round, or dynamic, procedure in which bidders would indicate their willingness to accept iteratively lower payments in exchange for relinquishing rights. For example, in a descending clock auction prices would start high and decline over time. As the price ticks down, stations would indicate whether they would be willing to relinquish certain spectrum rights at the current prices. Those that would still be willing to relinquish rights would remain active in the clock auction, while those that found the current prices for all the relinquishment options too low would decline all the offers, exit the auction, and continue broadcasting in their pre-auction band. The exit decision would be irreversible. The Commission could also offer bidders the option of submitting a ''proxy bid'' in advance of the clock auction indicating the minimum payment they would be willing to accept in exchange for relinquishing spectrum rights, making it possible for bidders to submit bids just once. The clock auction would then use the proxy bid to generate and submit bids dynamically on behalf of the bidder.

11. From the point of view of bidders, a dynamic procedure such as a clock auction with the option of making proxy bids may be preferable to a single round sealed bid procedure. A dynamic format does not require broadcasters to determine an exact bid at the beginning of the auction. They only need to determine their willingness to relinquish rights at the current price, which may make participation simpler and less expensive for bidders. On the other hand, the single round sealed bid procedure may require less complex software than a multiple round auction and thus be easier for the Commission to implement. The Commission seeks comment on these and any other bid collection procedure options commenters may suggest. Commenters advocating a particular option should address its advantages and disadvantages, including cost to bidders and how it would work with the other elements of the reverse auction.

2. Assignment Procedures

12. *Assignment Procedures in General.* The second auction design element—the assignment procedures used to decide which bids are accepted and which are rejected, thereby determining which stations remain on the air—is significantly more complicated in this reverse auction than in a typical auction. The Commission must solve a complex engineering problem by determining how stations that retain their current spectrum usage rights are assigned channels (''repacked''), taking into account relinquishment options including channel sharing and moves from a UHF to a VHF channel, and consistent with statutory requirements and other constraints. The *Incentive Auction NPRM* discusses the repacking process as it relates directly to the assignment procedures.

13. The Commission must also analyze whether and how to consider factors in addition to bid amounts in determining which bids are accepted and which are rejected. In a reverse auction where bidders are offering the same good, minimizing the cost of procuring that good leads to a straightforward rule for determining winners: the lowest bids win. When the goods being offered are not homogenous, however, bids are sometimes weighted or scored to account for factors in addition to bid amount. The goods offered in the reverse auction of broadcast television spectrum will not be homogenous. For example, some stations have larger coverage areas and serve greater populations than others, affecting both their economic value to broadcasters and the effect of repacking them. Broadcast stations' bids in the reverse auction could be assigned a score incorporating such factors. Bids from stations that would make the repacking more difficult because they would block more potential channel assignments to other stations could receive a lower score, for example, making them more likely to have their bids accepted and, equivalently, less likely to be assigned a channel in their pre-auction band. The score could also be designed to reflect the fact that the value of a broadcasting license depends in part on its population served. For a bid to move to VHF, the score may also account for the scarcity of VHF spectrum in the station's broadcast area. Selecting bids and paying winning bidders in relation to their population served or other indicators of value may reduce the cost of clearing broadcast television spectrum.

14. *Incorporation of Repacking Into the Assignment Procedures.* Repacking stations, which involves determining whether it is feasible, given the applicable constraints, to assign a collection of stations channels in a particular band, is part of the process for determining which broadcaster bids will be accepted in the reverse auction, which bids will not be accepted and what channel numbers will be assigned to the stations that will remain on the air. It may be helpful to think of the repacking of stations with different service areas and bid values into the broadcast television spectrum as being analogous to the process of packing boxes into a trunk when these boxes have different sizes and values.

15. The Commission has considered two alternative assignment procedures. The first uses an integer programming ''algorithm'' (a mathematical recipe for solving a problem). The second uses a simpler mathematical recipe that the *Incentive Auction NPRM* refers to as a ''sequential'' algorithm. Each involves the application of objective criteria to determine, using the analogy above, the best way to pack the trunk.

16. *Integer Programming Algorithm Approach to Establishing Assignments.* The first procedure would use computer optimization software to try to find the most efficient way of clearing a specified amount of broadcast television spectrum while satisfying all applicable constraints. Integer programming is a collection of mathematical algorithms that work to find and prove that a feasible solution has the best objective value of all feasible alternatives. In this case the software would, for a specified amount of spectrum to be cleared, minimize the sum of the reverse auction bids accepted and the relocation costs of stations that are reassigned to new channels. Due to the complexity of the problem, an ''ideal'' or provably optimal repacking solution using an integer programming model may not be feasible in a timely manner. It may be possible, however, to calculate a close approximation to the optimal solution in a reasonable amount of computing time. The approximate repacking solution may be highly efficient—coming close to minimizing the total bids of the cleared stations, given the amount of spectrum cleared—but it may be less than fully transparent, since the results cannot easily be replicated. This procedure also does not generally minimize the Commission's cost of clearing or maximize the amount of spectrum cleared if the pricing rule does

not pay winners their bid amounts, or if the pricing rule does pay winners their bid amounts but the bidders recognize their incentives to bid above their true values under this pricing rule.

17. *Sequential Algorithm Approach to Establishing Assignments.* A second approach whose results may be easier to replicate is to sequentially determine, again based on objective criteria, which stations should be assigned a channel, starting with stations that do not participate in the auction. For stations that do participate in the auction, the determination would be based on the scored bids from highest to lowest, as long as the station can feasibly be assigned a channel. In a descending clock auction, each bidder is faced with a declining sequence of price offers for relinquishing spectrum rights. The bidder can choose to accept an offer, or reject all offers. Once a bidder rejects all offers, it exits the auction and is assigned to its pre-auction band. Prior to each auction round, the auction software determines for each station that has not exited whether it can feasibly be assigned to its pre-auction band, given the assignments of other stations. If a station *cannot* feasibly be assigned to its pre-auction band, its compensation is set at the last price offer it accepted for its last preferred relinquishment option. Each station that *can* be assigned to its pre-auction band (but has not exited) submits a bid indicating its preferred relinquishment option at the (reduced) current prices. The rounds continue until every station has either exited the auction or can no longer be assigned to its pre-auction band. When the rounds stop, every bidder that has not exited receives its last preferred relinquishment option. Bidders that have exited and stations that did not participate are assigned specific channels in their pre-auction bands. This sequential algorithm can also be implemented in a sealed-bid auction. At the beginning of each step of the sequential algorithm, for each station that has not yet exited, it would be determined into which bands the station could be feasibly moved. Among all such feasible moves, the algorithm would implement the move that minimizes cost on a scored basis. The process would continue until either the available spectrum is fully packed or there are no more stations to consider. Stations not selected to remain on the air in their pre-auction band would be paid to voluntarily relinquish their broadcasting rights.

18. These alternative assignment algorithms present tradeoffs in terms of simplicity, transparency and efficiency that must be considered in determining the auction design. The Commission seeks comment on these options.

19. The Commission further seeks comment on whether it should consider in the repacking and assignment procedures whether a given broadcaster going off the air would create areas without any commercial or noncommercial broadcast television service. Adding an additional technical constraint would increase the complexity of the repacking process, possibly requiring additional time and resources and limiting the efficiency of the outcome. The Communications Act mandates that the Commission distribute licenses to provide a fair, efficient and equitable distribution of service to the several States and communities. Pursuant to this mandate, the Commission has strongly disfavored modification of a broadcast station's facilities that would create a ''white'' or ''gray'' area (an area where the population does not receive any over-the-air television service on only one over-the-air service, respectively), or an ''underserved'' area (where the population in the loss area would receive less than five over-the-air television signals). How great is the risk of creating ''white'' or ''gray'' areas where the population receives little or no over-the-air television service as a result of the reverse auction? Should the Commission seek to address any such risk as an auction design matter or through other steps outside of the incentive auction?

20. Commission staff has continued work on repacking methodologies since June 2010, and further evaluation in light of the technical, policy and auction design issues discussed in the *Incentive Auction NPRM* will be required. The Commission recognizes that the approach to assigning broadcast television channels in this proceeding is novel, especially because it is part of the incentive auction process. The Commission also recognizes that it is vital to get input from all stakeholders. The Commission staff intends to reach out to engage all stakeholders on issues related to repacking methodologies, in order to ensure transparency and share ideas and information, and the Commission seeks comment on the best timing and agenda for such a process.

3. Procedures To Determine Payments

21. The reverse auction must also determine the amount paid to winning bidders for relinquishing their spectrum rights. Some reverse auctions pay the winning bidder the amount of its bid. Another mechanism, known as ''threshold'' pricing, would pay a winning bidder the highest amount it could have bid and still have had its bid accepted, as illustrated in Appendix C of the *Incentive Auction NPRM.* Threshold pricing gives bidders an incentive to bid its station's value regardless of the bids submitted by others: if it bids an inflated value, it may forfeit the opportunity to be bought out at a price at least as high as the station's value, and if it bids an understated value, it may relinquish its rights at a price below the station's value.

22. The *Incentive Auction NPRM* discusses options for conducting the reverse auction in a single round or in a multiple round clock format. The Commission anticipates that in a clock format, a bidder that has its bid to relinquish spectrum rights accepted would be paid the threshold price, which is the prevailing clock price at the time its bid is accepted. In a sealed bid format, the Commission could determine payment either using the bid amount, or the threshold price. In choosing between these payment procedures, the Commission will consider such factors as their likely impact on the cost to the government of clearing spectrum, the efficiency of assignment, whether they would increase the complexity of implementing the assignment process, what impact they may have on bidder incentives, and whether they would encourage participation in the reverse auction. The Commission seeks comment on these choices, the factors the Commission should consider in deciding between them, and on any other considerations it should take into account.

23. *Reserve Price.* The Commission also will consider implementing a reserve price, or maximum payment, that would be made to broadcasters relinquishing spectrum usage rights. This reserve price could take the form of a maximum dollar payment to a broadcaster based on characteristics of the station such as population or viewership. The Commission seeks comment on the use of a reserve price, and the way it should be calculated.

B. Forward Auction

24. The forward auction will identify the prices that potential users of repurposed spectrum would pay for new licenses to use the spectrum. With this information, together with information from the reverse auction, the Commission can determine the winning bidders for new flexible use licenses and the prices those bidders would pay. In economic terms, whereas the reverse auction defines the supply side of the market, the forward auction defines the demand side. The forward

auction piece of the broadcast television spectrum incentive auction will differ from the typical spectrum license auction in which a fixed quantity of spectrum is licensed based on a band plan defined in the service rules. The licenses available in the forward auction will depend upon how much spectrum the reverse auction clears in specific geographic areas. That interrelationship may require that the forward auction be conducted in stages, with bids collected for different numbers of potentially available licenses.

25. The forward auction will incorporate the three basic auction design elements discussed above: bid collection procedures, assignment procedures, and procedures to determine the prices that winning bidders will pay.

1. Bid Collection Procedures

26. *Items Available for Bid.* The Commission's typical spectrum license auctions have collected bids specific to a frequency block in a geographic area. That is, in auctions with multiple blocks of spectrum available, bids were collected separately for each block in each geographic area. Alternatively, where there are multiple blocks of spectrum available in a geographic area, as the Commission expects to be the case in the forward auction, it could collect bids for one or more ''generic'' categories of licenses, such as paired or unpaired licenses, in a geographic area. Rather than indicating that a bid is for a specific frequency block in an area, bidders would indicate their interest in, for example, one or more paired 5 megahertz uplink and 5 megahertz downlink (''5 + 5'') blocks.

27. *Multiple Round Bidding Formats.* The Commission proposes to collect forward auction bids using a dynamic auction design format, for the same reasons that it typically uses a multiple round ascending auction design in spectrum license auctions. Multiple rounds permit a process of price discovery, allowing bidders to modify their bidding strategies in response to changes over the course of the auction in the absolute and relative prices of different licenses.

28. Two dynamic format options for the forward auction are a simultaneous multiple round ascending (SMR) auction and an ascending clock auction. In each, a bidder would indicate the license or licenses it seeks in a series of ascending price rounds, and would be required to satisfy an activity requirement, which provides an incentive for consistent bidding throughout the auction. The two formats differ in several ways.

29. Bidders submit price bids for specific licenses in the SMR design typical of past Commission auctions. At the end of each round the Commission identifies a provisionally winning bidder for each license that has received bids. When the auction closes (typically after a round passes where there are no new bids on any licenses), the provisionally winning bids become final.

30. In contrast, in an ascending clock auction format the Commission would announce prices for generic licenses in each category in each geographic area, and bidders would submit quantity bids for the number of licenses they seek. Prices may differ across categories and geographic areas, but within each category in each geographic area every license would sell at the same price. If total demand for the licenses in a category exceeds supply, the price would be increased for the next round, but no provisional winners would be chosen. The rounds would continue until demand for licenses no longer exceeds supply. In a clock auction, when prices are increased between rounds, the quantity of licenses sought by bidders could fall so much in a category that instead of exceeding the supply, the demand is less than the supply. This possibility of overshooting can be avoided by permitting intra-round bidding, whereby bidders can indicate their change in demand in each category at specified prices between the opening and closing prices in each round.

31. Bidding for generic blocks would be expected to speed up the forward auction, reducing the time and, therefore, the cost of bidder participation, since bidders would no longer need to iteratively bid on the least expensive of several specific but substitutable licenses, as in a typical Commission SMR auction. The Commission believes that speed is important to the successful design of the incentive auction for a number of reasons, including the interdependence of the reverse and forward auctions.

32. *Package Bidding.* Bid collection procedures in the forward auction could include provisions for package bidding—that is, bidders could be permitted to indicate a single, all-or-nothing bid amount that would apply to a group of licenses, such as more than one block in a geographic area or the same block in multiple geographic areas. Package bidding could be particularly helpful to bidders that face a risk of winning certain licenses but losing complementary licenses they consider essential to their business plans. Package bidding options generally complicate an auction, although such complexity can be limited if certain restrictions apply to the ways bidders can group licenses. Package bidding could take a number of specific forms, and its feasibility and potential usefulness to bidders would depend on auction design details. The Commission seeks comment on whether bidders are likely to have interests that may be addressed by package bidding, and on how package bidding options might work with the other auction design elements.

2. Assignment Procedures

33. For the forward auction, the assignment procedures will determine which bidders win which new licenses to use repurposed broadcast television spectrum, with the number of available licenses in the forward auction depending on the quantity of spectrum recovered from the reverse auction. In general, winning forward auction bidders will be those that place the highest bids on the available licenses. If bidders are allowed to specify packages or other contingencies, the assignment procedures would take those conditions into account in determining a set of best bids that are consistent with the Commission's forward auction objective of maximizing the aggregate amount of the bids that the Commission accepts for the available licenses.

34. The Commission anticipates that if generic blocks are made available in the forward auction, the assignment procedures would assign contiguous blocks to bidders that bid for multiple blocks in the same geographic area and could take into account the need to coordinate frequencies across adjacent areas. There could also be an additional auction phase to assign specific frequencies for generic licenses, which could be based on accepting additional bids. The specific frequencies that will be available in each area will be determined by the incentive auction process itself, and bidding on generic blocks facilitates conducting an auction given those interdependencies. Further, bidding based on generic blocks will speed completion. The Commission invites comment on these proposals and, alternatively, on how it could conduct an auction that would allow bids on specific frequencies rather than generic blocks.

3. Procedures To Determine License Prices

35. Generally, under the two forward auction design formats discussed in the *Incentive Auction NPRM,* the SMR-type auction and a clock auction, final license prices would be the highest

amount bid for the license. If there is an additional auction phase to assign specific frequencies for generic licenses, the Commission would need additional procedures to determine license prices. The Commission invites comment on these issues.

C. Integration—Putting the Reverse and Forward Auction Components Together

36. The reverse and forward auctions must be integrated to determine how much broadcast television spectrum is to be cleared and licensed for new uses. The timing of the reverse and forward auctions will affect the information available when bidding in each auction, and may also affect the length of the auction process.

37. An option that would provide reverse and forward auction bidders relevant information from the other side of the market while they are bidding would be to run the reverse and forward auctions concurrently in a series of stages. In each stage, the Commission would specify a provisional quantity of spectrum to be cleared in the reverse auction and a corresponding quantity of new licenses available in the forward auction. The first stage would be conducted with the provisional quantities set at the maximum possible amount of spectrum. The Commission would compare the provisional outcomes of the forward and reverse auctions and determine whether the auction closing conditions had been met—for example, the closing conditions would fail if total clearing costs in the reverse auction were greater than the revenue from the forward auction. If the closing conditions are met, the incentive auction process would end. If not, the Commission would continue running the forward auction to see if the closing conditions can be met. If the closing conditions cannot be met, another auction stage would be run, this time using a smaller provisional quantity of cleared spectrum and correspondingly smaller number of licenses available in the forward auction. If closing conditions were met at the end of this stage, the process would end. If not, additional stages would be run with the quantity of spectrum sought to be cleared further reduced, until the auction results met them. In addition to providing both reverse and forward auction participants with relevant information from the other side of the market while they are bidding, this approach is likely to take less time than conducting the auctions sequentially.

38. If the reverse and forward auctions are run sequentially, conducting the reverse auction first may be preferable, because it would allow greater certainty about the number of licenses available in each geographic area in the forward auction, based on broadcaster participation in the reverse auction. The Commission invites comment on these issues.

39. *Closing Conditions.* Section 6403(c)(2) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 125 Stat. 156 (2012) (Spectrum Act) requires that the forward auction generate proceeds sufficient to pay successful bidders in the reverse auction, cover the Commission's administrative costs, and cover the estimated costs of reimbursements required by the statute. The Commission seeks comment on the best way to implement this statutory requirement, and whether there are additional statutory, policy or other considerations that should be addressed in establishing the closing conditions.

40. *Auctionomics and Power Auctions Report.* The Commission has attached, as Appendix C of the *Incentive Auction NPRM,* a proposal developed by its team of expert auction consultants. It suggests an integrated approach to the broadcast television spectrum incentive auction: a reverse auction using a descending clock auction procedure using a sequential algorithm approach for repacking to determine supply; a forward auction using an ascending clock auction format to determine demand; and a clearing rule which links the outcome of the forward and reverse auctions by establishing closing conditions. This proposal illustrates one potential approach to addressing the auction design issues discussed in the *Incentive Auction NPRM,* and the Commission invites comment on it, as well as other proposed approaches.

41. *Cost-Effectiveness Analysis.* In connection with its Regulatory Impact Analysis, the Commission also seeks comment on the cost-effectiveness of the various auction design elements. In particular, are there auction design choices the Commission can make that would make it significantly less costly for bidders to participate in either the reverse or the forward auction? Are there hidden costs associated with any of the auction design elements of which the Commission should be aware?

III. Reverse Auction—Eligibility and Bid Options

A. Eligibility

42. The *Incentive Auction NPRM* proposes to propose to limit participation in the reverse auction to full power and Class A television licensees and to exclude non-Class A low power television stations and TV translators (collectively, ''low power television stations''). The Spectrum Act definitions and its repacking and reimbursement provisions limit participation to only full power and Class A television licensees. Further, because low power television stations have secondary interference rights, these facilities do not impede the band clearing and repacking process, and therefore there is no reason to facilitate their relinquishment through participation in the reverse auction. The *Incentive Auction NPRM* proposes that Class A television licensees whose status has been changed from Class A to low power television will be ineligible to participate in the reverse auction—like all other low power television stations.

43. It is proposed that noncommercial educational television stations may participate in the reverse auction. The Spectrum Act does not prohibit participation and the prohibition on subjecting NCEs to auction in Section 309(j) of the Communications Act would not apply because the reverse auction is being conducted under a separate Section 309(j) provision. Allowing NCEs to participate will ensure greater participation in the reverse auction and a return of a greater number of television channels for reallocation.

44. The *Incentive Auction NPRM* proposes that entities with original construction permits be allowed to participate in the reverse auction if they become licensees before the deadline for submission of the application to participate in the auction. There are only a very few entities in this category, and allowing the few original construction permit holders to participate in the incentive auction, so long as they receive a license by the deadline specified above, will maximize the amount of spectrum available for auction.

45. For the reverse auction bidding, it is proposed that the Commission only examine the spectrum usage rights held by stations in their licenses as of February 22, 2012. This conforms to the mandate in Section 6403 of the Spectrum Act that the Commission protect in repacking the coverage area and population served by a licensee as of the Spectrum Act enactment date. In contrast, it is proposed that full power and Class A television licensees with expired, cancelled or revoked licenses are ineligible to participate in the reverse auction. The *Incentive Auction NPRM* seeks comment on these matters.

46. For a new station permittee not licensed on February 22, 2012 (but

auction eligible because it becomes licensed by the pre-auction application filing deadline), the Commission proposes to evaluate its bid based on the spectrum usage rights authorized in the construction permit it held on February 22, 2012. This approach conforms with the Commission's proposal to extend repacking protections on public policy grounds to the facilities authorized in a construction permit for a new station on February 22, 2012. In order to conform with the mandate in Section 6403 of the Spectrum Act mandate to make all reasonable efforts to preserve the coverage area and population served of each television licensee only as of the Spectrum Act enactment date (February 22, 2012), any modifications made after February 22, 2012 to a licensed facility or to the construction permit of a new station will not be considered in evaluating a licensee's spectrum relinquishment offer. The Commission proposes a different approach for Class A stations that have not completed their digital transition based on the unique circumstances involved. For a Class A licensee with no digital license as of the date of commencement of the reverse auction process, the Commission proposes to evaluate a reverse auction bid based on the licensed analog facility as of February 22, 2012. The *Incentive Auction NPRM* seeks comment on these proposals.

47. Although the Commission seeks to maximize the spectrum reclaimed in the reverse auction process, it does not want to compensate a broadcaster for relinquishing spectrum rights to which it may no longer be entitled as the result of its license having expired, or having been cancelled or revoked in an enforcement proceeding. Therefore, the Commission proposes that any full power or Class A station with an expired, cancelled or revoked license should not be eligible to bid in the reverse auction. On the other hand, the Commission does not want to let the existence of such pending proceedings impede the auction process. The Commission seeks comment on how to address enforcement actions that are pending against a station whose bid to relinquish all usage rights is accepted (winning license termination bidder). The Commission seeks to identify processes that would accommodate both its interest in structuring an efficient auction mechanism and its interest in enforcing broadcasters' compliance with their legal obligations. As one possible approach to pending enforcement actions, the Commission seeks comment on whether license termination bidders should be required to enter into escrow arrangements to cover the potential costs of forfeitures. In this regard, the Commission seeks comment on whether to require license termination bidders to enter into such escrow arrangements either as a qualification for bidding in the auction, or after being selected as a winning license termination bidder. Should a ceiling for the escrow amount that a bidding station could face (in total or per violation) in the event it is a winning license termination bidder be established in advance, so that stations would be able to consider that maximum exposure in advance of developing a reverse auction bid? As an alternative for winning license termination bidders, the Commission seeks comment on the option to settle any pending enforcement proceedings at a fixed amount based on the nature of the alleged violation. Are there other approaches that would enable disposal of pending cases in an expedited fashion, while not delaying or overburdening the auction process? Should the same procedures apply to a winning license termination bidder that will continue to hold other broadcast station licenses? Are there other options for handling pending enforcement actions that would address the concerns and priorities identified above, short of offering to close the enforcement actions pending against a winning license termination bidder, with the legal and policy issues that would raise.

B. Bid Options

48. Section 6403(a)(2) of the Spectrum Act provides that the reverse auction of broadcast television spectrum ''shall include'' three bid options for participants: (1) Voluntary relinquishment of ''all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel * * *'' (license termination bid); (2) voluntary relinquishment of ''all usage rights with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel * * *'' (UHF to VHF bid); and (3) voluntary relinquishment of ''usage rights in order to share a television channel with another licensee'' (channel sharing bid). The Commission invites comment on whether to establish additional bid options for participants in the reverse auction. Regarding option (2) above, comment is invited on whether to also allow UHF to VHF bidders to limit their bids to a ''high VHF channel'' (channels 7–13). The Commission proposes allowing stations to participate in the reverse auction by agreeing to relinquish a ''high VHF channel'' (channels 7–13) in exchange for a ''low VHF channel'' (channels 2–6). Because high VHF spectrum may be more desirable than low VHF spectrum to a UHF to VHF bidder, making additional high VHF spectrum available by encouraging high VHF to low VHF moves may result in a greater reverse auction participation.

49. The Commission also seeks comment on whether to allow licensees to participate in the reverse auction by relinquishing spectrum usage rights through the acceptance of additional interference from other broadcast stations or reduce their service area or population covered by a set amount. If licensees were allowed to participate in the reverse auction by bidding to accept interference from which they otherwise would be entitled to protection, then would the Commission be able to accommodate more broadcast stations in the same amount of spectrum during the repacking process, enabling the clearing of more spectrum? Similarly, if broadcast licensees were allowed to bid to reduce their service areas or populations served, could it accommodate tighter repacking of the broadcast stations? 88. Similarly, should broadcasters be allowed to bid to accept additional interference from wireless broadband providers, or to accept a different antenna pattern or to deploy a distributed transmission system in order to reduce their signal strength in portions of their service areas and reduce the size of their service areas? By permitting this type of creative arrangement, the Commission believes it can potentially create an unencumbered wireless broadband service area license while still permitting a broadcast licensee to cover a portion of its service area. Commenters are invited to address these and other potential bid options in addition to those required by the statute, as well as the potential costs and benefits associated with them.

50. The Commission also proposes to prohibit a licensee to effectuate a channel sharing arrangement that would result in a change in the station's community of license and/or DMA. The Commission proposes this limitation because it believes that allowing changes in community of license in addition to changes in channel assignments would raise section 307(b) issues such as the fair, efficient, and equitable distribution of service, and would complicate its repacking efforts. The Commission proposes that a winning reverse auction bidder that relinquishes all of its spectrum usage rights with respect to its pre-incentive auction television channel will retain no

further rights with regard to that channel. For Class A bidder, since that service has not completed its transition to digital, the Commission proposes that a Class A licensee operating paired facilities must relinquish both if it is a winning license termination bidder. On the other hand, the Commission proposes to allow winning Class A channel sharing and UHF to VHF bidders that have paired facilities to continue operation of their analog facilities on a secondary basis until the analog facilities are predicted to interfere with a primary service, or until the September 1, 2015 digital transition deadline for Class A stations, whichever comes first.

IV. Repacking

51. It is critical, to enable repacking of the broadcast spectrum, that the Commission determine how to preserve the coverage area and population served as required by the Spectrum Act. Accordingly, the Commission seeks comment on engineering and other technical aspects of the repacking process, in particular Congress's mandate in Section 6403(b)(2) of the Spectrum Act that it make all reasonable efforts to preserve the coverage area and population served of television stations in the repacking. The broadcast television spectrum incentive auction and the associated repacking process could impact both the coverage area and the population served of television stations. If a station is assigned to a different channel, then its technical facilities must be modified in order to replicate its coverage area, because radio signals propagate differently on different frequencies. These varying propagation characteristics also mean that a new channel assignment may change the areas within a station's noise-limited service area affected by terrain loss. Channel reassignments, and stations going off the air as a result of the reverse auction, also may change the interference relationships between stations, which relationships in turn affect population served. Stations going off the air can eliminate existing interference to the stations that remain on the air. Likewise, new channel assignments generally will eliminate interference that the reassigned stations are now causing or receiving. At the same time, new channel assignments create a potential for new interference between nearby stations on the same channel or a first adjacent channel. The Commission seeks comment on a repacking methodology that takes in account all of these impacts in order to carry out Congress's mandate in section 6403(b)(2).

52. The Commission proposes that, during repacking, it would only preserve the service areas of full power and Class A television stations with regard to stations' facilities that were licensed, or for which an application for license to cover authorized facilities already was on file with the Commission, as of February 22, 2012. Further, the Commission proposes to protect the facilities set forth in unbuilt construction permits for new full power television stations as of February 22, 2012. It did not propose to protect the facilities contained in pending facility modification applications. The Commission found that consideration of all pending facility modification applications would greatly complicate the repacking analysis by increasing the amount of facilities under consideration in the repacking process. Additionally, protection of both a licensed facility and a modification thereto that would expand or alter the station's service area would further encumber the spectrum.

53. *Coverage Area.* The Commission proposes to interpret the statutory term ''coverage area'' to mean a full power television station's ''service area'' as defined in section 73.622(e) of the Commission's rules. The rules governing Class A stations do not define a ''service area'' for such stations. The Commission proposes to use a Class A station's ''protected contour''—the area within which it is protected from interference under our rules—as its ''coverage area'' for purposes of the repacking. The Commission's Office of Engineering and Technology has software that calculates the power and antenna pattern adjustments necessary to replicate a station's coverage area on a different channel. The Commission proposes to use that software in the repacking methodology to replicate the coverage areas of stations assigned to different channels. Construction of a transmitting antenna that matches precisely the antenna pattern created by the software is impractical in some cases, and that the closest practical design might slightly extend a station's coverage contour (that is, the area within which the station is protected from interference) in some directions and decrease it in others. To address such circumstances, the Commission proposes that a station assigned to a new channel in the repacking be allowed to continue to use the station's existing antenna pattern, and to adjust its power level so that the station's coverage area in total square kilometers is the same as it was before the repacking, without regard to whether that area is served or unserved by the station's existing operation. The Commission also proposes to allow stations to propose alternative transmission facilities to those specified by its replication software, provided that such facilities would not extend the coverage area in any direction beyond those specified by the replication software or cause new interference. 102. The fact that signal propagation characteristics vary from channel to channel also means that new channel assignments may change the portions of a station's coverage area that are affected by terrain losses. Therefore, the Commission seeks comment on whether it would be consistent with the Spectrum Act to consider a station's signal to be receivable at all locations within its noise-limited or protected contour (depending on whether it is a full power or Class A station) for purposes of the repacking. If the Commission does not adopt this approach, how should it accommodate stations whose coverage areas change as a result of new channel assignments?

54. *Population Served.* The Commission proposes three alternative approaches to fulfilling the requirement to make all reasonable efforts to preserve population served in the repacking process. The first approach would allow no new interference to a station's population served as of February 22, 2012. Under this approach, the Commission would apply the existing standard in section 73.616 that treats interference of 0.5 percent or less as ''no new interference'' in evaluating potential channel reassignments. In the second approach, the statutory mandate would be interpreted to require all reasonable efforts to preserve service to the same specific viewers for each eligible station. Under this approach, no individual channel reassignment, considered alone, could reduce another station's specific population served on February 22, 2012 by more than 0.5 percent. The second approach differs from the first approach in two ways. First, it allows ''replacement interference'' only where interference existed as of February 22, 2012. Second, it is calculated on a station-to-station rather than aggregate basis. The Commission seeks comment on this second approach, including whether to calculate interference on a per station basis if this approach is adopted. The Commission also seeks comment on a third option that, like the second option, would consider interference on a station-to-station, rather than an aggregate, basis. Under this approach, any interference between two individual stations, considered by themselves, that

existed on February 22, 2012, would continue to be allowed regardless of whether the stations are assigned to different channels in the repacking.

55. For each of the options, the *Incentive Auctions NPRM* seeks comment on the costs and benefits, including quantitative estimates, of each repacking option in comparison to the others. In that regard, commenters are invited to address the computational complexity of the channel assignment process under the first, second and third options—in determining whether a particular channel assignment is permissible, the second and third options would require examination of interference only between channel pairs, whereas the first option would require examination of all channel assignments—and how that factor should be considered. In addition, commenters are invited to suggest additional approaches that would fulfill the statutory mandate while permitting an efficient repacking of stations. Commenters are invited to submit appropriate economic studies to support their views or proposals on these issues. The Commission anticipates that whatever approach adopted to preserving population served will have a significant impact on the amount of spectrum available to repurpose for mobile broadband use, as well as on the overall costs of clearing broadcast television spectrum. For each of the three options proposed above, therefore, the *Incentive Auctions NPRM* invites comment on those assumptions, and on the potential magnitude of the impact on the amount of spectrum made available for mobile broadband, as well as the cost of doing so.

56. *Protection of Certain Authorized Facilities.* In the repacking process, the Commission proposes to protect the facilities authorized in unbuilt construction permits for new full power television stations as of February 22, 2012. The Commission proposes that Class A stations elect which facilities they would like protected in repacking. Because Class A stations are in the middle of a Commission-mandated digital transition that will not conclude until September 1, 2015, the Commission found that failing to offer repacking protection to those digital transition facilities not licensed by February 22, 2012 would be fundamentally unfair. Moreover, failure to protect these facilities could make it impossible for certain Class A stations to effectuate their conversion plans, thus stalling the digital transition. The Commission seeks comment on this proposed procedure, as well as whether any other authorized full power or Class A television station facilities should be protected in the repacking process. The Commission does not propose to extend any protection to facilities proposed in pending petitions for rulemaking for which a notice of proposed rulemaking has not been issued, nor does it propose to extend protection in the repacking process to low power television and translator stations.

V. Forward Auction—Reconfiguring the UHF Band

A. Allocations

57. Prior to the enactment of the Spectrum Act, the Commission sought comment in ET Docket No. 10–235 on adding new fixed and mobile allocations to the UHF and VHF bands. The Commission seeks further comment on its proposals in light of the Spectrum Act's passage. Its goal is to adopt a band plan that will provide for flexible use of these bands for new wireless broadband services while continuing to support existing uses. In particular, the Commission invites comment on the views expressed by broadcasters advocating retention of some of the UHF and VHF television bands exclusively for broadcast use. What are the benefits and drawbacks of such an approach? What effect would it have on the Commission's future flexibility to manage the spectrum? As a practical matter, how could such an approach be implemented, given that the amount of broadcast spectrum recovered in any specific geographic area depends on the results of the broadcast television spectrum incentive auction?

58. In addition, the Commission considers whether to relocate existing radio astronomy and wireless medical telemetry systems on channel 37 (608–614 MHz) to new spectrum. In the event that it decides to do so, it also proposes to add fixed and broadcast allocations to the channel 37 spectrum and modify the existing land mobile allocation in the UHF band, which is limited to medical telemetry and telecommand, to the more general mobile allocation. Similarly, if the Commission were to make changes to allocations for the channel 37 spectrum, it asks whether it should remove the radio astronomy allocation from that spectrum.

B. 600 MHz Band Plan

59. *600 MHz Spectrum Band.* We seek comment on the establishment of a 600 MHz band plan approach using 5 megahertz blocks, in which the uplink band begins at channel 51 (698 MHz), and, depending on the amount of spectrum available from the spectrum usage rights that broadcasters voluntarily relinquish in the reverse auction, will expand downward toward channel 37. Similarly, the downlink band would begin at channel 36 (608 MHz) and expand downward based on the amount of reclaimed spectrum. Under this approach, the downlink band would start at channel 36, in order to take advantage of the natural separation between television and wireless operations, given that channel 37 is presently used for non-broadcast operations. We also propose establishing guard bands between mobile broadband use and broadcast use when necessary to create spectrum blocks that are as technically and functionally interchangeable as possible to allow for enhanced substitutability among building blocks and flexibility in our auction design choices. We propose to make the guard band spectrum available for unlicensed use. We seek comment on this proposal, and on alternative uses for the guard bands, including approaches that involve licensing and/or auctioning this spectrum. We note that the Spectrum Act constrains the Commission to guard bands ''no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands,'' and requires a forward auction in which ''the Commission assigns licenses for the use of the spectrum that the Commission reallocates.'' *See* Spectrum Act at 6407(b), 6403(c). Under these provisions, we must license the spectrum we recover through the broadcast television spectrum reorganization, with the exception of guard bands.

1. Spectrum Block Size

60. To allow for the greatest amount of flexibility and efficiency, we propose to license the 600 MHz spectrum in 5 megahertz ''building blocks.'' Five megahertz blocks can support a variety of wireless broadband technologies. Licensing spectrum in 5 megahertz blocks also promotes efficiency in converting broadcast television licenses to flexible-use mobile channels because it is close in size to the 6 megahertz television channels that will be relinquished. Five megahertz blocks will optimize efficiency in the rebanded spectrum, allowing wireless spectrum demand in a given market to more closely match the amount of spectrum supplied by participating broadcasters. We seek comment on our proposal and whether this block size offers the best opportunity to use the spectrum efficiently.

61. We also seek comment on licensing the 600 MHz spectrum in six

megahertz blocks. One advantage of six megahertz blocks is that they precisely correspond to the size of digital television broadcast channels relinquished. Because six megahertz blocks do not precisely map onto the channel sizes used for most wireless broadband technologies in the market at this time, use of such blocks may result in spectrum inefficiency. Further, using six megahertz blocks may reduce the number of blocks auctioned in some circumstances. We seek comment on the relative costs and benefits of licensing the blocks in 6 megahertz increments.

62. Some prospective 600 MHz licensees may want to obtain spectrum in larger spectral units—for example, in 10 megahertz blocks. As discussed above, we are seeking comment on auction design options that would facilitate the aggregation of larger contiguous blocks composed of multiple 5 megahertz building blocks. We also anticipate that licensees could aggregate larger blocks post auction through the secondary market or using technological approaches such as channel aggregation. With these aggregation mechanisms in mind, we seek comment on the extent to which bidders view 5 megahertz building blocks as an acceptable balance between network performance and our ability to convert the 6 megahertz broadcast spectrum blocks into terrestrial wireless spectrum. Would the use of larger blocks (*e.g.,* 10 megahertz blocks) reduce the amount of spectrum that could be reclaimed in an auction? Do secondary markets or carrier aggregation technologies provide sufficient options for aggregating 5 megahertz building blocks?

2. Block Configuration

63. Our proposed band plan provides a general framework that will allow us to license different amounts of wireless spectrum in different license areas. We propose to offer a uniform amount of downlink spectrum nationwide on spectrum formerly allocated for broadcast use with no in-band television stations, so that wireless service providers can use uniform mobile device filters and so we can ensure that there is no interference between television and wireless services. We also propose to offer varying amounts of uplink spectrum in each service area, depending on the amount of spectrum available, due to the greater flexibility to accommodate different filters in base stations than in mobile terminals. Thus, our band plan aims to pair spectrum for FDD operations when possible, but may yield varying amounts of unpaired downlink spectrum blocks in different areas.

64. *Paired Blocks.* Existing transmission procedures for mobile broadband FDD operations generally operate on paired spectrum bands, so pairing spectrum, where possible, will allow mobile broadband providers to deploy and expand 4G wireless broadband services quickly and efficiently. We seek comment on our proposal to pair licensed spectrum when possible. Where we are able to make paired spectrum blocks available, we propose to auction and license these blocks on a paired basis. Are there any advantages to ensuring that a certain amount of spectrum is paired in each license area?

65. *Unpaired Spectrum.* Although we plan to provide paired spectrum blocks wherever possible, the relinquished broadcast television spectrum usage rights that allow us to offer wireless spectrum licenses will not always fit neatly into pairs in each license area. In order to maximize the amount of spectrum we can make available, as described above, where we have excess wireless spectrum that cannot be paired we propose to offer unpaired downlink spectrum that can serve as supplemental downlink expansion for FDD operations. In keeping with our proposed approach of offering a uniform amount of downlink spectrum nationwide, while allowing variable amounts of uplink spectrum on a more local basis, we propose to license the unpaired downlink spectrum in 5 megahertz increments too. These downlink expansion blocks would be located immediately adjacent to the downlink portion of paired blocks to minimize interference issues. We seek comment on our proposal to license unpaired spectrum blocks for downlink expansion. Alternatively, we seek comment on whether we should auction and license uplink and downlink spectrum separately. In discussing the amount of paired and unpaired spectrum that should be allocated for wireless broadband, commenters should discuss the relative costs and benefits of each approach.

66. Because wireless broadband traffic tends to be asymmetrical (*i.e.,* downlink Internet traffic is greater than uplink traffic because users download more data than they upload), we anticipate that wireless providers could use this excess downlink spectrum to support their wireless broadband services in this spectrum band, or supplement their spectrum holdings in other bands. We seek comment on the extent to which mobile wireless traffic today is symmetrical or asymmetrical and on how these patterns are expected to evolve in the future. To what extent do traffic patterns support the notion of unpaired downlink expansion blocks?

67. *Block Locations.* In deciding where to place the uplink and downlink spectrum bands, we aim to provide the best technical solution to reduce interference issues between adjacent bands and wireless operations. We propose an uplink band starting at channel 51 (698 MHz), and a downlink band beginning at channel 36 (608 MHz) to greatly reduce interference concerns, and consequently, our need for guard bands. Specifically, the 600 MHz uplink band will be adjacent to the 700 MHz uplink band, and therefore we are not proposing a guard band between the two uplink bands. In addition, we do not anticipate needing a guard band between the downlink band and existing channel 37 operations (radio astronomy and wireless medical telemetry), because they currently operate adjacent to broadcast television bands without interference. By designating downlink and uplink operations in specific frequencies, we reduce potential interference with adjacent operations, thus minimizing the need for guard bands; and we also minimize interference between wireless operations. We seek comment on this proposal, including the expected costs and benefits.

3. Offering Different Amounts of Spectrum in Different Markets

68. As explained above, our proposed band plan approach would accommodate non-uniform amounts of relinquished broadcast TV spectrum in each geographic area. The alternative—requiring the same amount of broadcast spectrum to be cleared in all markets—would limit the total amount of spectrum usage rights that broadcasters can choose to relinquish and that wireless providers can use for wireless broadband services.

69. On the other hand, proliferation of band plans is often considered undesirable from a technical perspective. Multiple band plans are undesirable because each band plan typically requires a different design of the filters and/or duplexers in mobile devices to support those band plans. To balance these two goals, we propose creating ''families'' of related band plans, and depending on the amount of spectrum that is relinquished, ''extended families'' of band plans.

a. Band Plan ''Families'' With Consistent Nationwide Downlink Bandwidth

70. A band plan ''family'' is a group of possible band plans with a consistent amount of nationwide downlink

spectrum to allow for market-by-market differences in the quantity of uplink spectrum. This concept ensures that user devices can operate nationwide with common receive filter components. The variable amount of uplink blocks means, however, that base stations in different markets may require different receive filtering. We believe that due to form factor, power, and other requirements, it is less costly to implement differential receive filtering in the base station than in the mobile device. We seek comment on this premise.

71. For example, if we reclaim 10 broadcast television channels in most areas, but fewer channels in some areas, we can only offer the minimum amount of paired blocks available nationwide if we offer the same amount of uplink spectrum, even though there is more available wireless spectrum in some areas. In contrast, if we allow for a variation in the amount of uplink spectrum offered in each area (with a minimum of one uplink block offered in each area), we can offer more spectrum: four paired blocks in areas where we clear 10 channels, three paired blocks where we clear 9 channels, and two paired blocks in areas where we clear 8 channels. Because we must clear the same amount of downlink spectrum nationwide for technical reasons, we propose to offer the unpaired downlink blocks for downlink expansion.

72. In areas where minimal spectrum usage rights are reclaimed through the reverse auction, we could choose to not clear any spectrum of broadcast usage rights instead of limiting the amount of downlink wireless spectrum available nationwide by the amount cleared in these areas. For example, if we could clear at least 10 TV channels in every market but one, where we can clear only 3 TV channels, we could choose not to clear any channels in that market and instead offer wireless spectrum licenses in all other markets. This would help us to maximize the amount of wireless spectrum that we can license overall while avoiding unnecessary disruption of broadcast television service. Where we choose to clear no TV channels and offer no wireless licenses on these frequencies, mobile devices operating in these geographic areas will need to operate on another frequency band (through other assets of the operator or roaming agreements, for example); therefore, TV stations in the band will not interfere with those mobile devices.

b. ''Extended Families'' Using Multiple Downlink Band Plans

73. If broadcasters voluntarily relinquish spectrum usage rights in more spectrum than can be supported in one pass band due to current technical limitations, we may need to support two downlink band plans from the outset.

74. In this case, mobile devices would need two filters rather than one filter to support service in the entire band. Because two filters are necessary due to technical limitations, there is no additional cost incurred to support a second band, provided it aligns with the installed filters. There is a fixed relationship between the two families, however, because the second family must align with the upper filter of the first family. Due to this alignment, it is not possible to arbitrarily combine any two families; only ones that align by having the number of downlink channels cleared in the smaller family align with one of the filters used in the larger family. We refer to these sets of families as ''extended families.''

75. Supporting extended families of band plans significantly increases the amount of market variation that can be accommodated by the band plan. There is also significant variation in the uplink to downlink mix by market in a way that is more variable and uneven than in the single family case, however. For example, a market with 10 channels cleared is fully symmetric, while a market with 11 channels cleared is highly asymmetric.

76. Supporting these extended families has certain benefits, but also some drawbacks. It will extend the range of market clearing options supported by the band plan, possibly enabling us to allow more broadcasters to voluntarily relinquish their spectrum usage rights by allowing us more flexibility for dealing with market variation in the number of television channels we can clear in each market. However, this approach adds complexity to the process and requires us to make assumptions about filter capability to align the families into extended families. Supporting two band classes also results in additional interoperability concerns. We seek comment on supporting extended families of band plans. Should we assume that certain amounts of spectrum will require two or three filters to implement? If we make this assumption, should we vary the amount of 600 MHz spectrum available by market based on the expected number and bandwidth of the required filters? What are the benefits and drawbacks of this approach?

4. Geographic Area Licensing

77. We propose to license the 600 MHz band using a geographic area licensing approach, and we seek comment on this proposal. A geographic area licensing approach is well suited for the types of fixed and mobile services that would likely be deployed in this band. Additionally, geographic licensing is consistent with the licensing approach adopted for other bands that support mobile broadband services. In the event that interested parties do not support geographic licensing for the 600 MHz spectrum, those commenters should explain their position, identify any alternative licensing proposal and the costs and benefits associated with that alternative.

78. Section 6403(c)(3) of the Spectrum Act directs the Commission to ''consider assigning licenses that cover geographic areas of a variety of different sizes.'' We discuss below appropriate geographic areas for licensing the 600 MHz spectrum and seek comment on how we should take account of this directive. The Commission has previously used a variety of geographic area sizes to license spectrum, ranging from nationwide and large regional areas such as Regional Economic Area Groups (REAGs) and Major Economic Areas (MEAs) to medium-sized geographic areas such as Economic Areas (EAs) and Component Economic Areas (CEAs), to smaller areas such as Metropolitan Statistical Areas/Rural Statistical Areas (MSAs/RSAs).

79. We are concerned that licensing the 600 MHz spectrum on a nationwide, or large regional, basis would require the Commission to reclaim an equal amount of spectrum nationwide, or throughout large regions. As a result, if only a few broadcasters in one geographic market voluntarily relinquish their spectrum usage rights, we would be constrained by that amount of available spectrum as the baseline for offering wireless spectrum in the broader area. Thus, the spectrum may not be put to its highest valued use, if broadcasters in other markets within the area want to relinquish spectrum usage rights and wireless providers want to purchase licenses for those rights, but cannot because of the uncleared market. Similarly, using REAGs would present the same problem of limiting the amount of spectrum that could be repurposed for wireless broadband because there are only 6 REAGs in the continental United States.

80. On the other hand, the use of small geographic license areas, such as MSAs/RSAs, could potentially support much greater variation in the amount of reclaimed spectrum from area to area, but impose different tradeoffs. While it is more likely that we can license more wireless spectrum that is not encumbered by potential interference

with nearby remaining broadcast television spectrum, having a large number of very small licenses may raise implementation risks for the auction designs contemplated in this proceeding. Moreover, more licenses could complicate potential bidders' efforts to plan for, and participate in, the auction for such licenses, as well as subsequent roll-out of service.

81. EAs, which the Bureau of Economic Analysis defines as ''one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes,'' represent a natural market unit for local or regional service areas. *Final Redefinition of the BEA Economic Areas,* 60 FR 13114 (1995). EAs nest within and may be aggregated up to larger license areas, such as Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) for operators seeking larger service areas. Depending on the licensing mechanism we adopt, licensees may aggregate or otherwise adjust their geographic coverage through auction or through secondary markets. We believe that for this spectrum, EA licensing strikes an appropriate balance between geographic granularity from a spectrum reclamation standpoint and having a manageable number of licenses from an auction design standpoint. We propose to license the 600 MHz band on an EA basis and seek comment on this approach. *See* 47 CFR 27.6. We ask commenters to discuss and quantify the economic, technical, and other public interest considerations of licensing on an EA basis, as well as the impacts this approach may have on auction design, rural service, and competition.

82. We also seek comment on whether we should use geographic areas other than EAs. Specifically, we seek comment on using geographic areas such as CEAs or MSAs/RSAs, which have a greater number of service areas throughout the United States and the reasons why using these geographic license sizes are more advantageous than using EAs. We also seek comment on whether there are certain circumstances in which using larger—nationwide or regional—licenses would be more appropriate or advantageous. For example, if we are able to reclaim a large amount of broadcast television spectrum nationwide or regionally, should we license a portion of the spectrum on a nationwide or regional basis? We encourage commenters to consider the auction design implications of any proposed geographical licensing scheme, as well as any associated costs and benefits.

83. In addition, we seek comment on whether and how to license areas outside of the continental United States as the Commission typically has done. Although we note that the Spectrum Act makes no special provisions for Alaska and Hawaii, we seek comment on whether any modifications to our proposed or current regulations are necessary to accommodate licensing spectrum in these areas. Similarly, if we decide to include the United States territories in the incentive auction, are any changes necessary? Finally, should we include the Gulf of Mexico in our licensing scheme for this spectrum? Should the Gulf of Mexico be part of another service area(s) or should we separately license a service area(s) to cover the Gulf of Mexico. Commenters who advocate a separate service area(s) to cover the Gulf of Mexico should discuss what boundaries should be used, and whether special interference protection criteria or performance requirements are necessary due to the unique radio propagation characteristics and antenna siting challenges that exist for Gulf licensees.

5. Technical Considerations

a. Guard Bands

84. In order to minimize interference between dissimilar adjacent operations, we propose to create guard bands in which there are no high powered operations. These guard bands may be used for low-powered unlicensed operations that are secondary and cannot cause interference. To determine the appropriate size of these guard bands, we must take into account two primary considerations. First, the guard bands must be large enough to ensure that wireless spectrum blocks adjacent to television operations or other adjacent high powered operations will support wireless broadband services to the same level of performance as spectrum blocks adjacent only to other spectrum blocks used for wireless broadband service. As described above, we propose creating spectrum blocks that are as similar and technically interchangeable as possible to allow for enhanced substitutability across blocks. Second, section 6407(b) of the Spectrum Act requires that the ''guard bands shall be no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands.'' We propose to establish guard bands that meet this requirement.

85. We seek comment on the appropriate size for guard bands. We ask commenters to provide detailed engineering analysis and data in support of the guard bands they propose.

86. *No Guard Band between 600 MHz Uplink and 700 MHz Uplink Spectrum.* The 600 MHz uplink band is adjacent to the lower 700 MHz A block (698 MHz to 704 MHz), which is used for terrestrial uplink services. Because both bands are designed for terrestrial uplink systems, the new 600 MHz block and the lower 700 A blocks are harmonized. Generally, we do not allocate any spectrum for guard bands when adjacent operations are harmonized. Therefore, we are not proposing a guard band between the 600 MHz uplink spectrum and the lower 700 MHz spectrum.

87. *No Guard Band between 600 MHz Downlink and Channel 37 (Assuming Existing Channel 37 Operations).* In our proposed band plan, the upper edge of the downlink band borders channel 37, which is not allocated for broadcast television, but radio astronomy and wireless medical telemetry. Currently, there is no guard band between television stations in channels 36 and 38 and the services in channel 37. Because the proposed in-band and out-of-band emissions of the 600 MHz downlink band are significantly lower than those of the television stations, we do not propose a guard band between the 600 MHz downlink band and channel 37.

88. *Guard Band between 600 MHz Uplink and Television.* At the lower edge of the 600 MHz uplink band, the adjacent systems—television channels used for downlink transmissions and 600 MHz uplink transmissions from mobile devices—are not harmonized. Interference can occur at either the television receiver or the mobile broadband base station receiver, either by out-of-band emissions (OOBE) or by receiver overload (''blocking'') from the adjacent service. We seek comment on the appropriate guard band size at the lower edge of the 600 MHz uplink spectrum to protect both remaining television stations and new wireless broadband licensees from interference. The Commission has previously found six megahertz of spectrum separation is sufficient to protect digital television receivers against 1 MW DTV transmitters. We propose a six megahertz guard band to protect television operations and 600 MHz uplink operations. Additionally, below we propose to add ''remainder'' spectrum to the guard bands to further mitigate any potential interference concerns. We also invite comment on how much guard band would be sufficient to prevent harmful interference between licensed services

outside the guard bands, as well as how to interpret Congress's mandate that guard bands be ''no larger than technically reasonable.''

89. Specifically, we ask commenters to analyze 600 MHz uplink interference into digital television receivers within the television station's protected contour, for receivers using indoor antennas and receivers using rooftop antennas, as considered in OET 69. *OET Bulletin No. 69, Longley-Rice Methodology for Evaluating TV Coverage and Interference,* page 9 (Feb. 6, 2004) available at *http://www.fcc.gov/encyclopedia/oet-bulletins-line.* Likewise, we ask commenters to analyze television station interference into 600 MHz base station receivers. In addition, we seek input on the types of user equipment (UE) likely to be deployed in the 600 MHz band (*e.g.,* handheld, laptops, tablets, fixed modems) and their operations to assist in determining the likelihood and severity of potential interference. We also seek information on device characteristics such as EIRP, antenna gain, body losses at 600 MHz, and the effects of power control on average UE power level. We also seek data on environmental factors such as typical interior/exterior wall penetration losses and polarization mismatch. Furthermore, we invite comments on potential improvements through the use of filters on digital television transmitters to reduce OOBE into 600 MHz base station receivers and improvements needed to prevent blocking. Could broadcasters be reimbursed under the Spectrum Act for installing the improved filters because such filters would increase the amount of relinquished spectrum that could be made available to wireless providers?

90. *Guard Band between 600 MHz Downlink and Television.* The lower edge of the 600 MHz downlink band and the adjacent television systems are harmonized to the degree that both systems are downlink, meaning that each produces transmissions from higher power fixed stations to smaller, more portable, and more numerous receivers. They are not fully harmonized, however, because broadcast television stations operate at a considerably higher power than what we are proposing for 600 MHz base stations, and television receivers are used differently than we anticipate 600 MHz devices will be. We seek comment on the appropriate guard band size to prevent harmful interference to the 600 MHz mobile broadband and DTV services. Similar to the guard bands between television and 600 MHz uplink, we propose a guard band of six megahertz plus remainder spectrum, where available. We also invite comment on how much guard band would be sufficient to prevent harmful interference between licensed services outside the guard bands, as well as how to interpret Congress's mandate that guard bands be ''no larger than technically reasonable.''

91. Specifically, we ask commenters to analyze interference from 600 MHz base stations into digital television receivers within the television station's protected contour for digital receivers using indoor and rooftop antennas. Additionally for this guard band, we are requesting commenters to analyze interference from television stations into 600 MHz mobile devices. We also invite comments on potential improvements through the use of filters on digital television transmitters to reduce OOBE into 600 MHz mobile receivers and improvements needed to prevent blocking. With respect to analyzing interference to 600 MHz downlink from television stations, we ask that commenters provide data to evaluate several scenarios for filtering and colocation, including: (1) Using existing mask digital television transmit filters with 600 MHz base station and television facilities not colocated; (2) using existing mask DTV transmit filters with 600 MHz base station and television facilities colocated; and (3) using improved mask digital television transmit filters, with 600 MHz base station and television facilities colocated. To support this analysis, commenters should provide data on the types of user equipment, their operational use, and device receiver characteristics such as antenna gain, body losses, adjacent channel rejection and blocking characteristics. In addition, commenters should justify any assumptions they make in their analysis.

b. Interoperability Considerations

92. Each band plan supported by a device requires a separate duplexer (or filter, in the case of Time Division Duplex (TDD) bands), and associated components. So, if we choose to clear different amounts of downlink spectrum in different markets, mobile device manufacturers would need to create separate duplexers for different markets or risk interference in areas where we cleared less spectrum for wireless use (to and from remaining broadcast television operations, for example). Supporting multiple band plans would increase the cost, size, and/or complexity of these devices. We seek comment on whether we should minimize the number of band plans that need to be supported in mobile devices using the 600 MHz spectrum by creating uniform downlink spectrum nationwide. Given that most user devices already support many bands, is the burden of adding one more band to support 600 MHz service significantly different from the burden of adding multiple bands to support 600 MHz operations? What is the maximum number of band plans we should offer in this spectrum?

93. In addition to potentially increasing a device's cost, size, and/or complexity, multiple band plans can also reduce interoperability. For example, if a provider's license area covers only two of the four band plans available nationwide, it might choose to support only that subset of bands in its devices. As explained above, one of our goals in deciding how best to license this wireless spectrum is encouraging interoperability. Interoperability has often been important in ensuring rapid and widespread deployment of mobile devices in a new spectrum band. Do our proposals sufficiently encourage and ensure interoperability in the 600 MHz band? Alternatively, should we require interoperability by adopting a specific interoperability rule? We seek comment on this issue.

94. As discussed above, to balance our goals of making more wireless spectrum available by clearing different amounts of spectrum in different areas and minimizing the burden of multiple band plans, we propose creating ''families'' of related band plans, where the same downlink band is available nationwide but the amount of spectrum cleared for uplink use will differ among areas. By keeping the same downlink spectrum nationwide, all user devices on the 600 MHz spectrum can potentially be supported with a single receive filter in the mobile device, thereby minimizing the costs associated with user devices and promoting interoperability. To obtain these benefits, however, the mobile device must be able to use a single duplexer for all the band plans. This will not result in interference, however, because the mobile devices will only operate where the network instructs it to transmit.

95. Given the variation in uplink spectrum, however, base stations will require different receive filters in different areas. We believe that creating a band plan that requires different filters on base stations results in fewer problems and is less costly to resolve than requiring multiple filters in mobile devices because providers use fewer base stations, the stations are fixed, and there is more physical room in a base station to install multiple receive filters. We seek comment on this proposition.

96. *Channel 51 Early Relocation.* Some have argued that we should consider interoperability because of the experience with lower 700 MHz A Block licensees. They further contend that exclusion zones designed to protect broadcasting have presented significant deployment challenges for lower 700 MHz A Block licensees. We seek comment on these arguments and on resolving issues related to coexistence of Lower A Block operations and channel 51 even before we commence the incentive auction by facilitating requests for channel relocation associated with voluntary agreements between affected parties addressing these issues.

c. Duplex Gap

97. One important parameter in determining the band plan is the required separation between the uplink and downlink bands, referred to as the duplex gap. We seek comment on the necessary size of the duplex gap. In the LTE bands specified by 3GPP, the smallest duplex gap is 10 megahertz for Band 8 (880–915 MHz and 925–960 MHz bands), with gaps ranging up to 355 megahertz for Band 4 (AWS–1). The size of the duplex gap relative to the width of the pass band is often considered more important than the absolute size, however, as filter roll off is generally proportional to frequency. Other factors can affect the appropriate duplex gap as well, such as the pass band width relative to the center frequency of the pass band, the duplex spacing between the transmitted and received signals, and allowances for temperature and manufacturing variation in components. In our proposed band plan, the duplex spacing is 90 megahertz, but we are not proposing a specific size for the duplex gap. Instead, we seek comment on the appropriate size of the duplex gap, and whether it should be specified as a minimum number of megahertz, a percentage of the pass band, another metric, or a combination of such metrics.

d. Pass Band Size

98. In our band plan proposal we have aimed to create large amounts of contiguous spectrum in a single band, minimize fragmentation of spectrum, and minimize proliferation of separate bands for flexible use spectrum. We recognize that there may be technical limitations on the maximum size of a band that can be supported, however.

99. Filters commonly used in mobile devices may have an upper limit on the pass band size they can support. Examination of the bands defined for LTE show the largest pass band for an FDD band is Band 3 (1710–1785 MHz and 1805–1880 MHz band), where the pass band is 4.2% of the center frequency. Larger pass bands may be possible, however. For example, Band 41 (2496–2690 MHz band), which is used for TDD operations, has a pass band of 7.5%. IWPC indicates that SAW filters using an alternative manufacturing process with Lithium and Niobium can support pass bands of up to 6% of the pass band center frequency. *See IWPC presentation to the FCC ''IWPC Mobile RF Filter Group''* March 11, 2011 at 14, available at *http://www.iwpc.org/ResearchLibrary.aspx?ArchiveID=165&Display=doc.*

100. In our proposed band plan, we may reach a potential technical limit of 4–6% of the pass band if we make 10 or more 5 megahertz blocks available for auction. We also recognize that there may be other technical limitations on band size, due to antennas or other components, and seek comment on any other limiting factors. We seek comment on any technical limitations on pass band size. Does current filter technology limit the pass band size to no more than 4% of the pass band center frequency, no more than 6% of the pass band center frequency, or some other limit? Are there other limitations on pass band size due to other components of the system? Are these hard limits or soft limits, that is, what are the consequences of slightly exceeding any stated limit? Are these limits likely to change by the time the 600 MHz band is deployed, or in the future, and how should we allow for any potential changes in configuring our band plan?

101. Even if the maximum size of a band is limited by current technologies, we believe it is better long-term spectrum policy to clear larger bands that can take advantage of future technology innovations. We seek comment on this issue. We also seek comment on how these limits may relate to the duplex gap, duplex spacing, and guard bands. Does increasing the size of the guard bands allow support of a larger pass band? If so, should we consider setting the minimum guard band size relative to the pass band size? Do the relatively large duplex gap and duplex spacing in our proposed band plan allow large pass bands?

e. Border Issues

102. As explained below, we recognize that TV broadcast operations in Canada and Mexico may reduce the amount of spectrum fully cleared for wireless use. We seek comment on how to address these border issues, particularly given the disparate timeframes for conversion to digital television in Canada and Mexico. For example, in specific license areas, should we place the 600 MHz uplink bands only in the available channels in channels 38–51 where wireless broadband operations will not be affected by remaining TV operations in the border areas? How can downlink spectrum be maximized in the border areas?

6. Additional Band Clearing Considerations

a. Interchangeable Blocks

103. Although we posit that creating spectrum blocks that are interchangeable will be advantageous to wireless bidders, we also seek comment on whether wireless bidders would prefer access to a greater amount of spectrum, even if not all blocks are protected equally from interference. For example, if we adopt a plan that allows for non-nationwide clearing of broadcast television stations, only a portion of a wireless broadband service area may be cleared in some areas because the contour of a broadcast station and the contour of a wireless license service area are not identical. If interchangeability is more important than quantity, we could choose not to offer wireless broadband licenses in these types of areas. We seek comment on whether we should refrain from offering blocks in areas where part of the spectrum is encumbered. If we offer only non-encumbered spectrum blocks, however, we will be able to offer fewer blocks of spectrum for wireless use, particularly along border areas. Alternatively, should we offer these encumbered blocks to interested bidders? If so, how? Should we establish a threshold (e.g., a percentage of a license area's population or geography) for determining whether a license is considered ''clear'' even if some portion of the license area has incumbent operations that must be protected? If so, how would such a concept affect the auction design? If we decide not to license certain heavily encumbered blocks, should we make the ''cleared'' spectrum available for unlicensed use? For example, if 90 percent of the geographic area of a spectrum block is encumbered by broadcasters, should we make the remaining 10 percent available for unlicensed use? We seek comment on potential approaches to address this issue.

b. Remainder Spectrum for Unlicensed Use

104. In order to maximize the number of valuable blocks for licensing, to improve the interference environment

for mobile operations, and to increase the substitutability of blocks in the auction, we propose to add ''remainder'' spectrum to the guard bands, which would be available for unlicensed use. The downlink and uplink 600 MHz bands would each be organized into 5 megahertz blocks, which can be aggregated by licensees into larger contiguous blocks as needed. Because 5 megahertz blocks match the prevailing channelization increments of modern cellular systems, this block size could enable a greater quantity of usable licensed blocks in any given market as compared to other approaches. The cleared TV broadcast stations operate on 6 megahertz wide channels, however, and as explained above, some spectrum from broadcasters' relinquished spectrum usage rights must serve as guard bands. Therefore, to determine the number of wireless spectrum blocks available for downlink and for uplink in each market, we look at the total amount of spectrum cleared, divide that number by 2, subtract the guard band, divide by 5 (megahertz), and round down. Because we must round down to a number divisible by 5 to create the wireless spectrum blocks, we will have 0 to 4 megahertz of ''remainder'' spectrum in any given market for each half of the duplex pairing. For the reasons described above, we believe that licensing in 5 megahertz increments is ideal from a technological perspective, and we propose auctioning interchangeable blocks of equal size to allow for enhanced substitutability among building blocks, which may give us more flexibility in our auction design choices. Therefore, we must find an alternative use for the ''remainder'' spectrum.

105. As discussed above, we propose a minimum of 6 megahertz guard bands between wireless and broadcast operations. Because we may have no ''remainder'' spectrum available in some areas, we must ensure that our proposed minimum size for guard bands is sufficient to protect against interference between broadcast and wireless operations. As noted above, providing additional guard band protection beyond 6 megahertz would further improve any potential interference concerns, and therefore, we propose to add this remainder spectrum to the guard bands. For example, if we clear 30 megahertz for downlink operations, and the guard band between wireless downlink and television is 6 megahertz, then the number of spectrum blocks available is four. Thus, in that market, we can offer four 5 megahertz blocks, and the remaining 4 megahertz of spectrum will be added to the 6 megahertz guard band, and offered for additional unlicensed use. Under this proposal, there could be between 6 and 10 megahertz of spectrum between the television channels and the 600 MHz uplink band in a market. In addition, there could be another 6 to 10 megahertz of spectrum between the television channels and the 600 MHz downlink band in a market. We seek comment on this approach. We also seek comment on alternative ways to make use of the remainder spectrum. For example, we note that it may be possible, when the remainders total 5 megahertz or more, to apportion some or all of the remainder spectrum to one half of the duplex pairing, *e.g.,* the downlink. This would increase the total number of 5 megahertz blocks available for licensing, but would have a tendency to reduce the number of uplink blocks and increase the asymmetry of the band plan. We seek comment on the advantages and disadvantages of various approaches to remainder spectrum.

7. Alternative Band Plan Approaches

106. In our proposed band plan, we have tried to balance flexibility with certainty while maximizing the amount of spectrum we can make available for wireless broadband services in each geographic area. We recognize that other band plans are possible that may achieve these goals. Below we discuss a few possible alternatives, compare them to our lead proposal, and seek comment on these approaches. In addition, we invite commenters to offer variations on our proposed band plan, address the alternative band plans we discuss below, or propose their own band plan. We also invite commenters to address whether there are other advances in technology that would improve efficiency in the band, and allow more flexibility in the band plan, perhaps similar to the manner in which the development of cognitive radio and the ability to query databases enabled the development of television white spaces devices. Commenters should discuss and quantify the costs and benefits of their proposed band plan, explain why their band plan better serves the public interest and our policy goals than our lead proposal, and discuss which proposed technical rules would need to be modified to accommodate their proposal.

a. Down From Channel 51

107. Using an alternative approach to our lead band plan proposal, we could clear broadcast television channels starting at channel 51 and expand downward. Under this approach, we would organize the cleared spectrum into an uplink portion, a downlink portion, and any necessary guard bands. Adopting this alternative would require us to designate a quantity of spectrum as a duplex gap between the uplink and downlink bands, which would not be used for licensed wireless broadband operations. As a result, this alternative band plan requires a tradeoff between the duplex gap size and the amount of licensed spectrum. Minimizing the duplex gap size would increase the amount of spectrum available for licensing but could have a negative impact on mobile performance. A wider duplex gap, conversely, could enhance mobile performance. We anticipate that regardless of the size of the duplex gap, some portion of the spectrum could also be available for unlicensed operations. We seek comment on whether, with a wider duplex gap, as with the alternative approach in which the downlink starts at channel 36, it may be possible to leave some television operations, as well. We seek comment on this alternative band plan proposal, and its relative costs and benefits in making spectrum available for broadband, including both licensed and unlicensed uses.

108. *Channel 37 Services Fixed.* If the existing wireless medical telemetry and radio astronomy operations remain fixed in channel 37, and if we clear more than 84 megahertz of spectrum, the channels above and below channel 37 would need to be cleared under this alternative band plan because channel 37 would be located in the downlink band. If we decide not to move incumbent channel 37 services, then this alternative is less advantageous than our lead proposal, which places the downlink band against channel 37, and assumes that existing channel 37 operations will remain in that frequency band.

b. Relocating Existing Channel 37 Operations

109. As described above, section 6403(b)(4)(A)(iii) of the Spectrum Act gives us authority to reimburse the move of incumbent operations in channel 37, with certain constraints. Our proposed band plan does not require us to move channel 37 operations, and instead, attempts to benefit from allowing existing channel 37 operations to remain in that frequency band by using channel 37 as a guard band between television operations and mobile broadband operations. If we decide to relocate channel 37 operations, however, should we consider other alternative band

plans, which may be just as spectrum-efficient? For example, we could consider placing the downlink band at channel 32 instead of channel 36, which allows for symmetry between the amount of potential uplink and downlink spectrum. We seek comment on these alternatives and the costs and benefits associated with adopting them and in making spectrum available for broadband, including both licensed and unlicensed uses.

c. In From Channels 51 and 21

110. Another alternative approach is to situate the 600 MHz uplink band adjacent to the 700 MHz uplink spectrum (as in our lead proposal), and situate the downlink band at the lower end of the broadcast television spectrum, at channel 21. The uplink spectrum would expand downward, and the downlink spectrum would expand upward. Similar to our proposed band plan, this alternative allows us to keep existing channel 37 operations on that channel, because channel 37 sits in the duplex gap. Further, like our lead band plan proposal, we would not need to create a duplex gap, because the remaining broadcast television operations would operate in the duplex gap. We would need to create guard bands where the mobile broadband operations and television operations meet, however. We would also need to determine whether such a large pass band size would be able to be supported by one band plan. We seek comment on this approach and the costs and benefits associated with adopting it and in making spectrum available for broadband, including both licensed and unlicensed uses.

d. Prioritizing Paired Spectrum

111. Our lead proposal allocates equal amounts of downlink spectrum and possibly different amounts of uplink spectrum in each market. Such an approach would maximize the amount of downlink spectrum available nationwide as well as the total amount of spectrum reallocated from television broadcasting to flexible use. In some circumstances, however, the proposed approach might result in highly asymmetrical markets. An alternative approach might prioritize the pairing of spectrum nationwide rather than the amount cleared in each individual market. Under this approach, the number of channels reallocated would be the same in every market and the spectrum cleared would be evenly split between paired downlink and uplink spectrum, with any residual blocks used to create no more than one block of unpaired downlink spectrum. Like our primary proposal, this approach would create a uniform downlink band plan to help ensure interoperability, and nationwide guard bands that could be used by unlicensed white space devices, at least on a secondary basis. On the other hand, such an approach might constrain overall spectrum recovery by limiting the amount of flexible use spectrum to the spectrum that can be recovered in the ''lowest common denominator'' markets. As a third possibility, could we allow two families of paired spectrum, one nationwide and another in less congested markets? Such an approach might increase the total amount of spectrum reallocated for flexible use, while prioritizing the pairing of spectrum. We seek comment on these alternatives, including the costs and benefits of prioritizing the pairing of spectrum versus maximizing the total number of megahertz reallocated.

e. Designating Spectrum for TDD Use

112. We recognize that TDD technologies can also be used to provide wireless broadband service and seek comment on whether the Commission should allow for TDD use in the 600 MHz band. For example, should we set aside a separate TDD-only block in our band plan or allow TDD operations throughout the entire band? If we set aside a TDD-only block, should it be contingent on creating a certain number of paired FDD spectrum blocks first? What is the minimum block size (*e.g.,* 5 megahertz, 10 megahertz) necessary for TDD operators to effectively provide mobile broadband service? What is the ideal geographic area license size for this type of service? If we allow for TDD operations throughout the band, what other considerations should we take into account in establishing block size and geographic area license size?

113. Furthermore, if we allow for TDD in the 600 MHz band, what technical rules should we adopt to accommodate TDD technologies while minimizing interference concerns? For example, if we allow TDD operations, is it necessary to establish a guard band where a TDD block adjoins an FDD block or another TDD block? If a guard band is necessary, should we require the TDD bidder to internalize that guard band or otherwise mitigate interference to those adjacent blocks? What other technical issues arise from allowing TDD in the 600 MHz band? We seek comment on this issue, and the costs and benefits of allowing for TDD technologies in this band. Commenters are also invited to discuss how such issues have been resolved in other countries where TDD systems have been licensed or are expected to be deployed (*e.g.,* India and China).

C. Technical Rules

1. OOBE Limits

114. Under the proposed band plan, we plan to license 600 MHz spectrum in paired 5 + 5 megahertz blocks as well as unpaired 5 megahertz downlink expansion blocks, using Economic Area licenses. Therefore, we must consider how to address interference between adjacent blocks within the 600 MHz band, and between 600 MHz spectrum and adjacent bands.

115. *Emission limits.* The Commission has previously concluded that attenuating transmitter out-of-band emissions (OOBE) by 43+10*log10(P) dB, where P is the transmit power in watts, is appropriate to minimize harmful electromagnetic interference between operators. This is consistent with the service rules that the Commission has adopted for other bands, including the lower 700 MHz band, that are used for wireless broadband services. 47 CFR 27.53(g). To fully define an emissions limit, the Commission's rules generally specify details on how to measure the power of the emissions, such as the measurement bandwidth. For the lower 700 MHz band, the measurement bandwidth used to determine compliance with this limit for both mobile stations and base stations is 100 kHz, with some modification within the first 100 kHz. 47 CFR 27.53(g). Similarly, we believe that it is reasonable to apply this procedure to both mobile and base transmissions in the 600 MHz band.

116. *Proposal.* To address potential harmful electromagnetic interference within the 600 MHz band, we propose to apply section 27.53(g) of the Commission's rules, which includes OOBE attenuation of 43+10*log10(P) dB and the associated measurement procedure, to the 600 MHz band. We seek comment on this proposal. Commenters should discuss and quantify the costs and benefits of this proposal and any proposed alternative approaches.

117. *Interference to Adjacent Lower 700 MHz operations.* The upper end of the 600 MHz uplink band is adjacent to the lower portion of the lower 700 MHz band, which is also being used for mobile uplink operations. As a result, the interference environment between these two bands will be nearly indistinguishable from interference within either band and we believe that our proposal to adopt the lower 700 MHz OOBE limits will protect adjacent lower 700 MHz operations.

118. *Interference to Adjacent DTV operations.* Under our proposed band plan, the 600 MHz band will be adjacent to DTV operations on the lower end of both the uplink and downlink bands. The interference environment is similar to what currently exists between the lower 700 MHz band and DTV stations. It is beneficial to maintain comparable emissions limits among commercial bands so as not to disadvantage one band over another. In the event that a specific incidence of harmful interference occurs, the Commission, under section 27.53(i) of its rules, may impose higher emissions limits as a remedy. By applying the same OOBE limits as currently exist between the lower 700 MHz band and DTV stations, 600 MHz licensees will provide similar protection as exists today.

119. *Interference to Channel 37 Operations.* Under the proposed band plan, downlink operations would be permitted adjacent to the lower edge of Channel 37. Depending on the amount of spectrum that broadcasters relinquish, uplink operations from mobiles could be permitted on the upper edge of Channel 37. Currently, DTV stations operate adjacent to Channel 37 without any guard bands, which indicates that the OOBE and power limitations required of DTV stations are sufficient to protect Channel 37 services. Both the emissions and power limits that are permitted by DTV operations under current regulations are higher than those proposed for the 600 MHz band. Therefore, if we adopt the proposed 600 MHz OOBE and power limits, 600 MHz services should provide as much or more protection to Channel 37 than they currently receive from DTV operations.

2. Power Limits

120. We propose to generally apply power limits for the 600 MHz band that are consistent with the lower 700 MHz band. *See* 47 CFR 27.50(c). However, we will need to modify the lower 700 MHz rules because the proposed band plan for the 600 MHz band has a predetermined uplink and downlink so different power limits are applied to each band.

121. *600 MHz Downlink Operations.* We propose to limit fixed and base station power for downlink operations in non-rural areas to 1000 watts per MHz ERP for emission bandwidths less than 1 MHz and to 1000 watts per MHz ERP for emission bandwidths greater than 1 megahertz, and to double these limits (2000 watts ERP) in rural areas. We will not apply the power flux density requirements of section 27.55(b) to the 600 MHz service. *See* 47 CFR 27.55. That requirement is designed to protect base station receivers from other high powered (50 kW) base stations nearby. Because high powered base stations are not allowed in the 600 MHz band, this requirement is unnecessary. We seek comment on this proposal, including the costs and benefits of the proposal.

122. *600 MHz Uplink Operations.* The upper part of the 600 MHz band plan is designated for uplink operations and is directly adjacent to the lower 700 MHz uplink operations. We propose to adopt the same power limit of 3 watts ERP for both portables and mobiles that apply to the lower 700 MHz band and prohibit fixed and base station operations, which are allowed in the lower 700 MHz band. 47 CFR 27.50(c)(10). In addition, as this band is intended for delivery of commercial wireless broadband services, no provision will be made for high power control stations used by specialized public safety applications. We seek comment on this approach, including the costs and benefits of the proposal.

3. Antenna Height Restrictions

123. We propose to apply the 700 MHz flexible antenna height rules, as set forth in section 27.50(c) of the Commission's rules to the 600 MHz band. Although the existing antenna rules do not set specific antenna height restrictions, ERP reductions will be required for base or fixed stations whose height above average terrain (HAAT) exceeds 305 meters. In addition, other rules effectively limit antenna heights. For example, all part 27 services are subject to section 27.56 of our rules, which prevents antenna heights that would be a hazard to air navigation. Also, our proposed co-channel interference rules effectively limit antenna heights because of the limitation on field strength at the boundary of a licensee's service area. We believe that the general antenna height restrictions are sufficient so we are not proposing any band-specific limitations. We seek comment on this approach, including the costs and benefits.

4. Co-Channel Interference Among 600 MHz Systems

124. Since we propose to license the 600 MHz bands using geographic service areas, we need to ensure that 600 MHz licensees do not cause interference to co-channel systems operating along common geographic borders. The 700 MHz rules address the possibility of harmful co-channel interference between geographically adjacent licenses by setting a field strength limit of 40 dBμV/m at the edge of the license area. *See* 47 CFR 27.55(a)(2). Due to the similarities between the 700 MHz and 600 MHz spectrum, we propose that this same signal strength limit is appropriate for the 600 MHz band. Therefore, we propose to apply 47 CFR 27.55(a)(2) to the 600 MHz spectrum. We seek comment on this proposal, including the associated costs and benefits.

5. Canadian and Mexican Coordination

125. Section 27.57(b) of our rules indicates that 700 MHz operations are subject to international agreements with Mexico and Canada. These arrangements establish 700 MHz wireless operations on a co-primary basis with foreign television operations. The arrangements do not however, establish criteria for the protection of wireless services from foreign television stations. Wireless services are essentially protected by default, given that the U.S. and Canada, and Mexico have agreed not to authorize new television services in the 700 MHz band. We note that modification of the 700 MHz band arrangements or the creation of new separate arrangements pertaining to the 600 MHz spectrum will be necessary to implement 600 MHz operations in areas along the common border and to protect these 600 MHz operations from cross-border interference. In addition, modified domestic rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of the 600 MHz band. We seek comment on these issues, including alternative approaches, and the costs and benefits of any proposal to address these issues.

6. Other Technical Issues

126. There are several additional technical rules applicable to all part 27 services, which are: equipment authorization, RF safety, frequency stability, antennas structures; air navigation safety, and disturbance of AM broadcast station antenna patterns. *See* CFR 27.51, 27.52, 27.54, 27.56, 27.63. Because the 600 MHz band will be licensed as a part 27 service, we propose that these rules should also apply to 600 MHz licensees, including licensees who acquire their licenses through partitioning or disaggregation. We seek comment on this approach, including associated costs and benefits.

VI. Other Services in the UHF Band

A. Channel 37 Services

127. TV channel 37 is not used for TV broadcasting but rather is allocated for

use by radio astronomy and medical telemetry equipment. TV channel 37 is situated in the spectrum such that it could affect the viability of certain band plans for wireless broadband service that would be most viable from a technical and economic standpoint. The Commission's proposed band plan does not require that existing channel 37 operations be relocated, and instead, attempts to benefit from allowing existing channel 37 operations to remain in that frequency band by using channel 37 as a guard band between television operations and mobile broadband operations.

1. Radio Astronomy

128. In light of the band plan proposals in the *Incentive Auction NPRM* and other considerations raised in this proceeding about channel 37 operations, the Commission seeks comment on whether RAS in channel 37 should be relocated to other spectrum and, if so, to what spectrum. In order to properly analyze this issue, the Commission needs to be aware of all observers in channel 37. The Commission understand that the ten VLBA sites, as well as the Green Bank and Arecibo telescopes, are the only radio telescopes currently observing channel 37 within the United States at this time. Additionally, we note that the Expanded Very Large Array in New Mexico will resume observations in channel 37 in late 2012. The Commission seeks comment as to whether any other sites within the United States currently perform or have plans to perform RAS observations in channel 37. In addition, it seeks comment regarding whether any foreign telescopes located near the United States or its territories, such as the Dominion Radio Astrophysical Observatory in Penticton, British Columbia, currently perform or have plans to perform RAS observations in channel 37. The Commission notes that because this band has only contained passive services and WMTS, which does not require individual licenses in the United States or Canada, channel 37 is not included in any cross-border agreements.

129. Because RAS applications involve observation of very low power radiation from space, a key requirement for RAS receivers is high sensitivity. However, this same property which enables reception of these low signals levels also makes the receivers susceptible to interference. The Commission asks commenters consider this issue in addressing whether we should relocate RAS and where. It also asks commenters to consider the various band plan options discussed in the *Incentive Auction NPRM.*

130. The Commission also invites comment on whether the RAS needs to keep a subset of the 500–700 MHz range available for RAS continuum observations. In addition, it seeks comment on the nature of the spectrum needed for such measurements. Because the VLBA relies on data from multiple receive sites, does it require a single interference-protected band throughout the entire United States? Further, as radio astronomy relies on extremely sensitive receivers, its seeks comment on whether a single, contiguous band is needed or RAS requirements can be satisfied through the use of multiple small, noncontiguous bands? In addition, it seeks comment on the cost of relocating RAS users from channel 37 to elsewhere in the 500–700 MHz range.

131. Further, the Commission seeks comment on whether there is a particular band within the 500–700 MHz range that would be the most desirable for RAS use, both from a scientific and an economic viewpoint. One alternative to the lead band plan proposal in the *Incentive Auction NPRM* would shift WMTS operations to the 578–584 MHz band (channel 32). Would this band also be desirable for RAS operations? Alternatively, what would the advantages and disadvantages be in relocating RAS to the lower (2–6) or upper (7–13) channels of the VHF band? Would such a band be as useful for RAS observations? Would relocation costs be comparable? What are the advantages and disadvantages of reserving another 6 megahertz-wide band for RAS use, as compared to a narrower or wider band?

132. The Commission also invites comment on any international implications of relocating the RAS band. How would relocating RAS from channel 37 affect foreign RAS operations, such as at the Penticton Observatory in British Columbia? Are there any foreign radio telescopes observing in channel 37 that would be subject to unwanted interference? The Commission recognizes that some RAS operations require coordinated observations with multiple telescopes in other countries. What would be the impact, if any, on these observations if we were to reallocate the RAS stations in channel 37? Finally, the Commission observes that any new RAS band in the United States would require coordination to protect it from unwanted interference from foreign sources and, if such a step is necessary, it proposes that United States stations be subject to the provisions of any negotiated cross-border agreement.

2. Wireless Medical Telemetry Service

133. In light of the band plan options set forth in the *Incentive Auction NPRM,* the Commission seeks comment on whether to relocate WMTS users from channel 37 and, if so, to what spectrum. Commenters should address their band plan preference and provide details on the relative costs and benefits of their preferred course of action. Is the ASHE estimate for sunk investment in WMTS systems correct and what would be the cost of relocation? To avoid unlimited increases in possible relocation costs, should we only consider relocating WMTS systems that were contained in the ASHE database by a date certain (e.g., the effective date of this NPRM)? Would the funds available for reimbursement of relocation costs, which the Spectrum Act limits to $300 million for all channel 37 incumbents, be sufficient?

134. The Commission also seeks comment on spectrum that could support WMTS. Specifically, it seeks comment on whether relocating WMTS to a nearby television channel, such as channel 32, may be less expensive than moving WMTS to more distant spectrum. It also seeks comment on whether the WMTS systems could simply be retuned to a new spectrum band for WMTS or whether new equipment would be required. If retuning is possible, is it possible to retune outside of the UHF band and if so, what would be the costs of retuning? In addition, the Commission seeks comment on whether all WMTS operations could be accommodated in the WMTS bands at 1395–1400 MHz and 147–1432 MHz.

135. The Commission also seeks comment on the time frame and process for possible relocation of WMTS. First, should relocation occur for WMTS under comparable facilities, as has been the Commission's past practice? If so, how would the Commission verify that the facility is comparable? If not, what standard should the Commission utilize, and what would be the legal basis for that standard? What would be the appropriate time frame for relocation? The Commission asks parties to provide estimates of the time required for equipment to be available to support any such relocation. Further, the Commission seeks comment on the impact of relocation on WMTS users if they were given a longer time frame for relocation, and if we were to freeze the issuance of new WMTS registrations. If WMTS users have a sufficiently long transition, would the cost of transition decrease because the WMTS equipment

will have reached the end of its useful life?

136. Finally, the Commission notes, that the United States Department of Veterans Affairs makes extensive use of the WMTS service. The NTIA Manual specifies that federal users of this band must follow the same procedures as non-federal users. The Commission seeks comment on whether, in the event that we decide to relocate channel 37 incumbents, federal users should be considered users for reimbursement purposes.

B. Television Fixed Broadcast Auxiliary Stations, Low Power Auxiliary Stations, and Unlicensed Wireless Microphones

1. Television Fixed Broadcast Auxiliary Stations

137. As a result of the repacking process, the amount of spectrum in the current VHF and UHF bands available for secondary licensing of fixed BAS operations is likely to diminish. We seek comment on whether and how we should address the availability of UHF band spectrum for secondary fixed BAS operations.

138. We propose to continue the licensing of fixed BAS on a secondary basis in the spectrum that remains available for television broadcast services nationwide. We recognize that coordinating and operating these point-to-point links, on a secondary basis, could be challenging in a more closely packed UHF band. Nevertheless, the number of fixed BAS licensees in the UHF band is relatively low, and we are unaware of any major interference problems to broadcast television service. Fixed BAS is directly tied to the provision of broadcast television service and competing broadcasters have successfully coordinated this service and other BAS operations, such as Electronic News Gathering in the 2 GHz band, for many years. We recognize that the continued feasibility of secondary, fixed BAS—whether for new links or for existing links that need to change frequencies to protect a repacked television station—may depend on the outcome of the repacking process. We invite comment on any relevant technical or operational implications of this proposal, including to television broadcasters and other post-auction users of the UHF band.

139. Consistent with past practice, we propose that secondary fixed BAS stations operating in the UHF band continue to be required to cease operating and relocate, at their own expense, to other frequency bands or to the repacked television band when a new 600 MHz wireless broadband licensee intends to turn on a system within interference range of the incumbent.

140. Also consistent with past practice, we propose to require broadcast television or new licensees to provide thirty days' notice to all incumbent fixed BAS operations within interference range prior to commencing operations in the vicinity. By providing notice to existing secondary licensees that they must cease operations, this approach will provide an opportunity to make other arrangements for service if the licensee has not yet done so. With several other frequency bands available to BAS, as well as the repacked television band (under our above proposal), we anticipate that stations will be able to engineer in and successfully coordinate BAS stations to suit their needs. We seek comment on these proposals.

141. We do not propose to make available compensation to fixed BAS licensees for relocating to other frequencies because BAS stations operate on a secondary basis in the UHF band. Historically, the Commission has not required new stations to pay for secondary stations to relocate. Rather, the FCC generally requires secondary stations to cease operations and relocate at their own expense when a new primary licensee begins operation if the secondary station will interfere with the primary licensee's operation. We also note that the Spectrum Act does not provide for payment of any relocation costs incurred by these secondary stations as a result of the repacking. We seek comment on our proposal.

2. Low Power Auxiliary Stations and Unlicensed Wireless Microphones

142. The Commission seeks comment on what steps it should take, if any, to best accommodate wireless microphone operations along with other uses, as well as to ensure that the available spectrum is used efficiently and effectively by wireless microphones. It seeks comment with respect to both licensed LPAS and unlicensed operations.

143. In particular, the Commission seeks comment on the operations of wireless microphones in the repacked spectrum that continues to be used for broadcast television service. With less broadcast television spectrum available after the repacking, and the possibility that two channels may no longer be designated for wireless microphone use, are there additional steps that we should take to promote more efficient or effective operations of wireless microphones in this spectrum? For instance, to make more of this limited spectrum usable for wireless microphones, should the Commission revise the rules for operating these devices on a co-channel basis with television stations in the UHF band by reducing the separation distance of 113 kilometers, a requirement established prior to the transition to digital television? Apart from reducing the separation distances generally, are there other, more precise methods that we should consider, such as permitting co-channel wireless microphone use even closer to television stations through use of a database that takes into account the particular interference conditions at that location? If so, should the Commission require that wireless microphone operations be registered in a database? Could this or other measures, such as coordination, enable more intensive use by wireless microphones of the broadcast television spectrum that is not available for white space devices? Are there other means of promoting more intensive use by wireless microphones of available spectrum while protecting broadcasting service?

144. In addition to requesting comment on wireless microphone operations in the repacked spectrum that continues to be used for broadcasting, the Commission seeks comment on operation of wireless microphones in the spectrum that would be established for the guard bands under the proposals set forth in the *Incentive Auction NPRM.* The band plan contemplates guard bands in which no high power operations would be permitted, and the Commission seeks comment on the use of such guard bands for unlicensed white space devices under the operational rules for those devices. The Commission seeks comment on wireless microphone operations in such guard band spectrum. To what extent could wireless microphone operations effectively be accommodated under any of these proposals? Have there been any technological advances that we should consider in this regard? The Commission also requests comment on how wireless microphone operations in the guard bands could co-exist with other users, including unlicensed white space devices. In particular, should wireless microphones be permitted to operate in the guard bands so long as they use the technologies required of white space device operations in these bands, including the ability to access a database (in order to identify the guard bands at particular locations) and to comply with other technical requirements, such as whatever power and emissions limits that we establish

for operations in these bands? Should wireless microphone operations only be permitted on an unlicensed basis in the guard bands, such that they would have the same status as the other unlicensed operations in these bands? To what extent should wireless microphone operators that currently qualify for registration and database protection have such protection extended to the guard bands? The Commission asks that commenters also discuss the costs and benefits associated with adoption of the proposals they discuss.

VII. White Space and Unlicensed Operations

145. The Commission seeks comment on proposals to enable a substantial amount of spectrum use by unlicensed devices, a significant portion of which use will be available on a nationwide basis. The Commission seeks comment on these proposals, including the technical and economic benefits and disadvantages on all relevant industries—the unlicensed industry, the wireless industry and broadcasters—and consumers. The Commission seeks comment on how to balance making spectrum available for use by unlicensed devices with our central goals in this proceeding of repurposing the maximum amount of UHF band spectrum for flexible use while preserving a healthy, diverse broadcast television service.

146. *White Space Devices.* The Commission proposes to continue to allow the operation of white space devices in the broadcast television spectrum on unused channels that are not repurposed for other uses under the current rules governing white space devices in the television bands. When spectrum is repurposed as a result of the incentive auction, the amount of broadcast television spectrum that will continue to be available for these white space devices may be reduced to some extent, in different markets, depending on the amount of spectrum that is recovered and other factors. Because unlicensed white space devices can adjust to whatever channels are available at any given location according to the white space database, however, the devices should be able to adapt to any reductions or changes in the available channels. Given that there is considerable white space available now in many areas–more than 100 megahertz in some markets–we expect that there will still be a substantial amount of spectrum available for use by these devices in the remaining broadcast television channels after the incentive auction. The Commission expects that there will continue to be more spectrum available in areas outside of the central urban areas of the largest markets than within those areas. The Commission seeks comment on these views.

147. *Guard Band Availability for Unlicensed Use.* The Commission's proposed 600 MHz band plan includes guard band spectrum. The Commission proposes to make the guard band spectrum available for unlicensed white space device use on a non-interference basis. The Commission believes that this proposal could increase the spectrum available for unlicensed use in the urbanized areas of major markets where there may be little or no white space spectrum available now, spurring deployment, use and a national market for unlicensed devices and applications. It invites comment on this premise. It also seeks comment on its proposal to make the guard bands available for unlicensed use, and any alternative approaches for the guard bands.

148. The Commission also seeks comment on whether its existing power and emission limits for white space devices in the television bands are appropriate for unlicensed operations in the guard band spectrum to protect licensed operations.

149. The Commission's present rules for white space devices in the television bands utilize a database to inform devices in real time which television channels they may operate on. Should the same process be used to make guard band spectrum available for use by existing and/or future white space devices? What changes would be required to accommodate different amounts of guard band spectrum?

150. *Possible Use of Channel 37.* The Commission proposes to make channel 37 available for unlicensed use, while protecting WMTS and the Radio Astronomy Service. This proposal would increase the efficiency of use of this spectrum while expanding the amount of spectrum available for innovative unlicensed operations. The Commission seeks comment on information regarding appropriate protection criteria for WMTS and the Radio Astronomy Service.

151. *Possible Availability of Channels Designated for Wireless Microphones.* The Commission invites comment as to whether it should maintain the designation of two channels for wireless microphones following the broadcast television spectrum incentive auction or whether this spectrum should be made available for unlicensed use.

VIII. Auction Rules

152. The Commission proposes competitive bidding rules to govern the reverse auction of broadcast television spectrum, and considers changes to the Commission's general competitive bidding rules that may be necessary or desirable to conduct the related forward auction for new spectrum licenses.

A. Competitive Bidding Process for Reverse Auction—Part 1 New Subpart

1. Purpose

153. The Commission proposes a general framework for the reverse auction of broadcast television spectrum. These proposed rules ultimately will govern how the auction process unfolds for broadcasters, *i.e.,* what applicants need to do to participate and when; how bids are collected, winners and incentive payments determined, and broadcast stations repacked; and how the results of the reverse auction for broadcasters are implemented, including disbursement of incentive payments. Consistent with the Commission's typical approach to spectrum license auctions, the proposed rules would provide a general framework to guide the development—through a series of public notices with opportunities for comment—of the detailed procedures and deadlines needed to conduct the auction. The public notice process would allow both the Commission and interested parties to focus and provide input on certain details of the auction design and the auction procedures after the rules have been established and the remaining procedural issues are better defined. The Commission's experience with spectrum license auctions demonstrates the value of this approach, so it anticipates following a similar approach here.

2. Pre-Auction Application Process

154. The Commission proposes to require submission of a pre-auction application by entities interested in participating in the reverse auction. Information provided on the pre-auction application would allow the Commission to evaluate whether the applicants are qualified to participate in accordance with the auction rules. The Commission envisions that the pre-auction application would be due on the dates specified by public notice and would be filed electronically in a process similar to that currently used for Commission spectrum license auctions. The Commission seeks comment on proposed rules regarding the contents of the pre-auction application for the reverse auction. The Commission also invites comment on measures that it should take to implement the statutory mandate to protect the confidentiality of

Commission-held data of licensees that participate in the reverse auction.

155. *Eligibility Requirements.* The Commission proposes that in order to participate in the reverse auction, a broadcast television licensee must be a full power or a Class A television station. The Commission proposes that a broadcast television licensee operating on a noncommercial educational (NCE) reserved channel, as well as a licensee operating with NCE status on a non-reserved channel, may participate. The Commission also proposes that the relevant license must be valid and not expired, cancelled, or revoked.

156. *Applicant.* Since the broadcast television ''licensee'' holds the relevant spectrum usage rights that may be relinquished in the reverse auction, in order to promote accountability and transparency, the Commission proposes that the applicant identified on the pre-auction application for the reverse auction must be the licensee. If the Commission adopts this proposal, a corporate parent would not be able to file one application for licenses held by different licensee subsidiaries; however, a licensee holding multiple licenses would only be required to file one application for all such licenses for which it wishes to submit bids in the reverse auction. The Commission seeks comment on this proposal and specifically asks commenters to address whether it should permit other persons or entities, such as the licensee's parent company or persons or entities with control over the licensee, to be the applicant.

157. For broadcast television licensees agreeing to share a channel, the Commission proposes that only the ''sharee(s)''—the station(s) that would relinquish their frequencies in order to move to the sharer's frequencies—must apply to participate in the reverse auction. More than two stations may share a channel. Thus, although there would be only one sharer in each channel sharing relationship, there could be multiple sharees. Since the ''sharer'' station would not move as a part of the channel sharing arrangement, the Commission proposes that the sharer need not submit an application to participate in the reverse auction unless it intends to bid to relinquish other spectrum usage rights—for instance, depending on the available bidding options, the sharer might bid to move from a UHF to a VHF channel, or it might submit a contingent bid to relinquish all of its spectrum usage rights. The Commission seeks comment on this proposal. The Commission also asks commenters to address any costs and benefits that would result for the auction and for the channel sharing relationship if, in the alternative, the Commission were to require all parties to a channel sharing agreement (*i.e.,* the sharee(s) and the sharer) to file pre-auction applications. Are there any other issues that the Commission should consider regarding channel sharing agreements that may affect who should apply to participate in the reverse auction?

158. *Information and Certifications Required in Application to Participate in Competitive Bidding.* The Commission seeks comment on what information applicants should be required to provide and what certifications they should be required to make in the pre-auction application regarding their qualifications to participate in the reverse auction.

159. Based on the Commission's experience with spectrum license auctions, it proposes that the pre-auction application request the following information from the applicant: (1) The applicant's name and contact information; (2) the license(s) (including station and channel information, full power or Class A status, and NCE status) and the associated spectrum usage rights that may be offered in the reverse auction (including whether the applicant intends to bid to relinquish all of its spectrum usage rights, to channel share, to move from UHF to VHF frequencies, and/or to offer any other permissible relinquishments); (3) any additional information required to assess the spectrum usage rights available for the reverse auction; (4) the identity of the individuals authorized to bid on the applicant's behalf; (5) the applicant's ownership information as set forth in 47 CFR 1.2112(a), and, for NCE stations, information regarding the licensee's governing board and any educational institution or governmental entity with a controlling interest in the station, if applicable; (6) for a channel sharing applicant, the channel the parties intend to share and any necessary information regarding the channel sharing agreement; (7) an exhibit identifying any bidding agreements, bidding consortia, or other such arrangements to which the applicant is a party, if permitted; (8) any current delinquencies on any non-tax debt owed to any federal agency, but only if the Commission determines in this proceeding that such information is necessary in order to assess the licensee's eligibility to participate in the reverse auction or if the Commission adopts a rule that would allow it to offset incentive payments by the amount of the licensee's outstanding delinquencies; and (9) any additional information that the Commission may require. The Commission seeks comment on this proposal. In particular, in lieu of requesting the ownership information set forth in 47 CFR 1.2112(a), should the Commission require reverse auction applicants to provide less detailed ownership information, and if so, what information should the Commission require? Should the Commission instead request the same ownership information that broadcast television licensees currently provide for the purposes of the multiple ownership rules, in which case attributable interests would need to be disclosed but non-attributable interests, such as certain insulated parties, would not need to be disclosed? If so, should the Commission merely require applicants to provide updated information to supplement existing disclosures on file with the Commission regarding media ownership, such as the information contained in the licensee's most recently filed Form 323 or Form 323–E Biennial Ownership Report Form?

160. The Commission seeks comment on what information regarding channel sharing agreements it should request in order to assess an applicant's eligibility to participate in the reverse auction. What information or documentation should the Commission require as a part of the pre-auction application? Should the Commission require submission of the channel sharing agreement with the pre-auction application?

161. The Commission also proposes and seeks comment on rules that would require applicants to certify on the pre-auction application that: (1) The applicant meets the statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to the applicant's licenses for the spectrum usage rights offered in the reverse auction; (2) if the applicant is a Class A television station, that it is, and will remain during the pendency of its application(s), in compliance with the ongoing statutory eligibility requirements to remain a Class A station; (3) for a channel sharing applicant, that the channel sharing agreement is consistent with all Commission rules and policies, and that the applicant accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel; (4) for a channel sharing applicant, that its shared channel facilities will continue to provide minimum coverage to its principal community of license as set

forth in the Commission's rules; (5) the applicant agrees that the bids it submits in the reverse auction are irrevocable, binding offers of the licensee; (6) the applicant agrees that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction; and (7) the individual submitting the application and providing the certifications is authorized to do so on behalf of the applicant. If the person submitting the application and providing the certifications on behalf of the applicant is not an officer, director, board member, or a controlling interest holder, the Commission proposes to require the applicant to submit evidence that such person has the authority to bind the applicant.

162. The Commission proposes that all parties to any channel sharing agreement—*i.e.,* the sharer and the sharee(s)—be required to make any necessary certifications with respect to the channel sharing agreement. The Commission seeks comment on this proposal and whether requiring all channel sharing parties to make any necessary certifications will encourage or discourage stations from entering into a channel sharing agreement in connection with the auction. In addition, the Commission seeks comment on any other issues that it should consider regarding certifications by licensees agreeing to channel share.

163. In addition, the Spectrum Act specifies that ''a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant'' may not participate in a system of competitive bidding that is required to be conducted by Title VI of the Spectrum Act. This national security restriction applies to the broadcast television spectrum reverse and forward auctions since Title VI requires the Commission to conduct both auctions.

164. The Commission proposes that on the pre-auction application for the reverse auction, the applicant must certify, under penalty of perjury, that it and all of the related individuals and entities required to be disclosed on the pre-auction application are not ''person[s] who [have] been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.'' The Commission proposes to include an identical certification requirement on the short-form application for participation in the forward auction. The Commission requests comment on this proposal. For the purposes of this certification, the Commission proposes to define ''person'' as an individual, partnership, association, joint-stock company, trust, or corporation. The Commission also proposes to define ''reasons of national security'' to mean matters relating to the national defense and foreign relations of the United States. The Commission seeks comment on these proposed definitions. What other issues, if any, should the Commission consider regarding this national security restriction?

165. *Procedures for Processing Pre-Auction Applications.* The Commission proposes that, similar to other auctions, if an applicant fails to make the required certifications, the application would be rejected, *i.e.,* dismissed with prejudice. The Commission also proposes that after the Commission's initial review of the pre-auction applications, applicants would have an opportunity to cure defects identified by the Commission, but if not corrected before the resubmission deadline, such applications would be dismissed. With respect to licensees whose pre-auction applications are dismissed, the Commission seeks comment on whether it should consider such licensees to be ''applicants'' and/or ''participants'' for the purposes of applying its reverse auction rules. For instance, should such licensees be considered ''applicants'' under the proposed rule prohibiting certain communications and ''participants'' under the proposed rule protecting confidential Commission-held data of licensees participating in the reverse auction?

166. The Commission proposes that whenever the information furnished in a pending pre-auction application is no longer substantially accurate and complete in all significant respects, the applicant must amend or modify the application as promptly as possible and in any event within five business days. The Commission proposes that certain minor changes would be permitted subject to a deadline specified by public notice, but major changes to the pre-auction application would not be permitted. Major amendments would include, but are not limited to, changes in ownership of the applicant or the licensee that would constitute an assignment or transfer of control. Precluding such changes in ownership after the submission of the application would ensure that all of the relevant parties are clearly identified for the purposes of applying the reverse auction rules, including the rule prohibiting certain communications. In addition, major amendments would include changes to any of the required certifications and the addition or removal of licenses or authorizations identified on the pre-auction application for which the applicant intends to submit bids. Minor amendments would include any changes that are not major, such as correcting typographical errors and supplying or correcting information requested by the Commission to support the certifications made in the application. The Commission seeks comment on these proposals.

167. In typical spectrum license auctions, the Commission releases a public notice identifying qualified and non-qualified applicants. To protect the confidentiality of the identities of all reverse auction participants as required by the Spectrum Act, the Commission proposes to notify the applicants individually as to whether they are qualified bidders, *i.e.,* are qualified to participate in the reverse auction. The Commission seeks comment on this proposal. The Commission seeks comment on additional issues that arise from its statutory obligation to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction.

3. Two Competing Participants Required

168. The Commission will share with winning bidders in the reverse auction a portion of the proceeds of the forward auction assigning licenses for spectrum usage rights relinquished in the reverse auction pursuant to section 309(j)(8)(G) of the Communications Act, as added by section 6402. Clause (ii) of subparagraph (G) requires that ''[t]he Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of auction proceeds * * * unless * * * at least two competing licensees participate in the reverse auction.'' Accordingly, the Commission proposes a rule to incorporate this requirement into the competitive bidding rules for the broadcast television reverse auction and seeks comment on the parameters of such a rule. In particular, the Commission seeks comment on what should constitute ''participation'' for these purposes. Should the Commission consider a licensee to be a ''participant'' if it has submitted an application to participate in the reverse auction and after review of the application the Commission finds the applicant qualified to bid? Alternatively, should the Commission require a licensee to become a qualified bidder and submit a bid to be considered a participant in the reverse auction? Similarly, the Commission seeks comment on what constitutes ''competing'' for purposes of

this requirement. Is there any reason why multiple reverse auction participants bidding for payments from the same source of funds—*i.e.,* the proceeds of the forward auction—should not be considered to be ''competing''?

4. Confidentiality and Prohibition of Certain Communications

169. *Confidentiality.* Section 6403(a)(3) of the Spectrum Act requires the Commission to ''take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction * * * including withholding the identity of such licensee until the [spectrum] reassignments and reallocations (if any) * * * become effective, as described in subsection (f)(2).'' That subsection provides that these reassignments and reallocations may not become effective ''until the completion'' of both the reverse and forward auctions. Unlike previous auctions for awarding spectrum licenses, which result in a winning bidder's initiation of new services or expansion of existing operations, licensees participating in the reverse auction will submit bids to exit an ongoing business, or to make significant changes to that business (*e.g.,* by sharing or changing the channels on which they operate). Section 6403(a)(3) recognizes the potential competitive sensitivities of the information that such existing licensee bidders provide to the Commission in this context.

170. The Commission proposes a rule to incorporate this confidentiality requirement into the competitive bidding rules for the broadcast television reverse auction and seeks comment on the parameters of such a rule. For example, what types of information should the Commission withhold from public disclosure in order to protect the identities of licensees participating in the reverse auction? Should the Commission protect non-identifying information about licensees participating in the reverse auction, such as bid amounts? What interests would be served by protecting such additional licensee data? Alternatively, would disclosing such non-identifying information provide benefits for the auction process?

171. Moreover, what ''reasonable steps'' should the Commission take to protect confidentiality as required by the Spectrum Act? Specifically, what types of procedures should the Commission implement to safeguard confidential Commission-held licensee data in order to satisfy section 6403(a)(3) of the Spectrum Act? Further, for how long should the Commission take such ''reasonable steps''?

172. The statutory requirement extends until any reassignments and reallocations become ''effective,'' and they may not become ''effective'' until the ''completion'' of both the reverse and forward auctions. The Commission proposes that the reverse and forward auctions will each be ''complete'' when the Commission publicly announces that each auction, respectively, has ended. The Commission proposes that the reassignments and reallocations will be ''effective'' when the Commission publicly announces the results of the reverse auction, forward auction, and repacking. These announcements may be released sequentially or simultaneously. The Commission seeks comment on this proposal and on any alternatives.

173. In addition, the Commission asks commenters to address the advantages and disadvantages of extending the Commission's obligation to take ''reasonable steps'' to protect confidential licensee data beyond the effectiveness of any reassignments and reallocations of broadcast television spectrum. After the statutory obligation in section 6403(a)(3) no longer applies, would the licensee data qualify for any exemptions from disclosure under the Freedom of Information Act (FOIA)? Should the duration of the protection afforded to confidential licensee data be different for participants that successfully bid to relinquish spectrum usage rights in the reverse auction, as opposed to participants whose bids are not accepted? Are there any other issues the Commission should consider regarding the ''reasonable steps'' it should take to protect confidentiality and the duration of such protection, such as the public policy interest in transparency?

174. The Commission also requests that commenters address whether the obligation to protect confidential Commission-held data should apply solely to the Commission, or extend to applicants in the reverse auction. Specifically, are there any legal or policy reasons to prohibit an applicant from announcing publicly or privately that it is participating in the reverse auction, or from releasing any of its identifiable information in connection with the auction? A reverse auction applicant may be prohibited by Commission rule from communicating its bid contents or bidding strategies to other applicants. Should applicants be entitled to note in the application that their information is not deemed by them to be ''confidential'' and that they waive any rights to protect it from disclosure? If a licensee, permissibly or impermissibly, publicly releases information regarding its participation in the reverse auction, the Commission proposes that such information would no longer be ''confidential[ ] * * * Commission-held data'' and, thus, the Commission would not be bound to protect the already released information. In addition, should applicants be prohibited from disclosing information regarding other licensees' participation in the reverse auction? The Commission seeks comment on these issues.

175. Auction participants may have legal obligations to disclose information that the Commission may be required to keep confidential pursuant to the Spectrum Act. For example, public companies must comply with the disclosure requirements of the Securities and Exchange Commission (SEC). More specifically, the SEC requires public companies to report on Form 8–K certain material, non-public events for purposes of shareholder disclosure. Of relevance here, the SEC requires that a public company disclose on Form 8–K any ''Material Definitive Agreement.'' A material definitive agreement is defined as ''an agreement that provides for obligations that are material to and enforceable against the registrant [*i.e.,* the filing party], or rights that are material to the registrant and enforceable by the registrant against one or more other parties to the agreement, in each case whether or not subject to conditions.'' If a public company has entered into a material definitive agreement, it must disclose on Form 8–K both (1) the date on which the agreement was entered into or amended, the identity of the parties to the agreement or amendment, and a brief description of any material relationship between the filing party or its affiliates and any of the parties, and (2) a brief description of the terms and conditions of the agreement or amendment that are material to the filing party. Does this reporting requirement apply in the context of a broadcast station participating in the reverse auction? Would this scenario create any conflict with the Commission's confidentiality obligations under the Spectrum Act?

176. *Prohibition of certain communications.* In the interests of fairness and maximizing competition in the reverse auction process, the Commission proposes to prohibit applicants in the reverse auction from communicating with one another directly or indirectly regarding the substance of their bids or bidding strategies during a time period commencing on or after the pre-auction application deadline and ending on a

date specified by public notice. Communications among applicants concerning matters wholly unrelated to the reverse auction, such as discussions between a broadcast affiliate and its network programming supplier on issues unrelated to the reverse auction, would not fall within the communications prohibition. This proposal is consistent with the Commission's approach in spectrum license auctions. The Commission seeks comment on this proposal, particularly with respect to the scope of the prohibition. In particular, should the Commission limit the prohibition to applicants within the same geographic region? If so, how should the Commission define the relevant geographic region?

177. Also, for purposes of this prohibition, should the term ''applicant'' include all controlling interests in the entity submitting the pre-auction application, as well as all holders of partnership and other ownership interests and any stock interest amounting to ten percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting the pre-auction application, and all officers and directors of that entity? For NCE stations, should the ''applicant'' also include, where relevant, all members of the licensee's governing board?

178. Should the Commission adopt any specific exceptions to the communications prohibition for certain applicants in the reverse auction? In particular, recognizing that one party may have an attributable ownership interest in a number of different broadcast television licensees, should auction-related communications between applicants with attributable and/or controlling interests in one another be exempt from the communications prohibition? Are there any other issues regarding the ownership structure of broadcast television licensees that the Commission should consider? Should the Commission permit auction-related communications between applicants that have agreements or arrangements particular to the broadcast television industry, such as a local marketing agreement (LMA), a joint sales agreement (JSA), a shared services agreement (SSA), a network affiliation agreement, or another similar cooperative arrangement?

179. Instead of adopting specific exemptions for particular types of relationships, consistent with the Commission's approach in spectrum license auctions, should it provide a more general exception to the proposed rule prohibiting certain communications that would allow parties to communicate with one another so long as they have entered into a partnership, joint venture, consortium, or other agreement, arrangement, or understanding relating to the spectrum usage rights being offered in the reverse auction if they have disclosed the existence of those relationships to the Commission? Would disclosure of such agreements to the Commission sufficiently alleviate anticompetitive concerns, even if the Commission does not disclose the existence of such agreements publicly or to other participants in the reverse auction? The Commission notes that even if its competitive bidding rules permit communications among certain reverse auction participants during the auction, participants must also adhere to any applicable antitrust laws. The Commission seeks comment on whether and how any applicable antitrust laws should affect a general exception to the prohibition of certain communications in the reverse auction.

180. In addition, how should the Commission's prohibited communications rule address channel sharing? To alleviate collusion and antitrust concerns related to channel sharing, should the Commission prohibit communications among parties to a channel sharing agreement concerning bids or bidding strategies during the time period specified for all prohibited communications regardless of whether such parties are ''applicants'' in the reverse auction? Should the Commission expand or contract the applicable time period for channel sharing stations and begin the application of the prohibition at an identified point in time before or after the pre-auction application deadline? In the alternative, recognizing that parties to a channel sharing agreement may prefer to share information with one another regarding their participation in the reverse auction, should the Commission grant an exception to the communications prohibition for communications among licensees agreeing to share a channel? Should channel sharing agreements fall under a general exception for agreements relating to spectrum usage rights offered in the reverse auction, so long as the agreements are disclosed to the Commission? In addition, even if the Commission determines in this proceeding that the sharer need not file a pre-auction application, given the sharer's indirect participation in the reverse auction through the sharee(s)' channel sharing bids, is there any reason why the Commission should not apply the rule prohibiting certain communications to the sharer and the sharee(s) so that the sharer would be prohibited from communicating with other reverse auction applicants? Should any exception for communications among licensees agreeing to share a channel extend to a contingent offer by the sharer to relinquish all of its spectrum usage rights? The Commission seeks comment on these issues. The Commission also seeks comment on antitrust laws that may impact channel sharing stations' participation in the reverse auction, and asks commenters to address whether and how such laws should affect its proposed rule prohibiting certain communications.

181. The Commission also requests comment on whether to prohibit reverse auction applicants from communicating with applicants in the forward auction regarding the substance of their bids or bidding strategies. If the Commission adopts this approach, what would be the appropriate duration of the prohibition? Should the prohibition begin on or after the pre-auction application deadline for either the reverse or the forward auction—whichever is first—and end after both the reverse and forward auctions are complete? Would the benefits and/or the feasibility of prohibiting certain communications among applicants in both the reverse and forward auctions change depending on whether they are conducted simultaneously or sequentially? Also, to enforce this prohibition, should the Commission require applicants in the reverse auction to identify in their pre-auction applications any relationships with wireless companies (for example, ownership by the same parent company or cross-marketing agreements) since those companies may participate in the forward auction? Should the Commission also require applicants in the forward auction to identify in their short-form applications any relationships with broadcast television licensees?

182. The Commission further asks commenters to consider the potential impact that the Commission's obligation to withhold reverse auction participants' identities may have on its proposed communications prohibition. In prior auctions in which the Commission sought to limit the disclosure of certain bidding-related information, the Commission provided each applicant a list of the other applicants with which they were not permitted to cooperate, collaborate, or communicate—including discussing

bids, bidding strategies, or post-auction market structure. Since section 6403(a)(3) of the Spectrum Act requires the Commission to take reasonable steps to keep the identities of broadcast television licensees participating in the reverse auction confidential, how can the Commission notify an applicant of the other applicants with which it may not communicate without releasing the names or other identifying information about the other applicants? To apply a prohibition against communications while complying with the confidentiality requirements of the statute, should the Commission prohibit all applicants in the reverse auction process from discussing their bids and bidding strategies with *any* broadcast television licensee, regardless of whether the licensee is participating in the auction? Would it be possible to limit such a ''blanket'' prohibition to broadcast television licensees within the same geographic region, and if so, how should the Commission define the relevant geographic region? The Commission welcomes any insights commenters may have on ways it can provide applicants the information they need to comply with the communications prohibition without releasing any confidential Commission-held data concerning licensees participating in the auction.

5. Bidding Process Options

183. The *Incentive Auction NPRM* proposes rules that would enable the Commission to select among procedural options when finalizing the auction design and related processes.

184. *Reverse Auction Design Options.* The Commission proposes a rule that provides for the establishment of specific auction procedures governing bid collection, assignment of winning bids, and the determination of incentive payment amounts in the reverse auction. The reverse auction may use one or more rounds of bidding and/or contingent stages of bidding. The procedures may incorporate bids or offers that simply specify a price for an item, that indicate demand for an item at a specified price, or that are more complex. The Commission may determine the assignment of winning bids in the reverse auction based on bid amounts and a variety of other factors, including but not limited to the feasibility of assigning broadcast television channels to licensees retaining spectrum usage rights, as well as the bids submitted in and/or the results of the forward auction. The Commission also proposes a rule regarding procedures to determine the incentive payments that winning bidders would receive. These proposed rules would enable the development of procedures for a specific auction design that is consistent with the various technical and policy requirements of the reverse auction as well as sound economic principles and practice and the needs of the Commission and the bidders. The Commission proposes that it may use real time bidding in all electronic auction designs. The Commission seeks comment on these proposals. Are there any additional auction design considerations that the Commission should take into account for the reverse auction?

185. *Sequencing.* The Spectrum Act does not require the reverse and forward auctions to occur in any particular order, and section 6403 expressly allows (but does not require) the broadcast television reverse and forward auctions to occur simultaneously. The Commission proposes a rule that enables the sequence of the reverse and forward auctions to be determined closer in time to the actual bidding. The Commission seeks comment on this proposal.

186. *Reserve Price.* The competitive bidding rules applicable to typical spectrum license auctions specify that the Commission may establish a reserve price or prices, either disclosed or undisclosed, below which a license or licenses subject to auction will not be awarded. The forward auction, as a spectrum license auction, would be subject to this rule. Similarly, the Commission proposes that it may establish a reserve price or prices for the reverse auction, either disclosed or undisclosed, above which bids to relinquish spectrum usage rights would not win in the reverse auction. The Commission proposes that the reserve price or prices for the reverse auction may be established for spectrum usage rights and/or licenses individually, in combination, or in the aggregate. The Commission seeks comment on the reserve price rule proposed for the reverse auction, and the Commission requests input on the factors that it should consider when setting a reserve price or prices for the reverse and forward auctions.

187. One factor that the Commission would consider when setting a reserve price or prices for the reverse and forward auctions would be the statutory minimum proceeds requirement. The Spectrum Act requires that the forward auction must yield proceeds greater than the sum of the following: (1) The total amount of compensation that the Commission must pay successful bidders in the reverse auction under section 6403(a)(1); (2) the cost of administering the broadcast television spectrum incentive auction, an amount which the Commission is required to retain under section 6403(c)(2)(C) and 47 USC 309(j)(8)(B); and (3) the estimated amount of the relocation cost reimbursements that the Commission is required to pay to broadcast television licensees and MVPDs under section 6403(b)(4)(A). In addition, section 6413 anticipates that proceeds from the forward auction will be available for distribution into the Public Safety Trust Fund. Are there any other factors that the Commission should consider when setting a reserve price or prices for the reverse and forward auctions?

188. *Opening Bids and Bidding Increments.* The Commission proposes a rule providing for the use of maximum or minimum bid increments in dollar or percentage terms to be established before or during the reverse auction, as well as maximum or minimum opening bids. The Commission requests comment on these proposals and specifically asks commenters to address what factors should influence any maximum or minimum opening bids and bid increments.

189. *Stopping Rules.* The Commission proposes a rule providing for stopping procedures to be established before or during the reverse auction in order to terminate the auction within a reasonable time and in accordance with the goals, statutory requirements, and rules for the auction, including the reserve price or prices. The stopping rule would thereby permit the Commission to adopt criteria to determine, prior to terminating the auction, whether such requirements have been met. The Commission seeks comment on this proposal.

190. *Activity Requirement.* In the event the Commission uses a multiple round competitive bidding design, the Commission proposes a rule providing for activity procedures that would require a minimum amount of bidding activity during the reverse auction. The Commission requests input on issues that may affect the use of activity rules in the reverse auction context.

191. *Auction Delay, Suspension, or Cancellation.* The Commission proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the reverse auction in the event of natural disaster, technical obstacle, network disruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Commission further proposes that, in its sole

discretion, it could elect to resume the auction starting from the beginning of the current or some previous round, or cancel the auction in its entirety. Network interruption could cause the Commission to delay or suspend the auction. The Commission requests comment on this proposal.

6. Post-Auction Processing

192. The Commission seeks comment here on each step of the post-auction process. To the extent commenters disagree with a particular aspect of the proposed process, the Commission asks them to identify that with specificity, propose an alternative, and address any associated costs and benefits.

193. *Commission Notices.* Upon the conclusion of spectrum license auctions, the Commission typically issues a public notice declaring the bidding closed and identifying the winning bidders. The Commission proposes to do so for the reverse auction, as well; however it notes that the timing and the permissible contents of such public notice may depend on the conduct of the forward auction and how the Commission applies the statutory confidentiality restriction. The Commission invites comment on this proposal and asks commenters to address whether there are any other issues it should consider with respect to notifying auction participants and the public of the reverse auction results.

194. *Binding Obligations.* The Commission proposes that all bids submitted in the reverse auction are irrevocable, binding offers to relinquish spectrum usage rights. As a result, if a participant's bid is accepted in the reverse auction, the spectrum usage rights offered in the bid would be relinquished by a Commission-imposed deadline. The Commission seeks comment on this proposal.

195. *Post-Auction Information Submittals.* The Commission proposes to require all winning bidders to submit additional information to facilitate incentive payments, such as wiring instructions or other bank account information necessary to disburse funds to winning bidders. The Commission envisions that the information would be submitted on standardized incentive payment forms. The Commission seeks comment on this proposal.

196. The Commission further asks that commenters address the appropriate deadlines for filing post-auction submittals. The Commission also seeks comment on the procedures that it should apply to a winning bidder that fails to submit the required post-auction information by the established deadlines.

197. *Incentive Payments/Portion of Proceeds Shared with Incumbent Volunteers.* In accordance with section 309(j)(8)(G)(i) of the Communications Act, the Commission will share with successful bidders that voluntarily relinquish licensed spectrum usage rights a portion of the forward auction proceeds ''based on the value of their relinquished rights as determined in [a] reverse auction.'' Section 6403(c) of the Spectrum Act provides that the amount of the proceeds that the Commission will share with a broadcast television licensee will not be less than the amount of the licensee's winning bid in the reverse auction. The Commission proposes to incorporate these statutory requirements into the competitive bidding rules for the reverse auction. The Commission seeks comment on this proposal.

198. The Commission proposes that generally, incentive payments would be distributed directly to the applicant. Elsewhere the Commission proposes that the applicant must be the licensee. The Commission seeks comment as to whether, even if it determines in this proceeding that the applicant may be an entity other than the licensee, the incentive payment should be distributed only to the licensee. In addition, the Commission proposes that for channel sharing bids, the applicant would be the sharee since the sharee would relinquish its frequencies in order to share a channel with the sharer. The Commission proposes that, even if it determines in this proceeding that both sharers and sharees should file applications and/or certain certifications prior to the reverse auction, the incentive payment would be distributed directly to the sharees. The Commission anticipates that the sharee(s) may choose to share the proceeds with the sharer based upon the contractual arrangements in their channel sharing agreement. Would this proposal affect a sharer's decision to participate in the reverse auction? Are there any other issues that the Commission should consider regarding the appropriate recipients of incentive payments for winning bids?

199. The Commission also seeks comment on the timing of the incentive payments. The only deadline in the Spectrum Act concerning payments to broadcast television licensees is the requirement in section 6403(b)(4)(D) that the Commission pay relocation costs within three years of the completion of the forward auction. This statutory deadline does not apply to incentive payments made to winning bidders in the reverse auction. Should the Commission identify a date by which it should make all reasonable efforts to complete all incentive payments? If so, what would be an appropriate goal? Should incentive payments be distributed before, on, or after the date upon which the licensee relinquishes its spectrum usage rights? What impact, if any, would the timing of the incentive payments have on a broadcast television licensee's decision to participate in the reverse auction?

200. Typically, entities that are currently delinquent on any non-tax debt owed to any federal agency are not permitted to participate in spectrum license auctions. In addition, the Commission's red light procedures require that action on an application be withheld until full payment is made on any non-tax delinquent debt owed to the Commission. Given that one of the Commission's goals is to encourage widespread participation in the reverse auction by broadcast television licensees, the Commission seeks comment on whether it should add an exception to its red light procedures that would allow entities currently owing non-tax delinquent debt to the Commission or other federal agencies to participate in the reverse auction. If the Commission adopts this exception, it requests comment as to whether it should deduct the amount of any such delinquent debts from the entities' incentive payments and hold such funds in escrow pending the outcome of any such delinquency proceedings and/or forward those funds to the appropriate agencies for collection.

B. Competitive Bidding Process for Forward Auction—Modifications to Part 1 Subpart Q

201. The Commission considers changes to the Commission's general competitive bidding rules that may be necessary or desirable to conduct a forward auction for new licenses to use broadcast television spectrum made available for flexible use through the incentive auction process. The Commission proposes that those general competitive bidding rules would apply to resolve any mutually exclusive applications received for such licenses. The Commission's competitive bidding rules provide a framework from which it develops final procedures for the particular competitive bidding processes that it conducts. Accordingly, the Commission considers changes that might be necessary with respect to particular licenses likely to be made available through the broadcast television spectrum incentive auction process. The Commission notes that any changes made to its general competitive bidding rules in other Commission

proceedings would apply to the forward auction for new licenses made available through the incentive auction process.

1. Purpose

202. The Commission has been authorized to conduct competitive bidding to resolve mutually exclusive applications for certain types of licenses since 1993. Accordingly, the Commission has developed a framework of rules to facilitate the auctions that it has held to date. The Commission's new statutory authority to conduct incentive auctions introduces a new dimension to the competitive bidding process. The Commission proposes revisions to the existing competitive bidding rules to take into account that the spectrum covered by the licenses is the subject of the broadcast television spectrum incentive auction process. In addition, the Commission seeks comment on whether further rule changes may be required.

2. Applications Subject to Competitive Bidding

203. The Communications Act, as amended, mandates that the Commission use competitive bidding to resolve mutually exclusive applications for licenses, subject to exceptions specified in the statute. To date, the Commission has considered two or more parties seeking to bid for a particular license to present mutually exclusive applications for the license, irrespective of whether each party subsequently bids for the license. Where only one party seeks a particular license offered in competitive bidding, that license will be removed from the competitive bidding process and the Commission will consider that party's non-mutually exclusive application for the license through a process separate from the competitive bidding. This has worked well with respect to defined licenses that have parameters such as frequency and geography defined apart from and in advance of competitive bidding.

204. The Commission seeks comment on how to apply the requirement of mutual exclusivity in the context of the broadcast television spectrum forward auction. Specifically, if the spectrum to be offered in the forward auction consists of generic (non-frequency-specific) blocks, how should the Commission determine whether mutual exclusivity exists? In addition, the Commission asks commenters to address whether applications to participate in the reverse and forward auctions are ''mutually exclusive applications'' for ''initial license[s]'' since the reverse and forward auction applicants will submit bids relating to mutually exclusive spectrum usage rights (*i.e.,* the spectrum currently used by broadcast television licensees). The Commission takes this opportunity to delete an outdated rule, 47 CFR 1.2102(c), that lists services that under current law are now subject to competitive bidding but previously were exempt consistent with prior law.

3. Bidding Credits

205. Section 309(j)(4) of the Communications Act requires that when the Commission prescribes regulations to establish a competitive bidding methodology for the grant of licenses through the use of competitive bidding, it must ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' In addition, section 309(j)(3)(B) of the Act provides that in establishing eligibility criteria and bidding methodologies, the Commission shall promote ''economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.''

206. In 1995 the Supreme Court decided *Adarand Constructors, Inc.* v. *Peña,* 515 U.S. 200 (1995), in which it held that any federal program wherein the ''government treats any person unequally because of his or her race'' must satisfy the ''strict scrutiny'' constitutional standard of review. In response to the Court's holding, the Commission decided to refrain from providing bidding credits to women- and/or minority-owned businesses until it developed a record that would provide the evidentiary support necessary to withstand these elevated standards of review. The Commission has noted that minority- and women-owned businesses that qualify as small businesses may take advantage of the provisions the Commission has adopted for small businesses.

207. The Commission defines eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. In light of the similarities with wireless licenses already assigned in the 700 MHz band, the Commission proposes to adopt here the same small business size standards the Commission adopted for 700 MHz. Accordingly, the Commission proposes to define a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The Commission will coordinate these proposed small business size standards with the United States Small Business Administration. The Commission also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent. The bidding credits the Commission proposes here are those set forth in the standardized schedule in Part 1 of the Commission's rules. The Commission seeks comment on the use of these standards and associated bidding credits for applicants to be licensed in the forward auction for new flexible use licenses in the reallocated broadcast television spectrum, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each license. The Commission requests that commenters address the expected capital requirements for services in these bands and other characteristics of the service. The Commission invites commenters to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments regarding the appropriate small business size standards.

208. The Commission also seeks comment on whether the small business provisions it proposes are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned or women-owned businesses, they should address how such provisions should be crafted to meet the relevant standards of judicial review.

209. In addition, the Commission notes that under its Part 1 rules, a winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying tribal land within that market, provided that it complies with the applicable competitive bidding rules. The Commission currently has under consideration various provisions and policies intended to promote greater use of spectrum over tribal lands. The Commission proposes to extend any rules and policies adopted in that proceeding to any licenses that may be issued through competitive bidding in

the forward auction. The Commission seeks comment on this proposal.

4. Competitive Bidding Design Options

210. The Commission's current rules list types of auction designs from which the Commission may choose when conducting competitive bidding for spectrum licenses. These options include sequential and simultaneous auctions, single and multiple round auctions, and auctions with combinatorial bidding. Since the Commission's Part 1 competitive bidding rules were originally adopted, auction design has evolved and continues to evolve in new directions, sometimes combining several of these listed auction design elements and sometimes utilizing different elements.

211. The Commission proposes to revise the current list of auction design options set forth in 47 CFR 1.2103. In particular, the Commission proposes a rule that provides for the establishment of specific auction procedures governing bid collection, assignment of winning bids, and the determination of payment amounts in spectrum license auctions. Such auctions may use one or more rounds of bidding and/or contingent stages of bidding; and may incorporate bids or offers that simply specify a price for an item, that indicate demand for an item at a specified price, or that are more complex. The Commission may determine the assignment of winning bids based on bid amounts and a variety of other factors, including but not limited to bids submitted in and/or the results of a separate competitive bidding process, such as an auction to establish incentive payments for relinquishment of spectrum usage rights. The Commission anticipates that procedures established to implement these broad auction design elements would take into account sound economic principles and practice and the needs of the Commission and the bidders. The Commission seeks comment on this proposal to amend 47 CFR 1.2103. In light of the Commission's authority to conduct the broadcast television spectrum incentive auction, are there any additional auction design considerations that it should take into account for the forward auction?

5. Competitive Bidding Mechanisms

212. 47 CFR 1.2104 sets forth various mechanisms that can be used in connection with any system of competitive bidding for Commission licenses. For example, the rules enable the Commission to determine how to sequence or group the licenses offered; whether to utilize reserve prices, minimum opening bids and minimum or maximum bid increments; whether to establish stopping or activity rules; and how to determine payments required in the event of bid withdrawal, default, or disqualification. The Commission notes, however, that 47 CFR 1.2104 does not attempt to list exhaustively all potential aspects of the Commission's procedures for competitive bidding.

213. The Commission proposes to amend its current stopping rule contained in 47 CFR 1.2104 so that it would permit the Commission to establish stopping rules before or during multiple round auctions in order to terminate the auctions not only within a reasonable time, but also in accordance with the goals, statutory requirements, and rules for the auction, including the reserve price or prices. The stopping rule would thereby allow the Commission to adopt criteria to determine, prior to terminating the auction, whether such requirements have been met. The Commission seeks comment on this proposal and on any alternatives.

214. The Commission also seeks comment on whether it should make any other revisions to the competitive bidding mechanisms listed in 47 CFR 1.2104 in order to ensure compatibility with the requirements for the broadcast television spectrum forward auction. The Commission also asks commenters whether it should add any new mechanisms to the rule to facilitate the conduct of the forward auction.

6. Revisions to Other Part 1 Competitive Bidding Rules

215. The Commission's existing competitive bidding rules also establish additional procedures regarding the competitive bidding process. More specifically, the Commission's existing rules address applications to participate in competitive bidding, communications among applicants to participate, upfront payments from competitive bidding participants, down and final payments by winning bidders, and applications for licenses by winning bidders, as well as the processing of such applications and default by and disqualification of winning bidders. The Commission seeks comment on whether these existing rules require any revisions in connection with the conduct of the broadcast television spectrum forward auction.

216. The Commission's existing rules prohibit applicants for licenses in any of the same geographic areas from cooperating or communicating with one another regarding the substance of their bids or bidding strategies during the competitive bidding process unless they have notified the Commission that they are members of a bidding consortium or other joint bidding arrangement. This rule seeks to prevent competing parties from reaching agreements that could reduce the competition in the auction. The Commission seeks comment on how to determine which parties are ''competing'' in the forward auction for the purpose of enforcing the communications prohibition, particularly if the spectrum licenses offered in the forward auction are generic blocks.

217. The Commission's existing rules also include various certifications that a party must make in any application to participate in competitive bidding. The Commission proposes that on the short-form application for the forward auction, the applicant must certify, under penalty of perjury, that it and all of the related individuals and entities required to be disclosed on the short-form application are not ''person[s] who [have] been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.'' As with other required certifications, failure to include the required certification by the applicable filing deadline would render the application unacceptable for filing, and the application would be dismissed with prejudice. The Commission seeks comment on this proposal.

218. Finally, the Commission invites commenters to address the potential regulatory impact of the proposed rules. In light of Congress's mandate to conduct a broadcast television spectrum incentive auction, the Commission asks that commenters address the cost effectiveness of the Commission's proposals and their own, both in relative and absolute terms. The Commission also asks that commenters be as detailed as possible with respect to claims based on any costs resulting from a proposal, and take into account any costs relative to the entire effect of the incentive auction, both on the party incurring the cost and as a whole.

IX. Post-Auction Issues

1. License Modification Procedures

a. Application Filing Requirements and Channel Substitution Opportunity

219. Section 316 of the Communications Act authorizes the Commission to modify any broadcast television station license in order to promote the public interest, convenience and necessity, and the Spectrum Act makes the right of a licensee to protest a proposed order of modification of its license under section 316 inapplicable in the case of a

modification under section 6403. The Commission proposes that once the reverse and forward auctions are complete and the repacking becomes effective, all stations that are reassigned to new channels would be required to file minor change applications for construction permits using FCC Forms 301–DTV, 301–CA or 340–DTV, with the exception of winning channel sharing bidders, who would be required to file only if their ''sharer'' channel—the channel to which they propose to move once they relinquish their spectrum usage rights—is reassigned in the repacking process. The Commission proposes a simplified, one-step process for implementing the post-auction and post-repacking channel changes. Rather than require stations to go through a prolonged two-step process of first amending the DTV Table of Allotments and then filing an application for its repacked facilities, the Commission is proposing simply to allow stations to file either a license application (for stations where no technical changes are proposed such as channel sharing) or a minor change application. The Commission proposes to expedite the processing of ''check list'' type applications that certify compliance with the technical rules and no substantial changes to their modified facilities. The streamlined procedures are meant to expedite the post auction licensing and to ensure a smooth post-auction transition and recovery of channels. The Commission anticipates that some stations receiving new channel assignments may wish to change their channels, and proposes that as soon as the staff has substantially completed its processing of the minor change applications required under the proposal above, the Commission will announce an opportunity for stations to request a substitute channel by filing an application to modify their construction permits, provided that they are able to identify an available channel. The Commission seeks comment on which licensees should be eligible for the proposed channel substitution opportunity. The Commission also seeks comment on appropriate procedures for the proposed channel substitution opportunity. Because implementation of a channel sharing arrangement does not involve construction of a new facility, the Commission proposes that channel sharing stations simply be required to file license applications (FCC Forms 302–DTV or 302–CA) for the shared facility upon commencement of shared operations. If a station that has agreed to share its channel with a winning channel sharing bidder is reassigned to a new channel, the Commission proposes to require the sharing stations to file license applications to share the original, pre-auction channel until their new channel facility is constructed. The *Incentive Auctions NPRM* seeks comment on these proposed procedures.

b. Construction Deadline

220. In the *Incentive Auction NPRM,* the Commission seeks comment on the amount of time that stations would need to transition to their repacked channels. The Commission recognizes the need to recover channels from the auction to allow their use by new wireless entities but also that stations would need various amounts of time to modify their facilities to operate on their repacked channels depending upon the degree of changes needed. The Commission invites comment on whether to establish a single deadline for the completion of the transition. Under this proposal, winning license termination bidders would be required to cease broadcasting, and stations that remain on the air would be required to transition to any new channel assignments by a date certain after the completion of the reverse and forward auctions and the effective date of the repacking. The Commission recognizes that some stations may need additional time to complete their facilities. Would 18 months be a reasonable transition deadline? Should the deadline instead be tied to individual stations' authorized construction periods? Should the three-year deadline for reimbursement of relocation costs imposed by the Spectrum Act be factored in, and if so, how? Commenters should explain the basis for their proposed deadlines, and address the potential costs and benefits associated with them. The Commission also seeks comment on creative approaches to the logistical challenges presented by the transition. Should a phased transition timetable be adopted, establishing different transition deadlines according to region (in light of weather/seasonal issues), individual station circumstances (e.g., the nature of the station modification involved), and/or other factors? Should the Commission establish earlier deadlines for winning license termination bidders, winning UHF to VHF bidders, and winning channel sharing licensees. Would it be reasonable to establish an earlier deadline for winning license termination bidders because they need not modify technical facilities in order to continue broadcasting? 326. Similarly, would it be reasonable to establish earlier deadlines for other winning reverse auction bidders because they will have access to shared auction proceeds to help fund any necessary technical modifications and, with regard to winning channel sharing bidders, may have to make less complicated technical changes? Would such stations be in a meaningfully different position from stations that elect to request advance payment of their estimated relocation costs for purposes of completing their transitions? The Commission also seeks comment on appropriate measures to provide regulatory flexibility for broadcasters to complete the transition. Regardless of the criteria adopted for considering requests for additional time to construct, the Commission seeks comment on whether to limit all extensions to a period of not more than six months from grant of the extension.

2. Consumer Education

221. In order to inform the public of the transition that will occur following the conclusion of the incentive auction and implementation of repacking, the Commission seeks comment on the types of consumer education that stations should perform. The Commission cites the need to notify viewers of channel changes and changes to station facilities that might result in a loss of service. The Commission seeks comment on whether to require stations that are going to cease broadcasting or transition to new channels as a result of the broadcast television spectrum incentive auction to air viewer notifications, as well as the form any such notifications should be required to take and when they should be aired. Comments also are sought on the costs and benefits of consumer education requirements.

3. Notice to MVPDs

222. The Commission seeks comment on whether to require stations that receive new channel assignments or cease broadcasting as a result of the broadcast television spectrum incentive auction to provide notice to affected multichannel video programming distributors (MVPDs) of channel changes and other technical changes that could affect carriage. Specifically, the Commission seeks comment on whether to require such notice, what information should be provided, and what form it should take. Would a simple letter notification to the affected MVPDs be sufficient? The Commission also seeks comment on a time frame for any such notice in order to provide MVPDs with a reasonable opportunity to prepare for any necessary carriage or technical changes and, should they chose to do so, to provide notice to their

subscribers. Alternatively, would the announcement by the Commission of the reverse auction winners and newly repacked channel assignments provide sufficient notice to MVPDs? The Commisison asks that commenters address the relative costs and benefits of any such notice requirements.

B. Payment of Relocation Costs

1. Payment of Eligible Broadcaster Costs

223. *Eligibility.* The Commission interprets the reimbursement mandate to apply only to full power and Class A television licensees that are involuntarily assigned to new channels in the repacking process; and it does not interpret it to require reimbursement of winning reverse auction bidders. The Commission seeks comment on this interpretation.

224. *Election of Estimated or Actual Cost Approach.* The Commission proposes to allow broadcasters to elect reimbursement of their eligible relocation costs based on either their estimated costs or their actual, out-of-pocket expenditures. Stations choosing to receive reimbursement based on the estimated cost approach would receive their reimbursement through an advance payment, while stations choosing reimbursement based on actual costs would receive reimbursement only after paying and documenting their costs.

225. Under our proposed approach, eligible television licensees that are involuntarily assigned to new channels in the repacking process could elect to request an advance payment based upon a predetermined amount to cover their relocation expenses. The Commission seeks comment on how to estimate relocation costs under the proposed approach. Should the estimated relocation costs be the same for all eligible stations, or should we establish tiers of fixed rates based on specified criteria such as the rank of the market to which the reassigned station is licensed, the type of channel change (e.g., within the UHF band, within the high VHF band, or within the low VHF band), and/or the extent of the technical modifications involved? The Commission also seeks comment on whether, under an estimated cost approach, the reimbursement amounts should differ depending on whether the broadcast licensee is a full power station operating under the Part 73 technical rules or a Class A station operating under the Part 74 technical rules. Finally, the Commission seeks comment on whether to require a station receiving an advance payment to report on whether they spent all of their reimbursement funds and to promptly return any unused funds.

226. Stations also could elect to be reimbursed based upon their actual costs instead of their estimated costs. For stations that elect to be reimbursed based on actual costs, the Commission proposes to require documentation of all expenses. The Commission invites comment on this proposed approach, including the potential costs and benefits associated with it.

227. Alternatively, the Commission invites comment on whether to require all broadcasters to demonstrate their relocation costs before receiving reimbursement. Would such an approach necessarily result in a more efficient use of the TV Broadcaster Relocation Fund? Would any such benefits be offset by the administrative burdens associated with preparation and review of such showings? How would the Commission meet the statutory three-year deadline under such an approach? If the Commission adopts such an approach, should it also cap reimbursements and, if so, how should it determine the appropriate caps? Should it provide reimbursement in excess of the cap upon an appropriate showing? The Commission seeks comment on these issues, as well as the appropriate procedures to use for documenting costs.

228. *Determination of Eligible Broadcaster Costs.* Regardless of the reimbursement approach it adopts, the Commission invites comment on the types of relocation costs that stations are likely to incur, and how to determine whether costs are ''reasonable'' for purposes of the reimbursement mandate. What types of ''hard'' and ''soft'' costs are stations likely to incur to effectuate channel changes, and to what extent should such costs be eligible for reimbursement? What types of relocation costs did stations incur in the digital television transition? Is it reasonable to expect that stations assigned to new channels in the repacking process would incur similar expenses? In the 800 MHz rebanding program, the Commission adopted a ''Minimum Necessary Costs Standard,'' and limited reimbursement to the ''minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner'' in order to provide facilities comparable to those presently in use, clarifying that this did not mean the absolute lowest cost under any circumstances. The Commission seeks comment on whether to adopt a similar standard in this proceeding. Under such a standard, licensees would be able to recover only costs that are reasonable, prudent and the minimum necessary to provide facilities and services comparable to those presently in use. The Commission also seeks comment on whether to permit licensees to request reimbursement for facility upgrades made while effectuating the channel changes. Some stations may not be able to replace older, legacy equipment and may be required to obtain upgraded or more expensive equipment in order to move to their new channels. Would permitting reimbursement of such equipment costs comport with the Spectrum Act mandate to reimburse only ''reasonable'' costs? The Commission also seeks comment on the point at which an upgrade would exceed the Spectrum Act mandate of ''reasonable'' and thus not be eligible for reimbursement.

229. The Spectrum Act prohibits reimbursements for ''lost revenues.'' The Commission seeks comment on how to interpret ''lost revenues'' for purposes of the reimbursement mandate.

230. The Commission also seeks comment on whether and how to prioritize requests for reimbursement in the event that the total eligible relocation costs exceed the statutory limit of $1.75 billion. Should it consider reimbursement requests on a first-come, first-served basis? Should it prioritize requests on some other basis? The Commission invites commenters to address the potential costs and benefits associated with any prioritization methods that they advocate.

231. Further, the Commission seeks comment on whether to explore bulk purchasing opportunities or bulk services arrangements that could reduce the relocation costs incurred by individual television licensees as a result of the repacking. In addition, during the digital television transition, some stations were able to repurpose their own analog and pre-transition digital equipment, or that of another station, for post-transition use. The Commission seeks comment on methods to encourage broadcasters to make use of equipment that is no longer needed by a repacked or channel sharing licensee.

232. *Service Rule Waiver in Lieu of Reimbursement.* Pursuant to the Spectrum Act, instead of reimbursement for repacking costs, a television licensee may accept a waiver of the Commission's service rules to permit it to make flexible use of its spectrum to provide non-broadcast services, so long as it ''provides at least 1 broadcast television program stream on such spectrum at no charge to the public.'' The Commission invites comment on the meaning and scope of this provision.

In particular, which of our rules should be eligible for waiver under this provision? What types of flexible uses by broadcasters should it consider appropriate in this context, and what factors should go into this analysis? How can the Commission assess whether flexible use operations by broadcasters would cause interference problems? Should waivers be granted on a permanent or temporary basis? If the latter, for how long should the waiver last? How should the Commission interpret the requirement of a ''broadcast television program stream'' provided ''at no charge to the public''? Would use of a technology other than the ATSC digital television standard satisfy this requirement? If so, what steps would a licensee need to take to ensure the ability of ''the public'' to view the broadcast television program stream at no charge?

233. In addition, the Commission seeks comment on appropriate procedures for the filing and review of any such waiver requests. At what point should any such requests be entertained, and how should they be submitted? Should they be subject to public notice and an opportunity for comment? Should the Commission require submission of any waiver requests at the same time and using the same procedures as for reimbursement requests? How can we ensure that a licensee whose waiver request is not granted has an opportunity to obtain reimbursement for its eligible relocation costs?

2. Payment of Eligible MVPD Costs

234. The Commission seeks comment on the Spectrum Act mandate that the Commission reimburse, from the TV Broadcaster Relocation Fund, costs reasonably incurred by an MVPD in order to continue to carry the signal of a broadcast television licensee that has its channel changed as part of the repacking process or that relinquishes its spectrum usage rights through a winning UHF to VHF or channel sharing bid in the reverse auction. Should the Commission allow MVPDs to elect to be reimbursed by an advance payment based on estimated costs, as proposed above for broadcasters? If so, how should it estimate costs? Should all MVPDs be eligible for reimbursement based upon the same estimated amount per station change? If so, should there be one estimated rate or rate tiers? On what basis should the Commission choose different tiers? As with the broadcaster reimbursements, the Commission seeks comment on whether to require an MVPD receiving an advance payment to report on whether they spent all of their reimbursement funds and to promptly return any unused funds. The Commission invites comment on these and any other issues raised by an estimated-cost reimbursement approach.

235. Regardless of whether it decides to allow MVPDs to elect to be reimbursed by an advance payment based on estimated costs, the Commission invites comment on reimbursing MVPDs based on actual costs. The Commission proposes to require documentation of all expenses under an actual-cost approach. MVPDs would be required to submit a showing, including appropriate documentation, detailing their costs, as well as a demonstration that all such costs are reasonable, prior to reimbursement. As with broadcaster reimbursement, the Commission seeks comment on whether to cap actual cost-based payments. If its sets such caps, how should it determine the appropriate limits? Should it provide reimbursement in excess of any caps upon an appropriate showing? The Commission seeks comment on the appropriate procedures to use for documentation of costs.

236. Further, the Commission seeks comment on the types of costs that MVPDs are likely to incur, and how to determine whether such costs are ''reasonable'' for purposes of the reimbursement mandate. For example, MVPDs incurred costs during the digital television transition in fulfilling the mandate that they ''ensure that the transition went smoothly for their customers.'' Similarly, what costs will MVPDs likely incur to carry stations involuntarily assigned to new channels in the repacking process? Should the Commission interpret the statute to provide for reimbursement of costs incurred in carrying a channel sharing station from the shared location if the station previously did not qualify for carriage on the MVPD system?

3. Measures To Prevent Waste, Fraud and Abuse

237. The Commission seeks comment on potential waste, fraud and abuse of the TV Broadcaster Relocation Fund, and how to prevent it. What steps might be taken to prevent such abuse? If the Commisison permits broadcasters and MVPDs to seek reimbursement based upon the estimated cost approach proposed above, it seeks comment on whether to require the receiving entity to report on whether they spent all of their reimbursement funds and to return any unused or misused funds.

238. The Commission seeks comment on whether appointment of a third-party auditor to over see the Relocation Fund would help further its goals to prevent waste, fraud and abuse.

C. Regulatory Issues; Licensing and Operating Rules

1. Broadcast Issues

a. Multiple Ownership Rules

239. In fairness to entities with broadcast multiple ownership combinations that could be rendered out of compliance due to channel allotments or technical changes resulting from repacking, the NPRM proposes that such ownership combinations be permanently ''grandfathered.'' The Commission proposes considering any other multiple ownership issues that result from the incentive auction in its ongoing quadrennial review proceeding.

240. The Commission also invites comment on measures that it might take outside of the context of the multiple ownership rules to address any impact on diversity that may result from the incentive auction.

b. Displacement of Low Power Television Stations

241. The Commission recognizes that low power television and TV translator stations may be greatly impacted by repacking. Because they have only secondary interference protection rights, LPTVs will not be permitted to participate in the reverse auction and will not be protected during repacking. Many stations will be displaced from their current operating channel. To ease the burden on these stations, the Commission proposes allowing displaced LPTV stations to have the first opportunity to submit a displacement application and propose a new operating channel. The Commission also cited the need to determine how to resolve mutually exclusive displacement applications filed by LPTV stations displaced by repacking. The Commission proposes adopting a set of priorities and seeks comment on the types of priorities to recognize. The Commission specifically seeks comment on the impact of such displacement of LPTV stations, and of the priorities by which displacement applications will be evaluated, on small, minority-owned, and women-owned LPTV stations. Comment is sought on suggestions for alternative criteria or procedures for allocating available channels among low power television and translator stations at risk of displacement following the incentive auctions.

c. Channel Sharing

242. The Commission seeks comment on several issues related to channel

sharing that were not resolved in the Commission's Channel Sharing Report and Order, ET Docket No. 10–235, Report and Order, 27 FCC Rcd 4616 (2012). For example, the Commission seeks comment on whether and when channel sharing agreements (CSAs) should be filed with the Commission and whether CSAs should be required to contain certain provision concerning access to, maintenance of, and modification of the shared transmission facilities. The Commission also seeks comment on how to resolve the termination of CSAs. Should the Commission require that CSAs grant approval rights or rights of first refusal to channel sharing stations in the event of a proposed assignment or transfer of the license held by the other station or stations. Alternatively, should the Commission mandate that CSAs require future buyers to assume the exiting party's rights and obligations under the CSA? Should all licensee parties to a CSA demonstrate assent to a proposed transaction in the assignment or transfer application related to that deal? Comment also is sought whether all parties to a CSA should be jointly responsible for compliance with certain of the Commission's rules. Comments is sought on proposals for retaining NCE status when an NCE licensee enters into a CSA with a commercial station. The Commission proposes that an NCE licensee, whether it relinquishes its reserved channel in order to share a non-reserved channel, or agrees to share its reserved channel with a commercial station, retain its NCE status on its license and be required to continue to comply with the rules and policies applicable to NCE licensees. Finally, the Commission proposes that the Spectrum Act provision on preservation of cable and satellite carriage would not affect the carriage rights of Class A stations. The Commission notes that the resolution of these issues is important in order to provide needed clarity to parties considering participating in the reverse auction through a channel sharing bid.

2. Wireless Issues

a. Flexible Use, Regulatory Framework, and Regulatory Status

(i) Flexible Use

243. We are proposing service rules for the 600 MHz band that permit a licensee to employ the spectrum for any use permitted by the United States Table of Frequency Allocations contained in part 2 of our rules, subject to our service rules. Congress recognized the potential benefits of flexibility in allocations of the electromagnetic spectrum and amended the Communications Act in 1999 to add section 303(y). In addition, the Spectrum Act provides that any initial licenses for use of spectrum made available for assignment by the voluntary relinquishment of broadcast television licensees shall be subject to flexible-use service rules.

244. Thus, we propose that the 600 MHz band may be used for any fixed or mobile service that is consistent with the allocations for the band. If commenters think any restrictions are warranted, they should describe why such restrictions are needed, quantify the costs and benefits of any such restrictions, and describe how such restrictions would comport with the statutory mandates of section 303(y) of the Communications Act and sections 6402 and 6403 of the Spectrum Act.

(ii) Regulatory Framework

245. Consistent with flexible use of these bands, we also propose licensing the spectrum under the flexible regulatory framework of part 27 of our rules. Unlike other rule parts applicable to specific services, part 27 does not prescribe a comprehensive set of licensing and operating rules for the spectrum to which it applies. Rather, for each frequency band under its umbrella, part 27 defines permissible uses and any limitations thereon, and specifies basic licensing requirements. We seek comment on our proposal to license the 600 MHz band under part 27 service and licensing rules, and any associated costs or benefits of doing so.

(iii) Regulatory Status

246. We propose to apply the regulatory status provisions of section 27.10 of the Commission's rules to 600 MHz licensees. Under this rule, applicants who may wish to provide both common carrier and non-common carrier services (or switch between them) can request status as both a common carrier and a non-common carrier under a single license, and are able to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status designated on their license application. Apart from this designation, applicants do not need to describe the services they seek to provide. We seek comment on this approach and the attendant costs and benefits.

247. We also propose that a licensee must notify the Commission of any change in regulatory status, as described in 47 CFR 27.10. Consistent with this rule, we propose to require that a licensee notify the Commission within 30 days of a change made without the need for prior Commission approval, except that a different time period may apply where the change results in the discontinuance, reduction, or impairment of the existing service. We seek comment on this proposal, including the costs and benefits of this proposal.

b. License Restrictions

(i) Foreign Ownership

248. We propose to apply the provisions of section 27.12 of the Commission's rules to applicants for licenses in the 600 MHz band. Section 27.12 implements section 310 of the Communications Act, including foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. An applicant requesting authorization to provide services in this band other than broadcast, common carrier, aeronautical en route, and aeronautical fixed services would be subject to the restrictions in section 310(a), but not to the additional restrictions in section 310(b). An applicant requesting authorization for broadcast, common carrier, aeronautical en route, or aeronautical fixed services would be subject to both sections 310(a) and 310(b). We do not believe that applicants for this band should be subject to different obligations in reporting their foreign ownership based on the type of service authorization requested in the application. Consequently, we propose to require all applicants to provide the same foreign ownership information, which covers both sections 310(a) and 310(b), regardless of which service they propose to provide in the band. We note, however, that we would be unlikely to deny a license to an applicant requesting to provide exclusively services that are not subject to section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for authority to provide such services. However, if any such licensee later desires to provide any services that are subject to the restrictions in section 310(b) we would require the licensee to apply to the Commission for an amended license, and we would consider issues related to foreign ownership at that time. We request comment on this proposal, including any costs and benefits of this proposal.

(ii) Eligibility and Mobile Spectrum Holding Policies

249. We propose to adopt an open eligibility standard for the 600 MHz band. We believe that opening the 600

MHz band to as wide a range of licensees as possible will encourage efforts to develop new technologies, products and services, while helping to ensure efficient use of this spectrum. An open eligibility standard is consistent with the Commission's past practice for mobile wireless spectrum allocations, as well as with section 6404 of the recently adopted Spectrum Act, which provides that the Commission may not prevent a person from participating in a system of competitive bidding, provided that the person complies with all procedures and other requirements established to protect the auction process, and meets specified technical, financial, character, and citizenship qualifications or would do so prior to the grant of a license by means approved by the Commission. We seek comment on our open eligibility approach.

250. We note that an open eligibility approach would not affect citizenship, character, or other generally applicable qualifications that may apply under our rules. As discussed above, we propose to implement section 6004 of the Spectrum Act, which restricts auction participation for reasons of national security, by requiring applicants participating in the broadcast incentive auction to certify, under the penalty of perjury, that they are not ''person[s] who [have] been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant.'' Section 6004 does not address eligibility to acquire licenses from holders thereof in auctioned (or any other) services. We seek comment on whether section 6004 permits or requires the Commission to restrict eligibility of the persons described therein to acquire licenses in the secondary market, and whether and to what extent the provisions of the Communications Act permit such restrictions. If such restrictions should be implemented, should we do so by requiring certifications in applications similar to those required under our rules for enforcement of the Anti-Drug Abuse Act of 1988? Would it be permissible and appropriate, as we do under our character policy, to address such situations on a case-by-case basis in light of the specific facts and circumstances? *See* 47 CFR 1.2001. Should we apply the same attribution rules in doing so, where the relevant person is not the sole owner of the proposed licensee?

251. Section 309(j)(3)(B) of the Communications Act provides that in designing systems of competitive bidding, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses.'' More recently, section 6404 of the Spectrum Act recognizes the Commission's authority ''to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.''

252. In the past, the Commission has sought comment on spectrum aggregation issues with respect to particular spectrum bands prior to auctioning spectrum licenses. We seek comment on what, if anything, the Commission should do to meet the statutory requirements of section 309(j)(3)(B) and promote the goals of the broadcast television spectrum incentive auction. For instance, we note that under current spectrum aggregation policies, the Commission would apply its spectrum screen and undertake its competitive analysis only after the auction. As discussed above, however, it is of particular importance to have certainty for bidders in this auction. As another example, section 309(j)(3)(B)'s direction to avoid excessive concentration of licenses might militate in favor of a rule that permits any single participant in the auction to acquire no more than one-third of all 600 MHz spectrum being auctioned in a given licensed area. Commenters may also discuss variations of that approach, including whether we should adopt thresholds that differ in urban and rural areas, whether we should adopt a threshold that recognizes the different characteristics of different spectrum bands, and/or whether we should adopt a threshold that would allow a licensee to acquire additional 600 MHz spectrum above that threshold so long as the licensee agrees to comply with certain conditions such as spectrum sharing through roaming and/or resale obligations, infrastructure sharing, or accelerated buildout requirements. We seek comment on the best means to achieve the goals established by Congress.

c. Secondary Markets

(i) Partitioning and Disaggregation

253. Part 27 rules for terrestrial wireless service provide that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. The rules also set forth the general requirements that apply with regard to approving applications for partitioning or disaggregation, as well as other specific requirements (*e.g.,* performance requirements) that would apply to licensees that hold licenses created through partitioning or disaggregation.

254. We propose to permit partitioning and disaggregation by licensees in the 600 MHz band. *See* 47 CFR 27.15. To ensure that the public interest would be served if partitioning or disaggregation is allowed, we also propose requiring each 600 MHz licensee who is a party to a partitioning, disaggregation, or combination of both, to independently meet the applicable performance and renewal requirements. We believe this approach would facilitate efficient spectrum use, while enabling service providers to configure geographic area licenses and spectrum blocks to meet their operational needs. We seek comment on these proposals. Commenters should discuss and quantify the costs and benefits of these proposals on competition, innovation, and investment.

255. We also seek comment on whether the Commission should adopt additional or different mechanisms to encourage licensees to partition and/or disaggregate 600 MHz spectrum that they are not utilizing and the extent to which such policies would promote additional wireless broadband service, especially in rural areas. Commenters should discuss and quantify the costs and benefits of promoting partitioning and disaggregation in the 600 MHz band, including the effects of the proposal on competition, innovation, and investment.

(ii) Spectrum Leasing

256. We propose that the spectrum leasing policies established in the *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets* 68 FR 66232 (2003) and the *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets* 69 FR 77522 (2004) proceedings be applied to the 600 MHz band in the same manner that those policies apply to other part 27 services. We seek comment on this proposal. Commenters should discuss the effects on competition, innovation and investment, and on extending our secondary spectrum leasing policies and rules to 600 MHz spectrum.

d. License Term, Performance Requirements, Renewal Criteria, and Permanent Discontinuance of Operations

(i) License Term

257. The Communications Act does not specify a term limit for wireless

radio services licenses, but the Commission has adopted 10-year license terms for most wireless licenses. We propose that in the 600 MHz band the license term similarly be 10 years. We seek comment on this proposal, and other proposals by commenters, including any costs and benefits of the proposals. In addition, commenters can submit their own proposal for the appropriate license term, which should similarly include a discussion on the costs and benefits. Further, we anticipate that wireless licenses would be issued by the completion of the broadcast transition discussed above, and it is our goal to issue most wireless licenses within 6–9 months of the completion of the auctions. We invite comment on whether this time frame is a reasonable goal.

258. Under our license term proposal, if a license in these bands is partitioned or disaggregated, any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term. This approach is similar to the partitioning provisions the Commission adopted for BRS, for broadband PCS licensees, for the 700 MHz band licensees, and for AWS–1 licenses at 1710–1755 MHz and 2110–2155 MHz. We emphasize that nothing in our proposal is intended to enable a licensee, by partitioning or disaggregating, to be able to confer greater rights than it was awarded under the terms of its license grant; nor would any partitionee or disaggregatee obtain rights in excess of those previously possessed by the underlying Commission licensee. We seek comment on these proposals, including the cost and benefits of these proposals.

(ii) Performance Requirements

259. The Commission establishes performance requirements to promote the productive use of spectrum, to encourage licensees to provide service to customers in a timely manner, and to promote the provision of innovative services in unserved areas, particularly in rural areas. We propose adopting performance requirements for the 600 MHz band. We note that the propagation characteristics of the 600 MHz band should allow for robust coverage at a lower cost than some other comparable bands. We encourage commenters to account for these and other technical characteristics as they address the topic of performance requirements.

260. We seek comment on three aspects of performance requirements: (1) What type of construction requirements we should impose (*e.g.,* a ''substantial service'' requirement or specific quantifiable coverage target, measured as a percentage of a population or geographic area); (2) when we should measure compliance with the requirements (*e.g.,* using interim benchmarks, an end-of-term goal, or multiple benchmarks); and (3) what sorts of penalties we should impose for licensees that fail to meet the requirements.

261. *Construction Requirements.* To ensure that licensees begin providing service to consumers in a timely manner, we propose adopting specific quantifiable benchmarks as an important component of our performance requirements. We seek comment on whether we should adopt an interim benchmark (*e.g.,* at 3 or 4 years from the license issue date), an end-of-term benchmark, and/or multiple benchmarks throughout the license term. We propose to measure build-out progress according to percentage of population served within the license area. In the alternative, we seek comment on whether we should use geographic area served. We also seek comment on what percentages would be appropriate population- or geography-based targets.

262. *Penalties for Failure To Meet Construction Requirements.* Along with these benchmarks, we must have meaningful and enforceable consequences, or penalties, for failing to meet construction requirements. We seek comment on which penalties will most effectively ensure timely build-out. For example, we seek comment on whether a licensee's failure to meet an interim benchmark should result in a reduction of the overall length of the license term. We also seek comment on whether failure to meet an end-of-term benchmark should result in license cancellation, loss of authorization for the unserved portions of a license area, or alternatively, a requirement to offer any unused spectrum for lease. Is the threat of license cancellation for failing to meet a benchmark more effective at promoting timely build-out than other penalties the Commission has implemented historically? Are there other penalties that would be effective in promoting timely build-out? Commenters should discuss the appropriate penalties and the attendant costs and benefits of imposing such requirements.

263. *Build-Out Approaches.* In light of the variety of service benchmarks and penalties that we discuss above, we seek comment on the most effective combination for fostering build-out of the 600 MHz spectrum, including several approaches we have adopted for other wireless broadband spectrum bands.

264. *PCS.* We seek comment on whether we should mirror the approach adopted in the broadband PCS services and subsequently adopted or proposed in other services (*e.g.,* 2.3 GHz WCS band, AWS–4 NPRM),which includes specific interim and final build-out requirements with licenses automatically terminating if the licensee fails to construct.

265. *700 MHz.* We seek comment on whether we should adopt an approach similar to that used in the 700 MHz band. Specifically, we seek comment on whether we should adopt rules similar to those for Upper 700 MHz C-Block licensees, which require them to meet specific interim and end-of-term population-based benchmarks, and include reducing their license term for failing to meet the interim benchmark, thus requiring them to meet their end-of-term benchmark on an accelerated schedule. We also seek comment on whether we should adopt a ''keep-what-you-use'' re-licensing mechanism, under which a licensee that fails to meet its final construction benchmark loses authorization for unserved portions of its license area, which are then returned to the Commission for reassignment.

266. *''Triggered'' Keep-What-You-Use.* We also seek comment on a variation of the ''keep-what-you-use'' rule, which was originally proposed in the 700 MHz context. Specifically, we ask whether the Commission, rather than reclaiming ''unused'' spectrum after a period of time, should reclaim spectrum only in the event that a third party seeks access to the licensed spectrum in an unserved portion of the license area. We seek comment on whether this triggered approach may offer a more efficient spectrum relicensing mechanism than the ''keep-what-you-use'' rule, because the Commission would only reclaim spectrum that a new licensee is ready to build. We further seek comment on two variations of this approach. In the first, as was proposed in 700 MHz, the achievement of a final build-out milestone would preclude third party applications for ''unused'' spectrum. In the second variation, and most similar to the original cellular construction rules, we would forego a final benchmark requirement, and simply allow licensees to only ''keep-what-you-use'' at the end of their license terms, regardless of how much of their license area they build out.

267. We also seek comment on the appropriate relicensing process under a triggered ''keep-what-you-use'' rule. For example, should we follow the process set forth in the 700 MHz rules? If so,

how should we address the variations that a ''triggered keep-what-you-use'' model establishes, such as what steps the Commission, or the licensee, should take to notify third parties about what ''unserved'' portions are available?

268. *''Use It or Lease It.''* We also seek comment on whether ''keep-what-you-use'' approaches are an effective means to provide additional service in unserved areas, including in rural areas, or whether another approach is advisable to meet this goal. For example, we seek comment on whether, instead of taking back unused portions of a license, we should require the licensee to lease the unused spectrum. Specifically, we ask whether licensees should be required to participate in good faith negotiations with third parties expressing an interest in spectrum leasing in license areas that have not been built-out at the end of the initial term. If so, what specific good faith negotiation process should we require? For all build-out approaches addressed in their comments, commenters should discuss and quantify how any supported build-out requirements will affect investment and innovation, as well as discuss and quantify other costs and benefits associated with their proposals.

269. *''Use It or Share It.''* In lieu of a ''use it or lease it'' approach, we also seek comment on whether, following the build-out term, we should permit third parties to make use of unused spectrum on a localized basis until a licensee deploys service in those areas. Specifically, for the 600 MHz spectrum, we seek comment on whether a ''use it or share it'' approach is feasible in areas where a licensee has failed to deploy service by the end of its build-out term. If we do adopt this approach, how should we permit third parties to gain access to unused spectrum? For example, should we allow unlicensed use of such spectrum through the white spaces database systems? What other processes should we consider?

270. *Other Approaches.* We also seek comment on any other construction models that might be appropriate to the 600 MHz context, including approaches used successfully in other spectrum bands.

271. *Compliance Procedures.* Assuming that we adopt interim and end-of-term construction benchmarks, we propose requiring licensees to demonstrate compliance with these performance requirements. We note that 600 MHz licensees would be subject to our generally applicable rules specifying that licensees file a construction notification within 15 days of the relevant benchmark certifying that they have met the applicable performance benchmark. Consistent with the 700 MHz rules, we propose that if a licensee has not met our performance requirements, the licensee must file a description and certification for the areas for which they are providing service. If we adopt a triggered ''keep-what-you-use'' relicensing mechanism or another mechanism that requires licensees to make unserved areas available to third parties (such as ''use it or lease it''), we seek comment on whether additional filing requirements are necessary. We believe that transparency is integral to the success of these approaches, and ask commenters to discuss what specific information we should require licensees to provide to ensure that third parties can determine what spectrum is available.

272. *Renewal.* We seek comment on how our approach to performance requirements can work effectively with our separate renewal criteria standard for 600 MHz licenses. While the distinctions between performance requirements and renewal standards are discussed in detail below, we seek comment on the costs and benefits of requiring separate filings to prove compliance with separate performance requirement and renewal standards. Further, if the Commission adopts a triggered ''keep-what-you-use'' or ''use it or lease it'' approach, how should we evaluate a licensee's renewal application where a licensee has not met our build-out requirements but is otherwise required to make unused spectrum available to third parties?

(iii) Renewal Criteria

273. Pursuant to section 308(b) of the Communications Act, the Commission may require renewal applicants to ''set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station'' as well as ''such other information as it may require.'' We note that 600 MHz licensees would be subject to our generally applicable rules regarding renewal filings. We propose to adopt service-specific 600 MHz license renewal requirements consistent with those adopted in the *700 MHz First Report and Order* and which form the basis of the renewal paradigm proposed in the *WRS Renewal NPRM and Order. See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands,* 72 FR 24238 (2007) (*700 MHz First Report and Order); Amendment of parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services,* 75 FR 38959 (2010) (*WRS Renewal NPRM and Order*).

274. We emphasize that, as the Commission made clear in both of these items, a licensee's performance showing and its renewal showing are two distinct showings. Broadly speaking, a performance showing provides a snapshot in time of the level of a licensee's service. By contrast, a renewal showing provides information regarding the level and types of the licensee's service offered over its entire license term. We propose that applicants for renewal of 600 MHz licenses file a ''renewal showing,'' in which they demonstrate that they have and are continuing to provide service to the public, and are compliant with the Commission's rules and policies and [with] the Communications Act. In the *700 MHz First Report and Order,* the Commission explained that, in the renewal context, the Commission considers ''a variety of factors including the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas, and any other factors associated with a licensee's level of service to the public.'' The *WRS Renewals NPRM and Order* also proposed to consider the extent to which service is provided to qualifying tribal lands. We propose that these same factors should be considered when evaluating renewal showings for the 600 MHz band and seek comment on this approach. Commenters should discuss and quantify the costs and benefits of this approach on competition, innovation, and investment.

275. To further encourage licensees to comply with their performance obligations, we propose awarding renewal expectancies to 600 MHz licensees that meet their performance obligations, and have otherwise complied with the Commission's rules and policies and the Communications Act during their license term. We seek comment on the above proposal and on whether 600 MHz licensees should obtain a renewal expectancy for subsequent license terms, if they continue to provide at least the level of service demonstrated at the final performance benchmark through the end of any subsequent license terms. In addition, we seek comment on how a licensee's failure to meet its performance requirements should affect its ability to renew its license. Commenters should discuss and quantify the costs and benefits of each

approach on competition, innovation, and investment.

276. Finally, consistent with the *700 MHz First Report and Order* and the *WRS Renewals NPRM and Order,* we propose to prohibit the filing of mutually exclusive applications at the time of renewal, and that if a license is not renewed, the associated spectrum would be returned to the Commission for reassignment. We seek comment on these proposals, including the costs and benefits of these proposals.

(iv) Permanent Discontinuance of Operations

277. We also request comment on whether to apply to licensees in the 600 MHz band the Commission's rules governing the permanent discontinuance of operations, which are intended to afford licensees operational flexibility to use their spectrum efficiently while ensuring that spectrum does not lay idle for extended periods. Under 47 CFR 1.955(a)(3), an authorization will automatically terminate, without specific Commission action, if service is ''permanently discontinued.'' For the 600 MHz band, we propose to define ''permanently discontinued'' as a period of 180 consecutive days during which a licensee does not operate and does not serve at least one subscriber that is not affiliated with, controlled by, or related to the provider. We believe this definition strikes an appropriate balance between our twin goals of providing licensees operational flexibility while ensuring that spectrum does not lie fallow. Licensees would not be subject to this requirement until the date of the first performance requirement benchmark so they will have adequate time to comply. In addition, consistent with § 1.955(a)(3) of the Commission's rules, we propose that, if a 600 MHz licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 and requesting license cancellation. An authorization will automatically terminate without specific Commission action if service is permanently discontinued even if a licensee fails to file the required form.

e. Other Operating Requirements

278. Even though licenses in the 600 MHz band may be issued pursuant to one rule part, licensees in this band may be required to comply with rules contained in other parts of the Commission's rules, depending on the particular services they provide. For example:

- Applicants and licensees would be subject to the application filing procedures for the Universal Licensing System, set forth in part 1 of our rules.
- Licensees would be required to comply with the practices and procedures listed in part 1 of our rules for license applications, adjudicatory proceedings, etc.
- Licensees would be required to comply with the Commission's environmental provisions, including 47 CFR 1.1307.
- Licensees would be required to comply with the antenna structure provisions of part 17 of our rules.
- To the extent a licensee provides a Commercial Mobile Radio Service, such service would be subject to the provisions of part 20 of the Commission's rules, including 911/E911 and hearing aid-compatibility (HAC) requirements, along with the provisions in the rule part under which the license was issued. Part 20 applies to all CMRS providers, even though the stations may be licensed under other parts of our rules.
- To the extent a licensee provides interconnected VoIP services, the licensee would be subject to the E911 service requirements set forth in part 9 of our rules.
- The application of general provisions of parts 22, 24, 27, or 101 would include rules related to equal employment opportunity, etc.

279. We seek comment on whether we need to modify any of these rules to ensure that 600 MHz licensees are covered under the necessary provisions. We seek comment on applying these rules to the 600 MHz spectrum and specifically on any rules that would be affected by our proposal to apply elements of the framework of these parts, whether separately or in conjunction with other requirements.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') [1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for and Objectives of the Proposed Rules

2. In the NPRM, the Commission considers matters related to the implementation of Congress's mandate to conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, §§ 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act). Congress's passage of the Spectrum Act set the stage for this proceeding and further expanded the Commission's ability to facilitate technological and economic growth. Wireless broadband is now a key component of economic growth, job creation and global competitiveness, and the explosive growth of wireless broadband services has created increased demand for wireless spectrum. Government entities and private industry alike have recognized the urgent need for more spectrum for wireless broadband services, and have been working to increase the availability of spectrum for these valuable uses. As part of the American Recovery and Reinvestment Act of 2009, Congress directed the FCC to develop a ''national broadband plan'' to ensure that every American has ''access to broadband capability.'' The resulting National Broadband Plan emphasized the indispensable importance of wireless spectrum in achieving Congress's broadband goals, recommending that the Commission make 300 megahertz of spectrum available for mobile broadband use within five years, including by reallocating a portion of the broadcast television spectrum.

3. The Spectrum Act authorizes the Commission to conduct incentive auctions in which licensees may voluntarily relinquish their spectrum usage rights in order to permit the assignment by auction of new initial licenses subject to flexible use service rules, in exchange for a portion of the resulting auction proceeds. Section 6403 of the Spectrum Act, which is not codified in the Communications Act, requires the Commission to conduct an incentive auction of the broadcast television spectrum and includes

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[2] See 5 U.S.C. 603(a).

[3] *See id.* sec. 603(a).

specific requirements and safeguards for the required auction.

4. The purpose of the NPRM is to develop rules and policies for the incentive auction process. The incentive auction will have three major pieces: (1) A ''reverse auction'' in which broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or ''repacking'' of the broadcast television bands in order to free up a portion of the ultra-high frequency (UHF) band for other uses; and (3) a ''forward auction'' of initial licenses for flexible use of the newly available spectrum.

5. Section 6403 of the Spectrum Act directs the Commission to conduct an incentive auction of broadcast television spectrum and includes special requirements for such an auction.[4] The incentive auction will have two competitive bidding components: (1) A ''reverse auction'' in which broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; and (2) a ''forward auction'' of initial licenses for flexible use of the newly available spectrum.[5] In order to implement this congressional mandate to conduct an incentive auction of broadcast television spectrum, the NPRM proposes and seeks comment on proposals to devise auction design and competitive bidding rules to govern the reverse auction, and considers changes to the Commission's general competitive bidding rules in Part 1 that may be necessary or desirable to conduct the related forward auction for new spectrum licenses. For example, the Commission will be seeking comment on: (i) Bid collection procedures that determine how bids in the auction are gathered, (ii) assignment procedures that determine which bids are accepted, and (iii) pricing procedures that determine what each bidder pays, or in the case of the reverse auction, receives in payment. The other major component of the incentive auction—the repacking—will help to determine which reverse auction bids will be accepted. In addition, consistent with the Commission's typical approach to spectrum license auctions, the proposed rules and Part 1 rule revisions provide a general framework to guide the development—through a series of public notices with opportunities for comment—of the detailed procedures and deadlines needed to conduct the auction. The public notice process will allow both the Commission and interested parties to focus and provide input on certain details of the auction design and the auction procedures after the rules have been established and the remaining procedural issues are better defined.

6. To assist small entities in competitive bidding in the forward auction, the NPRM proposes to establish small business size standards that were adopted in the 700 MHz band, as well as bidding credits that are set forth in the standardized schedule in Part 1 of the Commission's rules. Specifically, the NPRM proposes to define a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

7. The NPRM proposes to limit participation in the reverse auction to full power and Class A television licensees and to exclude non-Class A low power television stations and TV translators (collectively, ''low power television stations''). The Spectrum Act definitions and its repacking and reimbursement provisions limit participation to only full power and Class A television licensees. Further, because low power television stations have secondary interference rights, these facilities do not impede the band clearing and repacking process, and therefore there is no reason to facilitate their relinquishment through participation in the reverse auction.

8. It is proposed that noncommercial educational television stations may participate in the reverse auction. The Spectrum Act does not prohibit participation and the prohibition on subjecting NCEs to auction in Section 309(j) of the Communications Act would not apply because the reverse auction is being conducted under a separate Section 309(j) provision. Allowing NCEs to participate will ensure greater participation in the reverse auction and a return of a greater number of television channels for reallocation.

9. The NPRM proposes that entities with original construction permits be allowed to participate in the reverse auction if they become licensees before the deadline for submission of the application to participate in the auction. There are only very few entities in this category, and allowing the few original construction permit holders to participate in the incentive auction, so long as they receive a license by the deadline specified above, will maximize the amount of spectrum available for auction.

10. For the reverse auction bidding, it is proposed that the Commission only examine the spectrum usage rights held by stations in their licenses as of February 22, 2012. This conforms to the mandate in Section 6403 of the Spectrum Act that the Commission protect in repacking the coverage area and population served by a licensee as of the Spectrum Act enactment date.

11. For a new station permittee not licensed on February 22, 2012 (but auction eligible because it becomes licensed by the pre-auction application filing deadline), the Commission proposes to evaluate its bid based on the spectrum usage rights authorized in the construction permit it held on February 22, 2012. This approach conforms with the Commission's proposal to extend repacking protections on public policy grounds to the facilities authorized in a construction permit for a new station on February 22, 2012. In order to conform with the mandate in Section 6403 of the Spectrum Act to make all reasonable efforts to preserve the coverage area and population served of each television licensee only as of the Spectrum Act enactment date (February 22, 2012), any modifications made after February 22, 2012 to a licensed facility or to the construction permit of a new station will not be considered in evaluating a licensee's spectrum relinquishment offer.

12. Although the Commission seeks to maximize the spectrum reclaimed in the reverse auction process, it does not want to compensate a broadcaster for relinquishing spectrum rights to which it may no longer be entitled as the result of its license having expired, or having been cancelled or revoked in an enforcement proceeding. On the other hand, the Commission does not want to let the existence of such pending proceedings impede the auction process. Therefore, the Commission proposes that any full power or Class A station with an expired, cancelled or revoked license should not be eligible to bid in the reverse auction.

13. In the NPRM, the Commission proposes allowing stations to participate in the reverse auction by agreeing to relinquish a ''high VHF channel'' (channels 7–13) in exchange for a ''low VHF channel'' (channels 2–6). Because high VHF spectrum may be more

[4] *See* Spectrum Act § 6403.

[5] *See id.* at secs. 6403(a)–(c). *See also id.* at secs. 6001(16), (30) (defining ''forward auction'' and ''reverse auction,'' respectively). Note that the incentive auction of broadcast television spectrum has a third component—a reorganization or ''repacking'' of the broadcast television spectrum bands in order to free up a portion of the UHF band for other uses.

desirable than low VHF spectrum to a UHF to VHF bidder, making additional high VHF spectrum available by encouraging high VHF to low VHF moves may result in a greater reverse auction participation.

14. The Commission also seeks comment on whether to allow licensees to participate in the reverse auction by relinquishing spectrum usage rights through the acceptance of additional interference. By permitting this type of creative arrangement, the Commission believes it can potentially create an unencumbered wireless broadband service area license while still permitting a broadcast licensee to cover a portion of its service area.

15. The Commission also proposes to prohibit a licensee to effectuate a channel sharing arrangement that would result in a change in the station's community of license and/or DMA. The Commission proposes this limitation because it believes that allowing changes in community of license in addition to changes in channel assignments would raise section 307(b) issues such as the fair, efficient and equitable distribution of service,[6] and would complicate its repacking efforts.

16. It is critical, to enable repacking of the broadcast spectrum, that the Commission determine how to preserve the coverage area and population served as required by the Spectrum Act. Accordingly, the Commission seeks comment on engineering and other technical aspects of the repacking process, in particular Congress's mandate in Section 6403(b)(2) of the Spectrum Act that it make all reasonable efforts to preserve the coverage area and population served of television stations in the repacking. The broadcast television spectrum incentive auction and the associated repacking process could impact both the coverage area and the population served of television stations. If a station is assigned to a different channel, then its technical facilities must be modified in order to replicate its coverage area, because radio signals propagate differently on different frequencies. These varying propagation characteristics also mean that a new channel assignment may change the areas within a station's noise-limited service area affected by terrain loss. Channel reassignments, and stations going off the air as a result of the reverse auction, also may change the interference relationships between stations, which relationships in turn affect population served. Stations going off the air can eliminate existing interference to the stations that remain on the air. Likewise, new channel assignments generally will eliminate interference that the reassigned stations are now causing or receiving. At the same time, new channel assignments create a potential for new interference between nearby stations on the same channel or a first adjacent channel. The Commission seeks comment on a repacking methodology that takes in account all of these impacts in order to carry out Congress's mandate in section 6403(b)(2).

17. The Commission recently adopted rules to enable unlicensed devices to operate in parts of the TV spectrum that are unused at any given location. The availability of spectrum in the TV bands for unlicensed devices is an important part of supporting a robust wireless marketplace. To this end, the NPRM explores several ways to further improve the availability of the TV broadcast spectrum for unlicensed uses.

18. The Commission is developing a band plan for the incentive auction process that balances flexibility with certainty, accommodating varying amounts of available wireless spectrum in different geographic areas rather than requiring that a uniform set of television channels be cleared nationwide. Specifically, the Commission seeks comment on whether to keep the downlink spectrum band consistent nationwide while allowing variations in the amount of uplink spectrum available in any geographic area. With this approach, the Commission believes it can ensure as a technical matter that wireless providers will be able to offer mobile devices that can operate across the country, which should minimize device cost and interoperability concerns, and allow for greater economies of scale. The Commission also proposes designating specific uplink and downlink blocks, pairing them where possible, to support expansion of cutting-edge wireless broadband technologies.

19. TV channel 37 is not used for TV broadcasting but rather is allocated for use by radio astronomy and medical telemetry equipment. TV channel 37 is situated in the spectrum such that it could affect the viability of certain band plans for wireless broadband service that would be most viable from a technical and economic standpoint. The Commission's proposed band plan does not require that existing channel 37 operations be relocated, and instead, attempts to benefit from allowing existing channel 37 operations to remain in that frequency band by using channel 37 as a guard band between television operations and mobile broadband operations.

20. The Commission proposes that, during repacking, it would only preserve the service areas of full power and Class A television stations with regard to stations' facilities that were licensed, or for which an application for license to cover authorized facilities already was on file with the Commission, as of February 22, 2012. Further, the Commission proposes to protect the facilities set forth in unbuilt construction permits for new full power television stations as of February 22, 2012. It did not propose to protect the facilities contained in pending facility modification applications. The Commission found that consideration of all pending facility modification applications would greatly complicate the repacking analysis by increasing the amount of facilities under consideration in the repacking process. Additionally, protection of both a licensed facility and a modification thereto that would expand or alter the station's service area would further encumber the spectrum.

21. As it did with respect to reverse auction bids by Class A stations, the Commission also proposed that Class A stations elect which facilities they would like protected in repacking. Because Class A stations are in the middle of a Commission-mandated digital transition that will not conclude until September 1, 2015, the Commission found that failing to offer repacking protection to those digital transition facilities not licensed by February 22, 2012 would be fundamentally unfair. Moreover, failure to protect these facilities could make it impossible for certain Class A stations to effectuate their conversion plans, thus stalling the digital transition.

22. In the NPRM, the Commission proposes to only reimburse full power television and Class A stations that are repacked their reasonable expenses (such as a new antenna or transmitter) incurred during the repacking. The Commission explains that the Spectrum Act mandates only that a ''broadcast television licensee'' receive reimbursement. Furthermore, only full power television and Class A stations have spectrum rights that must be protected in repacking. Therefore, the Commission believes that full power television and Class A licensees are the only stations that fall within the statutory definition of stations that were assigned a new channel in repacking and that should qualify for reimbursement.

23. The Commission also proposes to limit reimbursement to multichannel video programming distributors (MVPDs) as defined by section 602 of the Communications Act. This was the

[6] *See* 47 U.S.C. 307(b).

definition set forth in the Spectrum Act and the Commission seeks comment on whether it is appropriate for determining reimbursement from the Relocation Fund.

24. In the NPRM, the Commission proposes allowing full power and Class A television stations and MVDPs to elect reimbursement of their eligible relocation costs based on either their estimated costs or their actual, out-of-pocket expenditures. Stations and MVPDs choosing to receive reimbursement based on the estimated cost approach would receive their reimbursement through an advance payment, while those choosing reimbursement based on actual costs would receive reimbursement only after incurring and documenting their costs.

25. The Commission seeks comment on the types of expenses incurred by stations and MVPDs that would qualify for reimbursement. The Commission proposes that stations and MVPDs would be able to recover only costs that are reasonable, prudent and the minimum necessary to provide facilities and services comparable to those presently in use. The Commission also seeks comment on whether to permit stations to request reimbursement for facility upgrades made while effectuating the channel changes.

26. The Commission proposes a simplified, one-step process for implementing the post-auction and post-repacking channel changes. Rather than require stations to go through a prolonged two-step process of first amending the DTV Table of Allotments and then filing an application for its repacked facilities, the Commission is proposing simply to allow stations to file either a license application (for stations where no technical changes are proposed such as channel sharing) or a minor change application. The Commission proposes to expedite the processing of ''check list'' type applications that certify compliance with the technical rules and no substantial changes to their modified facilities. The streamlined procedures are meant to expedite the post-auction licensing and to ensure a smooth post-auction transition and recovery of channels.

27. In the NPRM, the Commission seeks comment on the amount of time that stations would need to transition to their repacked channels. The Commission recognizes the need to recover channels from the auction to allow their use by new wireless entities but also that stations would need various amounts of time to modify their facilities to operate on their repacked channels depending upon the degree of changes needed. The Commission also recognizes that some stations may need additional time to complete their facilities and sought comment on the procedures for allowing for extensions of time.

28. In order to inform the public of the transition that will occur following the conclusion of the incentive auction and implementation of repacking, the Commission seeks comment on the types of consumer education that stations should perform. The Commission cites the need to notify viewers of channel changes and changes to station facilities that might result in a loss of service.

29. In fairness to entities with broadcast multiple ownership combinations that could be rendered out of compliance due to channel allotments or technical changes resulting from repacking, the NPRM proposes that such ownership combinations be permanently ''grandfathered.'' The Commission proposes considering any other multiple ownership issues that result from the incentive auction in its ongoing quadrennial review proceeding.

30. The Commission recognizes that low power television and television translator stations may be greatly impacted by repacking. Because they have only secondary interference protection rights, LPTVs will not be permitted to participate in the reverse auction and will not be protected during repacking. Many stations will be displaced from their current operating channel. To ease the burden on these stations, the Commission proposes allowing displaced LPTV stations to have the first opportunity to submit a displacement application and propose a new operating channel. The Commission also cited the need to determine how to resolve mutually exclusive displacement applications filed by LPTV stations displaced by repacking. The Commission proposes adopting a set of priorities and seeks comment on the types of priorities to recognize. The Commission specifically seeks comment on the impact of such displacement of LPTV stations, and of the priorities by which displacement applications will be evaluated, on small, minority-owned, and women-owned LPTV stations.

31. The NPRM recognizes several issues related to channel sharing that were not resolved in the Commission's Channel Sharing Report and Order, ET Docket No. 10–235, Report and Order, 27 FCC Rcd 4616 (2012). For example, the Commission seeks comment on whether and when channel sharing agreements (CSAs) should be filed with the Commission and whether CSAs should be required to contain certain provisions concerning access to, maintenance of, and modification of the shared transmission facilities. The Commission also seeks comment on how to resolve the use of termination of CSAs and whether all parties to a CSA should be jointly responsible for compliance with certain of the Commission's rules. Finally, the Commission proposes that the Spectrum Act provision on preservation of cable and satellite carriage would not affect the carriage rights of Class A stations. The Commission notes that the resolution of these issues is important in order to provide needed clarity to parties considering participating in the reverse auction through a channel sharing bid.

32. In proposing terrestrial service rules for the 600 MHz band, which include technical rules to protect against harmful interference, and licensing rules to establish geographic license areas and spectrum block sizes, we advance toward enabling widespread wireless broadband deployment in the band. We do so by proposing service, technical, assignment, and licensing rules for this spectrum that generally follow the Commission's Part 27 rules that generally govern flexible use terrestrial wireless service. For example, the Commission proposes: (1) That the 600 MHz band may be used for any fixed or mobile service that is consistent with the allocations for the band; (2) licensing the spectrum under the flexible regulatory framework of Part 27 of the rules; (3) allowing 600 MHz band licensees to provide both common carrier and non-common carrier services (or switch between them) and to request status as both a common carrier and a non-common carrier under a single license; and (4) allowing 600 MHz licensees to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status designated on their license application. These proposals are designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which broadband deployment would be able to develop through the application of standard terrestrial wireless rules.

B. Legal Basis

33. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r) and 309(j) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r) and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

34. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.[7] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' [8] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[9] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[10]

35. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [11] The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.[12] The Commission has estimated the number of licensed commercial television stations to be 1,384.[13] In addition, according to Commission staff review of the BIA Advisory Services, LLC's Media Access Pro Television Database on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[14] We therefore estimate that the majority of commercial television broadcasters are small entities.

36. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [15] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

37. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[16] These stations are non-profit, and therefore considered to be small entities.[17]

38. In addition, there are also 2,466 low power television stations, including Class A stations and 4,176 television translator stations.[18] Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

39. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [19] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year.[20] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

40. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[21] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[22] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[23] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[24] Thus, under this second size standard, most cable systems are small.

41. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard

[7] *Id.* sec. 603(b)(3).

[8] 5 U.S.C. 601(6).

[9] *Id.* sec. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[10] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[11] U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[12] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).

[13] *See FCC News Release,* ''Broadcast Station Totals as of June 30, 2012,'' dated July 19, 2012; *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-315231A1.pdf.*

[14] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[15] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[16] *See FCC News Release,* ''Broadcast Station Totals as of June 30, 2012,'' dated July 19, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-315231A1.pdf.*

[17] *See generally* 5 U.S.C. 601(4), (6).

[18] *See FCC News Release,* ''Broadcast Station Totals as of June 30, 2012,'' dated July 19, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-315231A1.pdf.*

[19] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110* (last visited Oct. 21, 2009).

[20] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[21] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[22] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[23] 47 CFR 76.901(c).

[24] Warren Communications News, *Television & Cable Factbook 2008,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [25] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[26] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[27] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[28] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

42. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [29] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[30] To gauge small business prevalence for the DBS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.[31] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network).[32] Each currently offers subscription services. DIRECTV [33] and EchoStar [34] each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

43. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[35] The SBA size standard for this industry establishes [36] as small any company in this category which receives annual receipts of $15 million or less. Based on U.S. Census data for 2007, in that year 469 establishments operated for the entire year. Of that 659, 197 operated with annual receipts of $10 million a year or more. The remaining 462 establishments operated with annual receipts of less than $10 million. Based on this date, the Commission estimates that the majority of establishments operating in this industry is small.[37]

44. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [38] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. According to Census bureau data for 2007, there were a total of 939 firms in this category that operated for the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees.[39] Thus, under that size standard, the majority of firms can be considered small.

45. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.[40] Data contained in the 2007 U.S. Census indicate that 491 establishments operated in that industry for all or part of that year. In that year, 456 establishments had 99 employees or less; and 35 had more than 100

[25] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[26] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[27] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[28] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[29] *See* 13 CFR 121.201, NAICS code 517110 (2007). The 2007 NAICS definition of the category of ''Wired Telecommunications Carriers'' is cited above.

[30] 13 CFR 121.201, NAICS code 517110 (2007).

[31] *See http://www.factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[32] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 580, para. 74 (2009) (''*13th Annual Report*''). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (''Dominion'') (marketed as Sky Angel). *See* Public Notice, ''Policy Branch Information; Actions Taken,'' Report No. SAT–00474, 22 FCC Rcd 17776 (IB 2007).

[33] As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. *See 13th Annual Report,* 24 FCC Rcd at 687, Table B–3.

[34] As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id.* As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving ''Sky Angel'' service from DISH Network. *See id.* at 581, para. 76.

[35] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515210&search=2007.*

[36] *See* 13 CFR 121.201, NAICS Code 515210.

[37] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.*

[38] The NAICS Code for this service 334220. *See* 13 CFR 121/201. *See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[39] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_31SA11&prodType=table.*

[40] 13 CFR 121.201, NAICS Code 334310.

employees.[41] Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

46. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.[42] The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees.[43] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[44] For this category, census data for 2007 show that there were 11,163 firms that operated for the entire year.[45] Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.[46] Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.[47]

47. *Fixed Microwave Services.* Microwave services include common carrier,[48] private-operational fixed,[49] and broadcast auxiliary radio services.[50] At present, there are approximately 31,549 common carrier fixed licensees and 89,633 private and public safety operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. Microwave services include common carrier,[51] private-operational fixed,[52] and broadcast auxiliary radio services.[53] They also include the Local Multipoint Distribution Service (LMDS),[54] the Digital Electronic Message Service (DEMS),[55] and the 24 GHz Service,[56] where licensees can choose between common carrier and non-common carrier status.[57] The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees.[58] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[59] For this category, census data for 2007 show that there were 11,163 firms that operated for the entire year.[60] Of this total, 10,991 firms had employment of 99 or fewer employees and 372 had employment of 1000 employees or more.[61] Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.[62]

48. *Manufacturers of unlicensed devices.* In the context of this IRFA, manufacturers of Part 15 unlicensed devices that are operated in the UHF–TV band (channels 14–51) involve wi-fi services used in wireless data transfer and as such fall into the category of Radio and Television and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [63] The SBA has developed a small business size standard for this category, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 firms in this category that operated for the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees.[64] Thus, under that size standard, the majority of firms can be considered small.

49. *Personal Radio Services/Wireless Medical Telemetry Service (''WMTS'').*

Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[65] These services include Citizen Band Radio Service (''CB''), General Mobile Radio Service (''GMRS''), Radio Control Radio Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant

[41] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_31I1&prodType=table.*

[42] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search.*

[43] 13 CFR 121.201, NAICS code 517210.

[44] 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[45] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[46] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[47] *See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.*

[48] 47 CFR Part 101 *et seq.* (formerly, part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

[49] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[50] Auxiliary Microwave Service is governed by Part 74 and Part 78 of Title 47 of the Commission's Rules. Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.

[51] *See* 47 CFR part 101, subparts C and I.

[52] *See* 47 CFR part 101, subparts C and H.

[53] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[54] *See* 47 CFR part 101, subpart L.

[55] *See* 47 CFR part 101, subpart G.

[56] *See id.*

[57] *See* 47 CFR 101.533, 101.1017.

[58] 13 CFR 121.201, NAICS code 517210.

[59] 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[60] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[61] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[62] *See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.*

[63] The NAICS Code for this service 334220. *See* 13 CFR 121/201. *See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[64] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=4500&-ds_name=EC0731SG3&-_lang=en.*

[65] 47 CFR part 90.

Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS'').[66] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[67] For this category, census data for 2007 show that there were 11,163 firms that operated for the entire year.[68] Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.[69] Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

50. However, we note that many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base a more specific estimation of the number of small entities under an SBA definition that might be directly affected by our action.

51. *Aeronautical Mobile Telemetry (''AMT'')* Currently there are 9 AMT licenses in the 2360–2395 MHz band. It is unclear how many of these will be affected by our new rules. The Commission has not yet defined a small business with respect to aeronautical mobile telemetry services. For purposes of this analysis, the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[70] For this category, census data for 2007 show that there were 11,163 firms that operated for the entire year.[71] Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.[72] Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The rules we adopt provide the flexibility to manufacturers, licensees and coordinators needed to accommodate changes in both AMT and Medical Body Area Network (MBAN) operations and to provide assurance to AMT users that their future access to the spectrum will not be hampered.[73]

52. *Radio Astronomy.* The Commission has not developed a definition for radio astronomy. However the SBA has established a category into which Radio Astronomy fits, which is: All Other Telecommunications.[74] This U.S. industry comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[75] The size standard for all establishments engaged in this industry is that annual receipts of $25 million or less establish the firm as small.[76] Based on data in the 2007 U.S. Census, in 2007 there were 2,263 establishments that operated in the All Other Telecommunications category. Of that 2,263, 145 establishments operated with annual receipts of more than $10 million per year. The remaining 2,118 establishments operated with annual receipts of less than $10 million per year.[77] Based on this data, the Commission estimates that the majority of establishments in the All Other Telecommunications category are small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

53. The NPRM proposes the following new or revised reporting or recordkeeping requirements.

54. In this NPRM, the Commission seeks comment on various reporting, record-keeping, and other compliance requirements for the parties that will participate in the broadcast television spectrum incentive auction. The Commission proposes, for example, that a television broadcaster interested in participating in the reverse auction component of the incentive auction process, whereby the broadcaster can offer to relinquish some or all of its spectrum usage rights in exchange for an incentive payment, must disclose certain information, such as its ownership, before becoming qualified to participate in the auction. In addition, the Commission asks whether a broadcaster that may offer to relinquish some of its spectrum usage rights and subsequently enter into a channel-sharing agreement, should be required to provide information regarding the channel sharing agreement, possibly including the channel sharing agreement itself.

55. The Commission also seeks comment on compliance requirements that will affect the parties interested in participating in the broadcast television spectrum incentive auction in order to obtain new licenses for the 600 MHz spectrum. The Commission proposes, for example, that a party interested in participating in the forward auction component of the incentive auction process, whereby the party may bid on such licenses, must disclose certain information, such as their ownership, before becoming qualified to participate in the auction.

56. Participants in both the reverse and the forward auction will also be required to report changes to information in their applications and any potential violations of the Commission's prohibition on certain

[66] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[67] 13 CFR 121.201, NAICS Code 517210.

[68] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[69] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[70] 13 CFR 121.201, NAICS Code 517210.

[71] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[72] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[73] *See* In The Matter of Amendment of The Commission's Rules to Provide Spectrum for the Operation of Medical Body Area Networks, ET Docket 08–59, 27 FCC Rcd. 6422, para 9 (2012).

[74] 13 CFR 121.202, NAICS Code 517919.

[75] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[76] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[77] *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.*

communications relating to the auction process. In addition, any participant that has a bid for relinquishing spectrum usage rights or for a new license accepted will have additional reporting, record-keeping, and compliance requirements.

57. Because the overall design of the broadcast incentive auction has not been finalized, we do not yet have a more specific estimate of potential reporting, recordkeeping, and compliance burdens on small businesses. The Commission anticipates that commenters will address the reporting, record-keeping, and other compliance proposals made in the NPRM, and will provide reliable information on any costs or burdens on small businesses for inclusion in the record of this proceeding.

58. As it did with respect to reverse auction bids by Class A stations, the Commission also proposes that Class A stations be required to elect which facilities they would like protected in repacking. The Media Bureau will issue a Public Notice outlining the procedures for Class A stations to make their elections.

59. The Commission proposed that full power television stations, Class A television stations and MVPDs that qualify for reimbursement of the expenses incurred in repacking have the option of submitting a filing demonstrating their actual expenses and later be required to report on whether all reimbursement funds were properly dispensed. Alternatively, the Commission proposes to advance payments to stations and MVPDs based on estimated amounts and without first requiring documentation. This was proposed to ease the burden on stations and MVPDs and to expedite the reimbursement process.

60. Stations whose channel assignments are changed as a result of the reverse auction or repacking will be required to submit an application for construction permit or license to implement their channel change. The Commission proposes a simplified, one-step process for implementing the post-auction and post-repacking channel changes. Rather than require stations to go through a prolonged two-step process of first amending the DTV Table of Allotments and then filing an application for its repacked facilities, the Commission is proposing simply to allow stations to file either a license application (for stations where no technical changes are proposed such as channel sharing) or a minor change application. The Commission proposes to expedite the processing of ''check list'' type applications that certify compliance with the technical rules and no substantial changes to their modified facilities. The streamlined procedures are meant to expedite the post auction licensing and to ensure a smooth post-auction transition and recovery of channels.

61. Stations that need additional time to relocate to their new channel assignments may be required to submit a request for extension of time (FCC Form 337), for tolling (informal filing) or for Special Temporary Authority (STA—informal filing).

62. The Commission proposes that all stations changing channel assignments as a result of the reverse auction or repacking be required to conduct consumer education including airing viewer notifications and submitting a report to the Commission on their consumer education efforts. The reports would be filed on existing FCC Form 388 (that was utilized for consumer education during the digital television transition) revised for use with the band transition. In addition, the Commission proposes that all stations changing channel assignments provide notice to MVPDs so that MVPDs can make the necessary changes to their channel lineups.

63. LPTV stations displaced as a result of repacking may be permitted to submit a displacement application (FCC Form 346). In addition to preparing and filing the application, the station may also be required to submit a new showing that it qualifies for priorities that will enable its application to be selected from a mutually exclusive group. It is expected that this requirement will have a greater effect on small entities because all LPTVs are small entities.

64. The Commission proposes that channel sharing bidders may be required to submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs.

65. All 600 MHz licensees would be required to file a construction notification and certify that they have met any applicable performance benchmark.[78] They will also be required to file a license renewal application.[79] In addition, a 600 MHz licensee must notify the Commission of certain changes. Specifically, notification is required by licensees if they change their regulatory status,[80] their foreign ownership status,[81] or if they permanently discontinue service.[82] Finally, 600 MHz licensees, along with TV broadcasters in the 470–698 MHz band, would need to provide thirty days' notice to all incumbent fixed BAS operations within interference range prior to commencing operations in the vicinity.[83]

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;[84] (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[85]

67. The proposed auction design and competitive bidding rules for the reverse auction resulting from the NPRM will apply to all entities in the same manner. Full power television and Class A stations will be permitted to participate in the reverse auction and the forward auction will be open to all entities. The Commission proposes changes to its Part 1 rules to deal with special issues that arise in the unique incentive auction process. For example, the Commission must consider the requirement of mutual exclusivity in the context of the broadcast television spectrum forward auction. Specifically, if the spectrum to be offered in the forward auction consists of generic (non-frequency-specific) blocks, how should the Commission determine whether mutual exclusivity exists? In addition, the Commission asks commenters to address whether applications to participate in the reverse and forward auctions are ''mutually exclusive applications'' for ''initial license[s]'' since the reverse and forward auction applicants will submit

[78] *See* 47 CFR 1.946(d).

[79] *See* 47 CFR 1.949.

[80] *See* 47 CFR 27.10(d); *see also* 47 CFR 27.66. A change in a licensee's regulatory status would not require prior Commission authorization, provided the licensee was in compliance with the foreign ownership requirements of Section 310(b) of the Communications Act that would apply as a result of the change. 47 U.S.C. 310(b).

[81] 47 U.S.C. 310(b).

[82] The licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 and requesting license cancellation.

[83] *See, e.g.,* 47 CFR 101.103(d) (30-day coordination ''notice and wait'' requirement).

[84] We note that all references to small entities in this IRFA apply also to minority-and women-owned small businesses.

[85] 5 U.S.C. 603(c)(1)–(c)(4).

bids relating to mutually exclusive spectrum usage rights (i.e., the spectrum currently used by broadcast television licensees). With respect to bidding credits for the forward auction, the Commission seeks comment on the use of certain size standards and associated bidding credits for applicants to be licensed in the forward auction with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each license. In the reverse auction, the Commission seeks comment on the Spectrum Act statutory provision requiring the Commission to take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction, including withholding the identity of such licensee. With respect to all proposed changes to the Part 1 rules, the Commission will apply them uniformly to all entities that choose to participate in spectrum license auctions, including the forward auction. The Commission believes that applying the same rules equally to all entities in these contexts promotes fairness. The Commission does not believe that the limited costs and/or administrative burdens associated with the rules or the proposed auction design will unduly burden small entities.

68. The proposed auction design and competitive bidding rules provide small businesses flexibility with respect to the ways in which they may participate in the reverse auction. For example, the NPRM proposes to allow a broadcast television licensee to relinquish some or all of its spectrum usage rights in at least three different ways: (1) It may relinquish all of its spectrum usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel; (2) it may relinquish spectrum usage rights in a UHF channel in return for receiving spectrum usage rights in a VHF channel; or (3) it may relinquish its spectrum usage rights in order to share a television channel with another licensee.

69. In addition, the NPRM recognizes the potential competitive sensitivities related to the information provided by licensees participating in the reverse auction either by submitting bids to exit an ongoing business, or by making significant changes to that business (*e.g.,* by sharing or changing the channels on which they operate). Specifically, as required by section 6403(a)(3) of the Spectrum Act, the NPRM proposes to take steps to protect the confidentiality of Commission-held data of licensees participating in the reverse auction, including the licensees' identities.

70. In the NPRM, and in paragraph 6 of this IRFA, the Commission sought comment on its proposed size standards which define a ''small business'' as an entity with annual average revenues of $40 million over the previous three years; and which define a ''very small business'' as an entity with an annual average revenues of $15 million over the previous three years. In the NPRM and in this IRFA, the Commission also sought comment on providing small businesses with a bidding credit of 15 percent and on providing very small businesses with a bidding credit of 25 percent. We believe these proposals will provide an economic benefit to small entities by making it easier to acquire spectrum licenses or to access spectrum through secondary markets.

71. The proposal to limit reverse auction participation to only full power and Class A stations and to not permit participation by low power television stations will have a greater impact on small entities since all low power television stations are small entities. Alternatively, the Commission could allow low power television stations to participate in the reverse auction but this would have no practical use since low power television stations do not have to be protected in repacking and clearing them from their channels in the reverse auction would be unnecessary. The Commission believes the additional burden on low power stations is outweighed by the need to implement Spectrum Act provisions, to recover a sufficient amount of spectrum in the reverse auction and to complete the successful repacking full power and Class A stations.[86]

72. In order to minimize the impact of the incentive auction and repacking processes on noncommercial educational (NCE) television stations, all of which are small entities, the Commission allowed these stations to participate in the incentive auction. It is expected that participation in the reverse auction will benefit small entities like NCEs by allowing them to strengthen their financial position through the use of auction proceeds. The Commission has decided to not bar NCEs from participating because that could limit the number of channels recovered in the reverse auction and thus negatively affect the outcome of the incentive auction process.

73. The NPRM proposes that entities with construction permits be allowed to participate in the reverse auction if they become licensees before the deadline for submission of the application to participate in the auction. This would require stations with unbuilt facilities to complete construction of their stations and seek a license prior to participating in the reverse auction. In addition, for a new station permittee not licensed on February 22, 2012 (but auction eligible because it becomes licensed by the pre-auction application filing deadline), the Commission proposes to evaluate its bid based on the spectrum usage rights authorized in the construction permit it held on February 22, 2012. There are only very few entities in this category, and all are full power television stations. Therefore, the proposal would have little adverse, if any, impact and would affect all entities equally.

74. For the reverse auction bidding, it is proposed that the Commission only examine the spectrum usage rights held by stations in their licenses as of February 22, 2012. All stations will be subject to this policy, and therefore, it is not expected to have a significant impact on small entities and, in any case, the impact would affect all entities equally.

75. The Commission's proposal to allow Class A stations to choose which facilities (analog or digital) to have evaluated for their reverse auction bids will benefit these small entities. Alternatively, the Commission could force many Class A stations to have their bids evaluated based on their licensed analog facilities. The Commission believes it would be unfair to those Class A licensees that have yet to convert to digital operation and that made transition plans in reliance on the rules we adopted just one year ago—months before passage of the Spectrum Act—to limit bid evaluations to only those Class A facilities licensed as of February 22, 2012. Class A stations will be permitted to relinquish the facilities with the greatest value, thus maximizing the return for their spectrum. This decision eliminates or minimizes adverse economic impact on Class A stations which are small.

76. Because they will apply in the same way to all stations, the Commission's proposals to not permit full power or Class A stations with an expired or cancelled license to participate in the reverse auction; to allow stations to participate in the reverse auction by agreeing to relinquish a ''high VHF channel'' (channels 7–13) in exchange for a ''low VHF channel'' (channels 2–6); and to allow licensees to participate in the reverse auction by

[86] As noted in paragraph 0, the Commission has asked for comment on establishing priorities applicable to displacement applications filed by LPTVs, many of which may be owned by small, minority and women applicants.

relinquishing spectrum usage rights through the acceptance of additional interference; would not have a significant impact on small entities and any impact would affect all entities equally.

77. The Commission's proposal to prevent a licensee from proposing a channel sharing arrangement in its reverse auction bid that would result in a change in the station's community of license and/or DMA would only affect full power television stations. The Commission believes that the burden on small entities of not being able to propose to change their communities of license in their reverse auction bid is greatly outweighed by the need to avoid complicated allocation and repacking issues. Following the conclusion of the incentive auction process, stations will once again be permitted to propose changes to their community of license.

78. As part of the rulemaking, we are seeking comment on the impact on broadcasters of the different repacking approaches we are exploring, including economic and other impacts. For example, the Commission considers engineering and other technical aspects of the repacking process, in particular Congress's mandate in Section 6403 of the Spectrum Act that the Commission make all reasonable efforts to preserve the coverage area and population served of television stations in the repacking. Channel reassignments, and stations going off the air as a result of the reverse auction, also may change the interference relationships between stations, which relationships in turn affect population served. The Commission's proposals must account for all of these impacts in order to carry out Congress's mandate in Section 6403.

79. The unlicensed devices operating in this spectrum are designed to adapt to whatever changes may occur in the spectrum that is available at any given location. Therefore, since the equipment is so flexible and will not have to be reconfigured, the Commission does not currently anticipate any adverse economic impact on the relatively few devices that are already deployed or devices that may be introduced in the future. In the NPRM, the Commission seeks comment on a variety of measures to ensure that spectrum in the TV bands will continue to be available for unlicensed use, including measures that may increase availability in many markets where little, if any, is available now. Increasing the availability of spectrum for unlicensed use will benefit small entities that use such spectrum for their various unlicensed devices.

80. In the NPRM, the Commission explores retaining the use of Channel 37 for wireless medical telemetry services and for radio astronomy, as well as the possibility to relocate these users. In the latter case, the Commission seeks comment on the possible economic and other impacts on small, minority-owned, and women-owned small businesses that such a relocation may have, including the availability of other spectrum to support these uses.

81. The Commission proposes to only preserve, during repacking, the service areas of television stations with regard to stations' facilities that were licensed, or for which an application for license to cover authorized facilities already was on file with the Commission, as of February 22, 2012. This proposal would have little impact and any impact would affect all entities equally. Alternatively, the Commission could protect facilities in all pending facility modification applications. However this would greatly complicate the repacking analysis by increasing the amount of facilities under consideration. Additionally, protection of both a licensed facility and a modification thereto that would expand or alter the station's service area would further encumber the spectrum, making it more difficult for the Commission to complete the repacking of the broadcast spectrum.

82. As it did with respect to reverse auction bids by Class A stations, the Commission also proposes that Class A stations elect which facilities they would like protected in repacking. This proposal will benefit small entities such as Class A stations by allowing these stations to choose which facilities to be protected in repacking, Alternatively, the Commission could only protect the Class A station's licensed facilities as of February 22, 2012, but the Commission found that that would be unfair since many Class A's are in the midst of their digital transition; and moreover, failure to protect these stations' unbuilt digital facilities could make it impossible for certain Class A stations to effectuate their conversion plans, thus stalling the digital transition.

83. The Commission proposes to only reimburse the expenses of full power television and Class A stations that are repacked. Alternatively, the Commission could reimburse low power television stations for their repacking expenses. However, that would mean reimbursing stations such as low power television stations that are secondary and that have no expectation of being protected in the repacking process and would also require an expenditure of reimbursement funds that could limit other eligible stations from being fully reimbursed. The burden to small entities such as low power television stations of having to fund their own repacking expenses is outweighed by the intent of Congress to limit reimbursement to only full power and Class A television stations and that have spectrum rights that must be protected in repacking.

84. The Commission's proposal to limit reimbursement to multichannel video programming distributors (MVPDs) as defined by section 602 of the Communications Act [87] would not have a significant impact on small entities since the definition is very broad and will enable providers affected by the incentive auction and repacking processes to qualify to receive reimbursement.

85. The proposal to reimburse stations and MVPDs based upon pre-determined estimated amounts per station will benefit small entities that cannot afford the expense of having to prepare formal documentation for reimbursement. Alternatively, the Commission could require all stations and MVPDs to prepare and file formal documentation of all expenses. However, the benefit of having more accurate reimbursement amounts is outweighed by the burden on small entities to have to prepare and submit such a filing and the possible delay in the completion of the reimbursement process which has a three-year completion deadline.

86. The proposal to advance reimbursement payments to stations and MVPDs, rather than making them go out-of-pocket for their expenses and reimbursing them, would greatly benefit small entities that may not be in the position financial to go out-of-pocket for their reimbursement expenses. The alternative, to make stations pay for repacking costs out-of-pocket, could would have a significant negative impact on small entities and could substantially delay repacking and make it more difficult to comply with the three-year reimbursement deadline set forth in Section 6403 of the Spectrum Act.

87. The proposal to use a simplified, one-step process for implementing the post-auction and post-repacking channel changes will benefit small entities with limited resources. Rather than requiring small entities to go through a prolonged two-step process of first amending the DTV Table of Allotments and then filing an

[87] The Communications Act defines MVPD ''as a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.'' 47 U.S.C. 522(13).

application for its repacked facilities, the proposal allow stations to file either a license application (for stations where no technical changes are proposed such as channel sharing) or a minor change application. In addition, the streamlined procedures are meant to expedite the post-auction licensing and to ensure a smooth post-auction transition and recovery of channels.

88. The proposal to allow stations to implement their post-auction and repacking facilities on a phased timeline will benefit small entities that may not have the resources to dedicate to the band transition process. Transitioning stations will be able to rely on either auction or reimbursement funds to construct their new facilities. Allowing flexibility in the transition schedule, including requests for additional time, will benefit small entities that may not be able to rely on in-house employees and may have to rely on outside contractors to complete construction of their new facilities.

89. The proposal to require all transitioning stations to inform the public of the transition that will occur following the conclusion of the incentive auction and implementation of repacking will have a greater impact on small entities that may have to expend funds to comply with the requirement or forego the airing of advertisements in lieu of viewer notifications. However, the burden on small entities is outweighed by the public's need to be informed of changes in stations' channel assignments.

90. The NPRM contains a proposal to allow existing ownership combinations rendered out of compliance due to channel allotments, or technical changes resulting from repacking, to be permanently ''grandfathered.'' This proposal will benefit small entities that would otherwise be forced to sell one or more of their media interests in order to comply with the multiple ownership rules. A ''forced'' sale would have to be done on an expedited basis and at a reduced price thus resulting in a substantial burden on small entities.

91. To remediate the significant burden to low power television stations, all of which are defined as small entities, from being displaced as a result of repacking, the Commission proposes to allow these stations to have the first opportunity to submit a displacement application and propose a new operating channel. This proposal will benefit small entities by allowing them to identify one of the remaining channels and continue to operate their facilities and avoid having to go off the air.

92. The proposal to require that all channel sharing agreements be in writing; contain certain provisions concerning access to, maintenance of, and modification of the shared transmission facilities; and outline joint responsibility for compliance with certain of the Commission's rules; may have a greater impact on small entities because they may not have access to in-house personnel to prepare and review these agreements. However, the burden on small entities to prepare a channel sharing agreement with the requisite provisions is outweighed by the need to ensure that channel sharing stations comply with the Commission's rules and to prevent disputes that could result in a disruption of service to the public.

93. The proposal to license the 600 MHz band under Economic Areas (EA) geographic size licenses will provide regulatory parity with other bands that provide wireless broadband services that are licensed on an EA basis, such as the lower 700 MHz band licenses. Additionally, assigning 600 MHz licenses in EA geographic areas would allow 600 MHz licensees to make adjustments to suit their individual needs. EA license areas are small enough to provide spectrum access opportunities for smaller carriers. Depending on the licensing mechanism the Commission adopts, licensees may adjust their geographic coverage through auction or through secondary markets. This proposal should make it easier for 600 MHz providers to enter secondary market arrangements involving terrestrial use of their spectrum. The secondary market rules apply equally to all entities, whether small or large. As a result, we believe that this proposal will provide an economic benefit to small entities by making it easier for entities, whether large or small, to enter into secondary market arrangements for 600 MHz spectrum

94. The NPRM makes several proposals to protect entities operating in nearby spectrum bands from harmful interference, which may include small entities. The proposed technical rules are based on the rules for 700 MHz spectrum, with specific additions or modifications designed to protect broadcast licensees, Radio Astronomy, and Wireless Medical Telemetry Services. The technical analysis contained in the NPRM also proposes that no additional rule modifications to protect other spectrum bands are necessary. This proposal may help minimize the impact on any small entities—both existing and potential small entities that may seek to provide services using 600 MHz spectrum—by streamlining regulations for operations in these spectrum bands.

95. The NPRM also proposes to provide 600 MHz licensees with the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum. This proposal is consistent with other spectrum allocated or designated for licensed fixed and mobile services, *e.g.,* Lower 700 MHz. The NPRM further proposes to license this spectrum under the Commission's market-oriented Part 27 rules. Proposals made pursuant to Part 27 include applying the Commission's secondary market policies and rules to all transactions involving the use of the 600 MHz band for terrestrial services, which will provide greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. This proposal should make it easier for 600 MHz providers to enter secondary market arrangements involving terrestrial use of their spectrum. The secondary market rules apply equally to all entities, whether small or large. As a result, we believe that this proposal will provide an economic benefit to small entities by making it easier for entities, whether large or small, to enter into secondary market arrangements for 600 MHz spectrum.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

96. None.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 27

Communications common carriers. Radio.

47 CFR Part 73

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 27, and 73 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r)

and 309; Secs. 6004, 6403, Pub. L. 112–96, 125 Stat. 156.

2. Section 1.949 is amended by adding paragraph (c) to read as follows:

§ 1.949 Application for renewal of license.

* * * * *

(c) *Renewal Showing.* An applicant for renewal of a geographic-area authorization in the 600 MHz band must make a renewal showing, independent of its performance requirements, as a condition of renewal. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(1) The level and quality of service provided by the applicant (*e.g.,* the population served, the area served, the number of subscribers, the services offered);

(2) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(3) The extent to which service is provided to rural areas;

(4) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(f)(3)(i); and

(5) Any other factors associated with the level of service to the public.

§ 1.2102 [Amended]

3. Section 1.2102 is amended by removing paragraph (c).

4. Section 1.2103 is revised to read as follows:

§ 1.2103 Competitive bidding design options.

(a) *Public notice of competitive bidding design options.* Prior to any competitive bidding conducted by the Commission, public notice shall be provided of the detailed procedures that may be used to implement auction design options.

(b) *Competitive bidding design options.* The public notice detailing competitive bidding procedures may establish procedures for collecting bids, assigning winning bids, and determining payments, including without limitation:

(1) *Procedures for collecting bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures allowing for bids that specify a price, indicate demand at a specified price, or provide other information as specified by the Commission.

(iii) Procedures allowing for bids for specific items or bids for a number of generic items in one or more categories of items.

(iv) Procedures allowing for bids that specify a bidder's willingness to accept a price only in the event that other bids are also accepted or other conditions are met, such as for packages of licenses or contiguous licenses.

(v) Procedures to collect bids in any needed additional stage or stages following an initial single or multiple round auction, such as an assignment stage for generic items.

(2) *Procedures for assigning winning bids.* (i) Procedures that take into account one or more factors identified by the Commission in addition to the submitted bid amount, including but not limited to the amount of bids submitted in separate competitive bidding conducted by the Commission.

(ii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for determining payments.* (i) Procedures to determine the amount of any payments made to or by winning bidders consistent with other auction design choices.

(ii) Procedures that provide for payments based on the amount as bid or on the bid amount that would have been assigned winning status.

5. Section 1.2104 is amended by revising paragraph (e) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(e) *Stopping rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time and in accordance with the goals, statutory requirements, and rules for the auctions, including the reserve price or prices.

* * * * *

6. Section 1.2105 is amended by adding paragraph (a)(2)(xii) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of certain communications.

(a) * * *

(2) * * *

(xii) For auctions required to be conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) or in which any spectrum usage rights for which licenses are being assigned were made available under 47 U.S.C. 309(j)(8)(G)(i), the Commission may require certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (a)(2)(ii) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term ''person'' means an individual, partnership, association, joint-stock company, trust, or corporation, and the term ''reasons of national security'' means matters relating to the national defense and foreign relations of the United States.

* * * * *

7. Section 1.9005 is amended by adding paragraph (kk) to read as follows:

§ 1.9005 Included Services.

* * * * *

(kk) The 600 MHz band (part 27 of this chapter).

8. Subpart BB is added to part 1 to read as follows:

Subpart BB—Competitive Bidding—Broadcast Television Spectrum Reverse Auction

Sec.

1.22000 Definitions.
1.22001 Purpose.
1.22002 Competitive bidding design options.
1.22003 Competitive bidding mechanisms.
1.22004 Applications to participate in competitive bidding.
1.22005 Prohibition of certain communications.
1.22006 Confidentiality of Commission-held data.
1.22007 Two competing participants required.
1.22008 Public notice of auction completion and auction results.
1.22009 Binding obligations.
1.22010 Disbursement of incentive payments.

§ 1.22000 Definitions.

For purposes of this subpart:

(a) *Broadcast television licensee.* The term *broadcast television licensee* means the licensee of—

(1) A full-power television station; or

(2) A low-power television station that has been accorded primary status as a Class A television licensee under § 73.6001(a) of this chapter.

(b) *Forward auction.* The term *forward auction* means the portion of an incentive auction of broadcast television spectrum described in section 6403(c) of the Spectrum Act.

(c) *Relinquishment bid.* The term *relinquishment bid* means a bid to relinquish some or all of a broadcast television licensee's broadcast television spectrum usage rights. *Relinquishment bids* include a bid to relinquish all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel; a bid to relinquish all usage rights with respect to an ultra high frequency television channel in return for receiving usage

rights with respect to a very high frequency television channel; a bid to relinquish usage rights in order to share a television channel with another licensee; and any other relinquishment bids permitted by the Commission.

(d) *Reverse auction.* The term *reverse auction* means the portion of an incentive auction of broadcast television spectrum described in section 6403(a) of the Spectrum Act.

(e) *Spectrum Act.* The term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

§ 1.22001 Purpose.

The provisions of this subpart implement section 6403 of the Spectrum Act, which requires the Commission to conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under Subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402 of the Spectrum Act.

§ 1.22002 Competitive bidding design options.

(a) *Public notice of competitive bidding design options.* Prior to conducting competitive bidding in the reverse auction, public notice shall be provided of the detailed procedures that may be used to implement auction design options.

(b) *Competitive bidding design options.* The public notice detailing competitive bidding procedures for the reverse auction may establish procedures for collecting bids, assigning winning bids, and determining payments, including without limitation:

(1) *Procedures for collecting bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures for collecting bids for multiple relinquishment options.

(iii) Procedures allowing for bids that specify a price for a relinquishment option, indicate demand at a specified price, or provide other information as specified by the Commission.

(iv) Procedures allowing for bids that are contingent on specified conditions, such as other bids being accepted.

(v) Procedures to collect bids in an additional stage or stages, if needed, following an initial single or multiple round auction.

(2) *Procedures for assigning winning bids.* (i) Procedures for scoring bids by factors in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors.

(ii) Procedures to evaluate the technical feasibility of assigning a winning bid.

(A) Procedures that utilize mathematical computer optimization software, such as integer programming, to evaluate bids and technical feasibility, or that utilize other decision routines, such as sequentially evaluating bids based on a ranking of scored bids.

(B) Procedures that combine computer optimization algorithms with other decision routines.

(iii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for determining payments.* (i) Procedures to determine the amount of any incentive payments made to winning bidders consistent with other auction design choices.

(ii) Procedures that provide for incentive payments based on the amount as bid or on the highest bid amount that would have been assigned winning status.

§ 1.22003 Competitive bidding mechanisms.

(a) *Public Notice of competitive bidding procedures.* Detailed competitive bidding procedures shall be established by public notice prior to the commencement of the reverse auction.

(b) *Sequencing.* The Commission will establish the sequencing with which the reverse auction and the related forward auction assigning new spectrum licenses will occur.

(c) *Reserve price.* The Commission may establish reserve prices, either disclosed or undisclosed, above which relinquishment bids for various bidding options would not win in the reverse auction. The reserve prices may apply individually, in combination, or in the aggregate.

(d) *Opening bids and bid increments.* The Commission may, by announcement before or during the reverse auction, require maximum or minimum bid increments in dollar or percentage terms. The Commission also may establish maximum or minimum opening bids.

(e) *Stopping rules.* The Commission may establish stopping rules before or during the reverse auction in order to terminate the auction within a reasonable time and in accordance with the goals, statutory requirements, and rules for the auction, including the reserve price or prices.

(f) *Activity rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Auction delay, suspension, or cancellation.* By public notice or by announcement during the reverse auction, the Commission may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 1.22004 Applications to participate in competitive bidding.

(a) *Public notice of the application process.* All applications to participate must be filed electronically. The dates and procedures for submitting applications to participate in the reverse auction shall be announced by public notice.

(b) *Applicant.* The applicant identified on the application to participate must be the broadcast television licensee that would relinquish spectrum usage rights if it places a winning bid.

(c) *Information and certifications provided in the application to participate.* The Commission may require an applicant to provide the following information in its application to participate in the reverse auction:

(1) The following identifying information:

(i) If the applicant is an individual, the applicant's name and address. If the applicant is a corporation, the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, the name, citizenship, and address of all general partners, and, if a general partner is not a natural person, then the name and title of a responsible person for that partner, as well. If the applicant is a trust, the name and address of the trustee. If the applicant is none of the above, it must identify and describe itself and its principals or other responsible persons;

(ii) Applicant ownership and other information as set forth in section 1.2112(a) of this title; and

(iii) For NCE stations, information regarding the applicant's governing board and any educational institution or governmental entity with a controlling interest in the station, if applicable.

(2) The identity of the person(s) authorized to take binding action in the bidding on behalf of the applicant.

(3) For each broadcast television license for which the applicant intends to submit relinquishment bids:

(i) The identity of the station and the television channel;

(ii) Whether it is a full-power or Class A television station;

(iii) If the license is for a Class A television station, certification that it is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station;

(iv) Whether it is an NCE station, and if so, whether it operates on a reserved or non-reserved channel;

(v) The types of relinquishment bids that the applicant may submit; and

(vi) Any additional information required to assess the spectrum usage rights offered.

(4) For each broadcast television license for which the applicant intends to submit a bid to relinquish usage rights in order to share a television channel with another licensee:

(i) The identity of the television channel that the applicant has agreed to share with another licensee;

(ii) Any information regarding the channel sharing agreement required by the Commission;

(iii) Certification that the channel sharing agreement is consistent with all Commission rules and policies, and that the applicant accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel; and

(iv) Certification that its shared channel facilities will continue to provide minimum coverage to its principal community of license as set forth in the Commission's rules.

(5) Certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (c)(1) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term ''person'' means an individual, partnership, association, joint-stock company, trust, or corporation, and the term ''reasons of national security'' means matters relating to the national defense and foreign relations of the United States.

(6) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia, or other agreements, arrangements, or understandings of any kind relating to the spectrum usage rights being auctioned, including any such agreements relating to the post-auction market structure.

(7) Certification under penalty of perjury that the applicant has not entered and will not enter into any explicit or implicit agreements, arrangements, or understandings of any kind with any parties other than those identified pursuant to paragraph (c)(6) of this section regarding the amount of their bids, bidding strategies, or the particular relinquishment bids that they will or will not submit.

(8) An exhibit identifying all current delinquencies on any non-tax debt owed to any Federal agency.

(9) Certification that the applicant agrees that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction.

(10) Certification that the applicant agrees that the bids it submits in the reverse auction are irrevocable, binding offers by the applicant.

(11) Certification that the individual submitting the application to participate and providing the certifications is authorized to do so on behalf of the applicant, and if such individual is not an officer, director, board member, or controlling interest holder of the applicant, evidence that such individual has the authority to bind the applicant.

(12) Certification that the applicant is in compliance with all statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to the license(s) identified in the application to participate.

(13) Such additional information as the Commission may require.

(d) *Application processing.* (1) Any timely submitted application to participate will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications to participate shall be reviewed or considered.

(2) Any application to participate that does not contain all of the certifications required pursuant to this section is unacceptable for filing, cannot be corrected subsequent to the application filing deadline, and will be dismissed with prejudice.

(3) The Commission will provide bidders a limited opportunity to cure specified defects and to resubmit a corrected application to participate. During the resubmission period for curing defects, an application to participate may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, an application to participate may be amended or modified to make minor changes or correct minor errors in the application to participate. Minor amendments may be subject to a deadline specified by public notice. Major amendments cannot be made to an application to participate after the initial filing deadline. Major amendments include, but are not limited to, changes in ownership of the applicant that would constitute an assignment or transfer of control, changes to any of the required certifications, and the addition or removal of licenses identified on the application to participate for which the applicant intends to submit relinquishment bids. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information requested by the Commission to support the certifications made in the application.

(4) Applicants who fail to correct defects in their applications to participate in a timely manner as specified by public notice will have their applications to participate dismissed with no opportunity for resubmission.

(5) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications to participate. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application to participate continues until they are made.

(e) *Notice to qualified and non-qualified applicants.* The Commission will notify each applicant as to whether it is qualified or not qualified to participate in the reverse auction.

§ 1.22005 Prohibition of certain communications.

(a) *Definition of applicant.* For purposes of this section, the term ''applicant'' shall include the entity submitting an application to participate in the reverse auction, all controlling interests in the entity submitting the application to participate, as well as all

holders of partnership and other ownership interests and any stock interest amounting to ten percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting the application to participate, and all officers and directors of that entity. For NCEs, the term ''applicant'' shall also include all members of the licensee's governing board.

(b) *Certain communications prohibited.* After the deadline for submitting applications to participate in the reverse auction, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant directly or indirectly in any manner the substance of its own, or one another's, or any other applicant's bids or bidding strategies, until a date specified by public notice.

(c) *Duty to report potentially prohibited communications.* An applicant that makes or receives a communication that may be prohibited under paragraph (b) of this section shall report such communication in writing to Commission staff immediately, and in any case no later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(d) *Procedures for reporting potentially prohibited communications.* Particular procedures for parties to report communications that may be prohibited under paragraph (b) of this section may be established by public notice. If no such procedures are established by public notice, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

§ 1.22006 Confidentiality of Commission-held data.

The Commission will take all reasonable steps necessary to protect the confidentiality of Commission-held data of a broadcast television licensee participating in the reverse auction, including withholding the identity of such licensee, until the reassignments and reallocations (if any) under section 6403(b)(1)(B) of the Spectrum Act become effective.

§ 1.22007 Two competing participants required.

The Commission may not enter into an agreement for a broadcast television licensee to relinquish broadcast television spectrum usage rights in exchange for a share of the proceeds from the related forward auction assigning new spectrum licenses unless at least two competing broadcast television licensees participate in the reverse auction.

§ 1.22008 Public notice of auction completion and auction results.

Public notice shall be provided when the reverse auction is complete and when the forward auction is complete. Public notice shall be provided of the results of the reverse auction, forward auction, and repacking, and shall indicate that the reassignments of television channels and reallocations of broadcast television spectrum are effective.

§ 1.22009 Binding obligations.

A bidder in the reverse auction assumes an irrevocable, binding obligation to relinquish its spectrum usage rights upon placing a winning bid. Winning bidders will relinquish the spectrum usage rights associated with any winning bids by a date specified by public notice.

§ 1.22010 Disbursement of incentive payments.

A winning bidder shall submit to the Commission the necessary financial information to facilitate the disbursement of the winning bidder's incentive payment. Specific procedures for submitting financial information, including applicable deadlines, will be set out by public notice.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

9. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

10. Section 27.1 is amended by adding paragraph (b)(10) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(10) Spectrum in the 470–698 MHz UHF band that has been reallocated and redesignated for flexible fixed and mobile use pursuant to Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 125 Stat. 156.

* * * * *

11. Section 27.4 is amended by adding in alphanumeric order the definition entitled ''*600 MHz service*'' to read as follows:

§ 27.4 Terms and definitions.

600 MHz service. A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5(j).

* * * * *

12. Section 27.5 is amended by adding paragraph (j) to read as follows:

§ 27.5 Frequencies.

* * * * *

(j) *600 MHz band.* In accordance with the terms and conditions established in Docket No. 12–268, pursuant to Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 125 Stat. 156, the following frequencies are available for licensing pursuant to this part in the 600 MHz band:

(1) [XX] channel blocks of 5 megahertz each are available for assignment for uplink communications (hereinafter the 600 MHz uplink band).

(2) [XX] channel blocks of 5 megahertz each are available for assignment for downlink communications (hereinafter the 600 MHz downlink band).

Note to paragraph (j): The specific frequencies and number of channel blocks will be determined in light of further proceedings pursuant to Docket No. 12–268 and the rule will be updated accordingly.

13. Section 27.6 is amended by adding paragraph (i) to read as follows:

§ 27.6 Service areas.

* * * * *

(i) *600 MHz band.* Service areas for the 600 MHz band prescribed in § 27.5 are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

14. Section 27.11 is amended by adding paragraph (j) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(j) *600 MHz band.* Initial authorizations for the 600 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(j). Authorizations will be based on Economic Areas (EAs), as specified in § 27.6(a).

15. Section 27.13 is amended by adding paragraph (i) to read as follows:

§ 27.13 License period.

* * * * *

(i) *600 MHz band.* Authorizations for the 600 MHz band will have a term not to exceed ten years from the date of issuance or renewal.

16. Section 27.14 is amended by revising the first sentence of paragraph (f) to read as follows:

§ 27.14 Construction requirements; criteria for renewal.

* * * * *

(f) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 600 MHz, 698–746 MHz, 747–762 MHz, and 777–792 MHz bands. * * *

* * * * *

17. Section 27.15 is amended by revising paragraph (d)(1)(i); adding paragraph (d)(1)(iii); revising paragraph (d)(2)(i), and adding paragraph (d)(2)(iii) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(d) * * *

(1) * * *

(i) Except for WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the section option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

* * * * *

(iii) For licensees in the 600 MHz band, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a geographic partitioning must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements).

(2) * * *

(i) Except for WCS licensees holding authorizations for the 600 MHz band, Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

* * * * *

(iii) For licensees holding authorizations in the 600 MHz band, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a spectrum disaggregation must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements).

18. Section 27.17 is added to read as follows:

§ 27.17 Discontinuance of service in the 600 MHz band.

(a) *Termination of Authorization.* A licensee's authorization in the 600 MHz band will automatically terminate, without specific Commission action, if it permanently discontinues service after meeting the interim buildout requirements.

(b) Permanent discontinuance of service is defined as 180 consecutive days during which a 600 MHz licensee does not operate or, in the case of a commercial mobile radio service provider, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

(c) *Filing Requirements.* A licensee of the 600 MHz band that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

19. Section 27.50 is amended by revising paragraphs (c) introductory text, (c)(5), (c)(9), (c)(10), and the heading to Tables 1 through 4 to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(c) The following power and antenna height requirements apply to stations transmitting in the 698–746 MHz band and the 600 MHz downlink band:

* * * * *

(5) Licensees, except for licensees operating in the 600 MHz downlink band, seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

* * * * *

(9) Control and mobile stations are limited to 30 watts ERP in the 698–746 MHz band and 3 watts ERP in the 600 MHz uplink band but are precluded in the 600 MHz downlink band;

(10) Portable stations (hand-held devices) are limited to 3 watts ERP in the 698–746 MHz band and the 600 MHz uplink band but are precluded in the 600 MHz downlink band; and

* * * * *

Table 1 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 757–758 and 775–776 MHz Bands and for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth of 1 MHz or Less

* * * * *

Table 2 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–

793 MHz Bands Transmitting a Signal With an Emission Bandwidth of 1 MHz or Less

* * * * *

Table 3 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth Greater than 1 MHz

* * * * *

Table 4 to § 27.50—Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands Transmitting a Signal With an Emission Bandwidth Greater than 1 MHz

* * * * *

20. Section 27.53 is amended by revising paragraph (g) to read as follows:

§ 27.53 Emission limits.

* * * * *

(g) For operations in the 600 MHz and 698–746 MHz bands, the power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kilohertz or greater. However, in the 100 kilohertz bands immediately outside and adjacent to a licensee's frequency block, a resolution bandwidth of at least 30 kHz may be employed.

* * * * *

21. Section 27.55 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 27.55 Power strength limits.

* * * * *

(a) * * *

(2) 600 MHz, 698–758, and 775–787 MHz bands: 40 dBμV/m.

* * * * *

(b) *Power flux density limit for stations operating in the 698–746 MHz band and the 600 MHz band.* For base and fixed stations operating in the 698–746 MHz band and the 600 MHz band in accordance with the provisions of § 27.50(c)(6), the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

* * * * *

22. Subpart O is added to part 27 to read as follows:

Subpart O—Competitive Bidding Procedures for the 600 MHz Band

Sec.

27.1401 600 MHz band subject to competitive bidding.
27.1402 Designated entities in the 600 MHz band.

§ 27.1401 600 MHz band subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 600 MHz band (*i.e.,* the frequency bands specified in § 27.5(j)) are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.1402 Designated entities in the 600 MHz band.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that has average attributable gross revenues, as determined pursuant to § 1.2110 of this chapter, not exceeding $40 million for the preceding three years.

(2) A very small business is an entity that has average attributable gross revenues, as determined pursuant to § 1.2110 of this chapter, not exceeding $15 million for the preceding three years.

(b) *Bidding credits.* (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

PART 73—RADIO BROADCAST SERVICES

23. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

24. Section 73.3572 is amended by adding paragraph (a)(4)(vi) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

* * * * *

(a) * * *

(4) * * *

(vi) Low power television and TV translators displaced as a result of the broadcast television incentive auction set forth in 47 CFR 73.3700 shall be permitted to submit an application for displacement relief in a restricted filing window announced by the Media Bureau by Public Notice. Priority processing shall be afforded to mutually exclusive applications filed by low power television stations or TV translators that provide the only local over-the-air television service within their protected service area as set forth in § 74.792 of this chapter.

* * * * *

25. Section 73.3700 is revised to read as follows:

§ 73.3700 Reverse auction provisions.

(a) *Definitions.* (1) *High VHF Channel.* For purposes of this paragraph, ''High VHF Channel'' means a television channel located between the frequencies from 174 MHz to 216 MHz (television channels 7 through 13).

(2) *Reverse auction.* For purposes of this paragraph, ''reverse auction'' means the auction set forth in Section 6403(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

(3) *Low VHF Channel.* For purposes of this paragraph, ''Low VHF Channel'' means a television channel located between the frequencies from 54 MHz to 72 MHz and 76 MHz to 88 MHz (television channels 2 through 6).

(4) *MVPD.* For purposes of this paragraph, ''MVPD'' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming as set forth in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

(5) *Repacking.* For purposes of this paragraph, ''repacking'' means the reorganization of the broadcast television spectrum, including the reassignment of channels in conjunction with the reverse auction, as set forth in Section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012.

(6) *Television station.* For purposes of this paragraph, ''television station'' means full power television stations and Class A television stations.

(7) *Ultra High Frequency Television Channel.* For purposes of this paragraph, ''ultra high frequency television channel'' (''UHF'') means a television channel that is located in the portion of the electromagnetic spectrum between the frequencies from 470 MHz to 698 MHz (television channels 14 through 51).

(8) *Very High Frequency Television Channel.* For purposes of this paragraph, ''very high frequency television channel'' (''VHF'') means a television channel that is located in the portion of the electromagnetic spectrum between the frequencies from 54 MHz to 72 MHz, from 76 MHz to 88 MHz, or from 174 MHz to 216 MHz (television channels 2 through 13).

(b) *Participation in reverse auction.* (1) A television station licensee or holder of a construction permit for a newly authorized unbuilt station, may participate in the reverse auction so long as it holds a license for the spectrum it seeks to relinquish prior to the date it submits its application to participate in the reverse auction.

(2) Noncommercial educational (NCE) television stations may participate in the reverse auction.

(3) Television stations may participate in the reverse auction regardless of whether they are subject to any pending complaints or investigations related to the spectrum being contributed to the incentive auction, unless such complaints or investigations have resulted in a revocation or non-renewal of the station's license.

(c) *Channel sharing.* Each licensee participating in a channel sharing arrangement shall continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies applicable to the television service.

(1) *Channel sharing arrangements involving full power television and class A television stations.*

(i) Channel sharing is permissible between full power television stations, between Class A television stations and between full power and Class A television stations.

(ii) A Class A television station that relinquishes usage rights to its channel in order to share a channel with a full power television station pursuant to this paragraph will be licensed with the technical facilities of the full power television station, but must comply in all other respects with the rules and policies applicable to Class A stations as set forth in the Community Broadcasters Protection Act of 1999 and 47 CFR subpart J.

(iii) A full power television station that relinquishes usage rights to its channel in order to share a channel with a Class A television station pursuant to this paragraph will be licensed with the part 74 technical facilities of the Class A television station as set forth in part 74 of this chapter but must continue to comply with the provisions in part 73, subpart E except for those that are inconsistent with the part 74 technical requirements.

(iv) A Class A television station sharing a channel with a full power television station pursuant to this paragraph may only qualify for the cable carriage rights afforded ''qualified low power television stations'' in 47 CFR 76.56(b)(3).

(2) *Channel Sharing Between Commercial and Noncommercial Educational Television Stations.*

(i) Channel sharing is permissible between commercial and NCE television stations.

(ii) An NCE television station licensee that relinquishes a channel reserved for NCE use to share a channel that has not been reserved for NCE use will retain its NCE status while operating on the non-reserved channel and must continue to comply with the requirements set forth in 47 CFR 73.621 and Commission policies related to NCE television stations. The NCE licensee may only assign or transfer its shared license to an entity qualified in that rule section to become an NCE television licensee.

(iii) An NCE television station licensee sharing a channel reserved for NCE use with a commercial television station licensee will retain its NCE status and the commercial licensee will retain its commercial status. The NCE licensee must continue to comply with the requirements set forth in 47 CFR 73.621 and Commission policies related to NCE television stations, and may only assign or transfer its shared license to an entity qualified in that rule section to become an NCE television licensee.

(3) *Required channel sharing agreement provisions.* Channel Sharing Agreements shall contain provisions that:

(i) Ensure that each licensee shall retain sufficient spectrum usage rights to operate one Standard Definition (SD) program stream.

(ii) Ensure that each licensee has reasonable access rights to its shared transmission facilities and is able to operate without limitation.

(iii) Set forth each licensee's rights and responsibilities with respect to maintenance of the shared transmission facilities.

(iv) Specify procedures for licensees to propose and implement modifications to shared transmission facilities.

(v) Provide for the rights of each licensee in the event of assignment or transfer of one of the channel sharing stations to a third party.

(4) *Changes to community of license or market designation.* Stations may not propose any channel sharing arrangement that would result in a change in the stations' community of license or DMA.

(5) *Preservation of carriage rights.* A broadcast television station that voluntarily relinquishes spectrum usage rights under this paragraph in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

(d) *Protection of licensed facilities during repacking.* Only the licensed facilities of television stations as they existed on February 22, 2012 shall be protected during the repacking of the broadcast television spectrum.

(1) *Class A television stations.* A Class A television station that has not completed its conversion to digital operations shall be afforded an opportunity prior to completion of the repacking process to specify an authorized digital facility for which it requests protection during repacking.

(2) [Reserved].

(e) *Post-auction licensing.* (1) *Applications.* Following the announcement of the results of the reverse auction and repacking plan, all stations that have been reassigned to a new channel (excluding a channel sharing station moving to a channel that has not been repacked) must file a minor change application for a construction permit using FCC Forms 301–DTV, 301–CA or 340–DTV by the date specified. Channel sharing stations must each file an application for license using FCC Form 302–DTV by the date specified.

(2) *Deadlines.* (i) *Stations relinquishing channels.* A television station licensee that wins its reverse auction bid to relinquish a channel without receiving in return any usage rights with respect to another channel must comply with the notification and cancellation procedures in 47 CFR 73.1750 and terminate operations on the relinquished channel within [XX] months of notification that it is a winning bidder.

(ii) *Channel-sharing stations.* A licensee that wins its reverse auction bid to relinquish a channel pursuant to a CSA must comply with the notification and cancellation procedures in 47 CFR 73.1750 and terminate operations on the relinquished channel within [XX] months of issuance of notification that it is a winning bidder, even if the shared channel has also been repacked.

(iii) *Stations moving from a UHF to VHF channel and repacked stations.* A licensee that wins its reverse auction bid to move from a UHF to a VHF channel, and a station reassigned to a new channel in the repacking plan, must terminate operation on its former channel and begin operation on its new channel within 18 months of issuance of notification that it is a winning bidder or that it has been assigned a new channel during repacking.

(3) *Requests for additional time to complete construction.* Stations subject to the deadlines in § 73.3700(e)(2) may seek additional time to terminate operations on their former channel facilities and, where applicable, to complete construction of their new channel facilities.

(4) *Consumer education.* Stations subject to the deadlines in § 73.3700(e)(2) must provide notice to their viewers of their planned termination of operations and, if applicable, relocation to a new channel.

(5) *Notice to MVPDs.* Winning bidders in the reverse auction and repacked stations shall notify MVPDs in writing of any changes to the stations' channel or technical facilities that could affect carriage. Such notification shall be provided not less than [XX] days prior to implementation of changes in conjunction with the channel sharing arrangement.

(f) *Compensation.* (1) Television stations are eligible for reimbursement of the costs reasonably incurred as a result of their channels being reassigned through repacking.

(2) MPVDs are eligible for reimbursement of the costs reasonably incurred in order to continue to carry the signal of a television station that has its channel changed as part of repacking or that relinquishes its spectrum rights through the incentive auction.

(3) *Amount of reimbursement.* (i) Television stations may elect to be reimbursed through an advance payment based upon an estimated rate per station or may submit a showing and be reimbursed based upon their actual expenditures incurred in the repacking process.

(ii) MVPDs may elect to be reimbursed through an advance payment based upon an estimated rate per station change or may submit a showing and be reimbursed based upon their actual expenditures incurred to accommodate changes that result from the reverse auction or repacking processes.

(4) In lieu of receiving reimbursement of their costs reasonably incurred as a result of their channels being reassigned through repacking, a television station may accept a waiver of the service rules to permit the television station to provide services other than broadcast television services. Such waiver shall only remain in effect while the licensee provides at least one broadcast television program stream on such spectrum at no charge to the public.

26. Section 73.6012 is revised to read as follows:

§ 73.6012 Protection of Class A TV, low power TV and TV translator stations.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect other authorized Class A TV, low power TV and TV translator stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.707 of this chapter. The protection of other authorized low power TV and TV translator stations and applications for changes in such stations shall not apply in connection with any application filed by a Class A TV station to implement the reorganization of broadcast spectrum authorized in section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012.

27. Section 73.6019 is revised to read as follows:

§ 73.6019 Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect authorized low power TV, TV translator, digital low power TV and digital TV translator stations in accordance with the requirements of § 74.793 (b) through (d) and (h) of this chapter. This protection must be afforded to applications for changes filed prior to the date the digital Class A station is filed. The protection of other authorized low power TV, TV translator, digital low power TV and digital TV translator stations shall not apply in connection with any application filed by a Class A TV station to implement the reorganization of broadcast spectrum authorized in section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012.

[FR Doc. 2012–27235 Filed 11–20–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 225 November 21, 2012

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0050; MO–4500030113]

Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates for or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number (LPN) to each species or to determine that species should be removed from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms) for each candidate species.

Overall, this CNOR recognizes two new candidates, changes the LPN for nine candidates, and removes three species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR in the past year, the current number of species that are candidates for listing is 192.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period October 1, 2011, through September 30, 2012.

We request additional status information that may be available for the 192 candidate species identified in this CNOR.

DATES: We will accept information on any of the species in this Candidate Notice of Review at any time.

ADDRESSES: This notice is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/endangered/what-we-do/cnor.html.* Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Office of Communications and Candidate Conservation, Arlington, VA (see address under **FOR FURTHER INFORMATION CONTACT**), or on our Web site (*http://ecos.fws.gov/tess_public/pub/candidateSpecies.jsp*). Please submit any new information, materials, comments, or questions of a general nature on this notice to the Arlington, VA, address listed under **FOR FURTHER INFORMATION CONTACT.** Please submit any new information, materials, comments, or questions pertaining to a particular species to the address of the Endangered Species Coordinator in the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s), or Chief, Office of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703–358–2171). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We request additional status information that may be available for any of the candidate species identified in this CNOR. We will consider this information to monitor changes in the status or LPN of candidate species and to manage candidates as we prepare listing documents and future revisions to the notice of review. We also request information on additional species to consider including as candidates as we prepare future updates of this notice.

You may submit your information concerning this notice in general or for any of the species included in this notice by one of the methods listed in the **ADDRESSES** section.

Species-specific information and materials we receive will be available for public inspection by appointment, during normal business hours, at the appropriate Regional Office listed below under Request for Information in **SUPPLEMENTARY INFORMATION.** General information we receive will be available at the Office of Communications and Candidate Conservation, Arlington, VA (see address under **FOR FURTHER INFORMATION CONTACT**).

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As defined in section 3 of the ESA, an endangered species is any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. We may identify a species as a candidate for listing after we have conducted an evaluation of its status on our own initiative, or after we have made a positive finding on a petition to list a species, in particular we have found that listing is warranted but precluded by other higher priority listing actions (see the Petition Findings section, below).

We maintain this list of candidates for a variety of reasons: To notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to request input from interested parties to help us identify

those candidate species that may not require protection under the ESA or additional species that may require the ESA's protections; and to request necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species, and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Regional Office listed under Request for Information or visit our Web site, *http://www.fws.gov/endangered/what-we-do/cca.html.*

Previous Notices of Review

We have been publishing candidate notices of review (CNOR) since 1975. The most recent CNOR (prior to this CNOR) was published on October 26, 2011 (76 FR 66370). CNORs published since 1994 are available on our Web site, *http://www.fws.gov/endangered/what-we-do/cnor.html.* For copies of CNORs published prior to 1994, please contact the Office of Communications and Candidate Conservation (see **FOR FURTHER INFORMATION CONTACT** section above).

On September 21, 1983, we published guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Section 4(h)(3) of the ESA (16 U.S.C. 1533(h)(3)) requires the Secretary to establish guidelines for such a priority-ranking guidance system. As explained below, in using this system we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. For all candidate species, the threats are of sufficiently high magnitude to put them in danger of extinction, or make them likely to become in danger of extinction in the foreseeable future. But for species with higher magnitude threats, the threats have a greater likelihood of bringing about extinction or are expected to bring about extinction on a shorter timescale (once the threats are imminent) than for species with lower magnitude threats. Because we do not routinely quantify how likely or how soon extinction would be expected to occur absent listing, we must evaluate factors that contribute to the likelihood and time scale for extinction. We therefore consider information such as: The number of populations or extent of range of the species affected by the threat(s) or both; the biological significance of the affected population(s), taking into consideration the life-history characteristics of the species and its current abundance and distribution; whether the threats affect the species in only a portion of its range, and if so, the likelihood of persistence of the species in the unaffected portions; the severity of the effects and the rapidity with which they have caused or are likely to cause mortality to individuals and accompanying declines in population levels; whether the effects are likely to be permanent; and the extent to which any ongoing conservation efforts reduce the severity of the threat.

As used in our priority-ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent'' and is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats but are not known to be presently facing such threats.

Our priority ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPS).

The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threats are of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (i.e., a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies or DPS would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. No matter which LPN we assign to a species, each species included in this notice as a candidate is one for which we have sufficient information to prepare a proposed rule to list because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the 1983 guidance is available on our Web site at: *http://www.fws.gov/endangered/esa-library/pdf/48fr43098-43105.pdf.* For more information on the LPN assigned to a particular species, the species assessment for each candidate contains the LPN chart and a rationale for the determination of the magnitude and immediacy of threat(s) and assignment of the LPN; that information is summarized in this CNOR.

This revised notice supersedes all previous animal, plant, and combined candidate notices of review.

Summary of This CNOR

Since publication of the previous CNOR on October 26, 2011 (76 FR 66370), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency-list any of these species, particularly species with high priorities (i.e., species with LPNs of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk first.

In addition to reviewing candidate species since publication of the last CNOR, we have worked on numerous findings in response to petitions to list species, and on proposed and final determinations for rules to list species under the ESA. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see *Preclusion and Expeditious Progress,* below, for details).

Based on our review of the best available scientific and commercial information, with this CNOR we identify 2 new candidate species (see New Candidates, below), change the LPN for 9 candidates (see Listing Priority Changes in Candidates, below) and determine that a listing proposal is not warranted for 3 species and thus remove them from candidate status (see Candidate Removals, below). Combined with the other decisions published separately from this CNOR, a total of 192 species (including 69 plant and 123 animal species) are now candidates awaiting preparation of rules proposing

their listing. These 192 species, along with the 94 species currently proposed for listing (including 6 species proposed for listing due to similarity in appearance), are included in Table 1.

Table 2 lists the changes from the previous CNOR, and includes 47 species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those categories. This includes 41 species for which we published a final listing rule, 1 species for which we published a withdrawal of a proposed rule, 2 candidate species for which we published separate not-warranted findings and removed from candidate status, plus the 3 species in this notice that we have determined do not meet the definition of an endangered or threatened species and therefore do not warrant listing. We have removed these species from candidate status in this CNOR.

New Candidates

Below we present a brief summary of one new mammal (Peñasco least chipmunk), and one new fish (Cumberland arrow darter), that are additions to this year's CNOR. Complete information, including references, can be found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from our Web site *http://ecos.fws.gov/tess_public/pub/candidateSpecies.jsp.* For these species, we find that we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but that preparation and publication of a proposal is precluded by higher-priority listing actions (i.e., it met our definition of a candidate species). We also note below that two other species—San Francisco Bay-Delta longfin smelt DPS and Arapahoe snowfly—were identified as candidates earlier this year as a result of separate petition findings published in the **Federal Register**.

Mammals

Peñasco least chipmunk (*Tamias minimus atristriatus*)—The Peñasco least chipmunk is endemic to the White Mountains, Otero and Lincoln Counties, and the Sacramento Mountains, Otero County, New Mexico. The Peñasco least chipmunk historically had a broad distribution throughout the Sacramento Mountains within ponderosa pine forests. The last verification of persistence of the Sacramento Mountains population of Peñasco least chipmunk was in 1966, and the subspecies appears to be extirpated from the Sacramento Mountains. The only remaining known distribution of the least chipmunk is restricted to open, high elevation, talus slopes within a subalpine grassland, located in the Sierra Blanca area, White Mountains, Lincoln and Otero Counties, New Mexico.

The Peñasco least chipmunk faces threats from present or threatened destruction, modification, and curtailment of its habitat from the alteration or loss of mature ponderosa pine forests in one of the two historically-occupied areas. The documented decline in occupied localities, in conjunction with the small numbers of individuals captured, are linked to widespread habitat alteration. Moreover, the highly-fragmented nature of its current distribution is a significant contributor to the vulnerability of this subspecies and increases the likelihood of very small, isolated populations being extirpated. As a result of this fragmentation, even if suitable habitat exists (or is restored) in the Sacramento Mountains, the likelihood of recolonization of historical habitat or population expansion from the White Mountains is extremely remote. Considering the magnitude and imminence of these threats to the subspecies and its habitat, and the vulnerability of the White Mountains population, we conclude that the least chipmunk is in danger of extinction throughout all of its known range now or in the foreseeable future.

The remaining population of Peñasco least chipmunk in the White Mountains is particularly susceptible to extinction as a result of small, reduced population sizes and its isolation. Because of the reduced population size and lack of contiguous habitat adjacent to the extant White Mountains population, even a small impact on the White Mountains could have a very large impact on the status of the species as a whole. As a result of its restricted range, apparent small population size, and fragmented historical habitat, the one known remaining extant population in the White Mountains is inherently vulnerable to extinction due to effects of small, population sizes. These impacts are likely to be seen in the population at some point in the foreseeable future, but do not appear to be affecting this population currently. Therefore, we conclude the threats to this population are of high magnitude, but not imminent. Therefore, we assign an LPN of 6 to the subspecies.

Fish

Cumberland arrow darter (*Etheostoma sagitta sagitta*)—The following summary is based on information in our files. The Cumberland arrow darter is a brightly colored darter with a total length of 116 millimeters (4.6 inches). It is restricted to the upper Cumberland River basin in southeastern Kentucky and northeastern Tennessee. The Cumberland arrow darter typically inhabits small, headwater streams (first to third order) but is sometimes observed in larger streams or small rivers. Its preferred habitat consists of pools or transitional areas between riffles and pools (runs and glides) in moderate to high gradient streams with bedrock, boulder, and cobble substrates. Cumberland arrow darters feed on a variety of aquatic invertebrates, but adults feed predominantly on larval mayflies (order Ephemeroptera), specifically the families Heptageniidae and Baetidae. Rangewide surveys from 2010 to 2012 revealed that the Cumberland arrow darter has been extirpated from portions of its range. During these efforts, the subspecies was observed at 60 of 101 historical streams and 72 of 123 historical sites.

The subspecies' habitat and range have been degraded and limited by water pollution from surface coal mining and gas exploration activities; removal of riparian vegetation; stream channelization; increased siltation associated with poor mining, logging, and agricultural practices; and deforestation of watersheds. The magnitude of these threats is most severe in the eastern half of the range, where resource extraction activities are more common and public ownership is sparse. The threat magnitude is lower in the western half of the range where resource extraction activities are less severe and a larger proportion of the range is in public ownership. Since the species and its life cycle and habitat requirements are fairly evenly distributed across its range, overall, the magnitude of the threats is moderate. We also consider these threats to be imminent because the threats are ongoing and will continue for the foreseeable future. Consequently, we assigned an LPN of 9 to the Cumberland arrow darter.

Longfin smelt, San Francisco Bay-Delta DPS (*Spirinchus thaleichthys*)—We previously announced candidate status for this DPS, and described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on April 2, 2012 (77 FR 19756).

Insects

Arapahoe snowfly (*Capnia arapahoe*)—We previously announced candidate status for this species, and

described the reasons and data on which the finding was based, in a separate warranted-but-precluded 12-month petition finding published on May 10, 2012 (77 FR 27386).

Listing Priority Changes in Candidates

We reviewed the LPN for all candidate species and are changing the numbers for the following species discussed below. Some of the changes reflect actual changes in either the magnitude or immediacy of the threats. For some species, the LPN change reflects efforts to ensure national consistency as well as closer adherence to the 1983 guidelines in assigning these numbers, rather than an actual change in the nature of the threats.

Reptiles

Sonoran desert tortoise (*Gopherus morafkai*)—The following summary is based on information contained in our files. Sonoran desert tortoises are most closely associated with Sonoran and Mojave Desert scrub vegetation types, but may also be found in other habitat types within their distribution and elevation range. They occur most commonly on rocky, steep slopes and bajadas in paloverde-mixed cacti associations. Washes and valley bottoms may be used in dispersal and, in some areas, as all or part of home ranges. Most Sonoran desert tortoises in Arizona occur between 904 to 4,198 feet (275 to 1280 meters) in elevation. The Sonoran desert tortoise is distributed south and east of the Colorado River in Arizona in all counties except for Navajo, Apache, Coconino, and Greenlee Counties, south to the Rio Yaqui in southern Sonora, Mexico.

Threats known to affect Sonoran desert tortoises include nonnative plant species invasions and altered fire regimes; urban and agricultural development, and human population growth; barriers to dispersal and genetic exchange; off-highway vehicles; roads and highways; historical ironwood and mesquite tree harvest in Mexico; improper livestock grazing (predominantly in Mexico); undocumented human immigration and interdiction activities; illegal collection; predation from feral dogs; human depredation and vandalism; drought; and climate change. Threats to the Sonoran desert tortoise differ geographically in type and scope, and are highly synergistic in their effects. However, in their totality, these threats are high in magnitude because of the large amount of habitat that is likely to be affected and the irreversible nature of the effect of these threats in sensitive habitats that are slow to rebound. While some threats are ongoing, the more significant ones are not. Thus, overall, the threats are nonimminent. Recent phylogenetic research confirmed what has been suspected for decades within the scientific community that the Sonoran desert tortoise is a distinct species. Therefore, we changed the LPN from a 6 to a 5, reflecting that this entity is now a full species and no longer a DPS.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Sonoyta mud turtle occurs in a spring and pond at Quitobaquito Springs on Organ Pipe Cactus National Monument in Arizona, and in the Rio Sonoyta and Quitovac Spring of Sonora, Mexico. Loss and degradation of stream habitat from water diversion and groundwater pumping, along with its very limited distribution, are the primary threats to the Sonoyta mud turtle. The Sonoyta mud turtle may also be vulnerable to aerial spraying of pesticides on nearby agricultural fields. Sonoyta mud turtles are highly aquatic and depend on permanent water for survival. The area of southwest Arizona and northern Sonora where the Sonoyta mud turtle occurs is one of the driest regions in the Southwest. Due to continued drought and irrigated agriculture in the region, we expect surface water in the Rio Sonoyta to further dwindle in the foreseeable future but not as imminently as previously believed since National Park Service staff have implemented several actions to stabilize the water levels at Quitobaquito Springs. However, surface water use will have a significant impact on the survival of this subspecies. Based on a change in the timing of the threat from the reduction of surface water to nonimminent (i.e., expected to occur in foreseeable future), we are changing the LPN for Sonoyta mud turtle from a 3 to a 6.

Amphibians

Black Warrior waterdog (*Necturus alabamensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Black Warrior waterdog is a salamander that inhabits streams above the Fall Line within the Black Warrior River Basin in Alabama. There is very little specific locality information available on the historical distribution of the Black Warrior waterdog because little attention was given to this species between its description in 1937 and the 1980s. During this time, there were a total of only 11 known historical records from 4 Alabama counties. Two of these sites have now been inundated by impoundments. Extensive survey work was conducted in the 1990s to look for additional populations. As a result of that work, the species was documented at 14 sites in 5 counties.

Water-quality degradation is the biggest threat to the continued existence of the Black Warrior waterdog. Most streams that have been surveyed for the waterdog showed evidence of pollution and many appeared biologically depauperate. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of waterdog habitat. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. The North River, Locust Fork, and Mulberry Fork, all streams that this species inhabits, are on the Environmental Protection Agency's list of impaired waters. An additional threat to the Black Warrior waterdog is the creation of large impoundments that have flooded thousands of square hectares of its habitat. These impoundments are likely marginal or unsuitable habitat for the salamander. Suitable habitat for the Black Warrior waterdog is limited, and available data indicate extant populations are small and their viability is questionable. This situation is pervasive and problematic; water quality issues are persistent and regulatory mechanisms are not ameliorating these ongoing threats. The most current survey information indicates all populations except one may have decreased below detectable limits indicating the threats have increased in their severity and effects on the species. Based on this updated information, the threats are now of high magnitude overall. Water quality degradation in the Black Warrior Basin is ongoing, therefore, the threats are imminent. We have changed the LPN from an 8 to a 2 for this species.

Snails

Page springsnail (*Pyrgulopsis morrisoni*)—The following summary is based on information contained in our files. The Page springsnail is known from a complex of springs located within an approximately 0.93-mi (1.5-km) stretch along the west side of Oak

Creek around the community of Page Springs, and within springs located along Spring Creek, tributary to Oak Creek, Yavapai County, Arizona.

The primary threat to the Page springsnail has been modification of habitat by domestic use, agriculture, ranching, fish hatchery operations, recreation, and groundwater withdrawal. Many of the springs where the species occurs have been subjected to some level of modification. However, the immediacy of the threat of groundwater withdrawal is uncertain, due to conflicting information regarding immediacy. Based on recent survey data, it appears that the Page springsnail is abundant within natural habitats and persists in modified habitats, albeit at reduced densities. Arizona Game and Fish Department (AGFD) management plans for the Bubbling Ponds and Page Springs fish hatcheries include commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. The candidate conservation agreement with assurances (CCAA) for the Page springsnail has resulted in the implementation of conservation measures such as restoration and creation of spring ecosystems, including springs on AGFD properties. The implementation of the CCAA has resulted in measurable benefits to the species and its habitats. Additionally, the National Park Service has expressed an interest in restoring natural springhead integrity to Shea Springs, a site historically occupied by Page springsnail.

Accordingly, we find that ongoing implementation of the CCAA continues to substantially reduce the magnitude and immediacy of threats to, and to appreciably improve the conservation status of, the species. Therefore, we are changing the LPN for the Page springsnail from an 8 to an 11.

Insects

Nevares Spring naucorid bug (*Ambrysus funebris*)—The Nevares Spring naucorid bug is an aquatic insect that has a distribution that is limited to the Travertine-Nevares Springs Complex within Death Valley National Park, Inyo County, California. Surveys indicate that it is a rare species within the aquatic invertebrate community. The Travertine and Nevares Springs areas have eight water collection facilities that provide water for commercial and domestic uses. Information pertaining to the historical distribution of the Nevares Spring naucorid bug prior to the development of the local water collection systems is not available. However, several of the aquatic habitats where the insect occurred have been eliminated or substantially reduced in size. It is likely that the species occupied a large area of habitat where suitable micro-habitat features were present. The widespread loss of aquatic habitat within the Travertine-Nevares Springs Complex since the water collection systems were installed suggests the species has experienced major reductions in abundance and distribution as springbrook environments were eliminated or reduced in extent. The adverse effects of water diversion activities are most pronounced during the summer months, when aquatic habitats and the species that occupy those habitats are most restricted, and therefore vulnerable to perturbation. In addition, as the human population in southwestern Nevada grows, the demand for ground water and the application for permits to pump more ground water from the underground aquifer that supplies water to desert springs, seeps, and streams in Death Valley National Park will grow. This would likely reduce the quantity of water supplies to desert seeps, springs, and streams and reduce the habitat available to the Nevares Spring naucorid bug.

Nonnative mosquitofish (*Gambusia affinis*) may prey on and compete with Nevares Spring naucorid bugs for food resources. Crayfish (*Procambarus* sp.) are in close proximity to the naucorid bug's range, and if ever introduced into the same habitat, could pose an immediate threat to the species. The presence of nonnative plants may also reduce water availability or alter microhabitat features. Climate change will likely affect the species because increasing temperatures will likely result in greater evaporation rates and increasingly arid conditions, which may result in decreased recharge rates into the groundwater system. In previous years, magnitude of threats was classified as high and immediacy of threats was classified as nonimminent for this species, resulting in an LPN of 5. However, the primary threats to this species are ongoing, and, thus, to ensure consistency in the application of our listing priority process, we have changed the immediacy of threats from nonimminent to imminent, resulting in an LPN of 2 (high magnitude and imminent threats) for the Nevares Spring naucorid bug.

Stephan's riffle beetle (*Heterelmis stephani*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Stephan's riffle beetle is an endemic riffle beetle historically found in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. In the most recent surveys conducted in 1993, the beetle was only documented in Sylvester Spring in Madera Canyon, within the Coronado National Forest. Suspected potential threats to that spring are largely from habitat modification, and potential changes in water quality and quantity due to catastrophic natural events and climate change. The threats are of low to moderate magnitude based on our current knowledge that the effects of these threats are unlikely to be permanent as they stem from occasional natural events that do not result in permanent water quality degradation. Additionally, there is a higher likelihood that the species will persist in areas that are unaffected by the threats; it is unlikely that all areas of the spring would be simultaneously be affected. Threats from habitat modification have already occurred and are no longer ongoing, and the threats from climate change are expected to occur over many years. Therefore, the threats are nonimminent. Thus, we are changing the LPN for the Stephan's riffle beetle from an 8 to an 11.

Flowering Plants

Astragalus anserinus (Goose Creek milkvetch)—The following summary is based on information in our files and in the petition received on February 3, 2004. The majority (over 80 percent) of Goose Creek milkvetch sites in Idaho, Utah, and Nevada occur on Federal lands managed by the Bureau of Land Management. The rest of the sites occur as small populations on private and State lands in Utah and on private land in Idaho and Nevada. Goose Creek milkvetch occurs in a variety of habitats, but is typically associated with dry, tuffaceous soils (made up of rock consisting of smaller kinds of volcanic detritus) from the Salt Lake Formation. The species grows on steep or flat sites, with soil textures ranging from silty to sandy to somewhat gravelly. The species tolerates some level of disturbance, based on its occurrence on steep slopes where downhill movement of soil is common.

The primary threat to Goose Creek milkvetch is habitat degradation and modification resulting from an altered wildfire regime, fire suppression activities, and rehabilitation efforts to recover lands that have burned. Other factors that also appear to threaten Goose Creek milkvetch include livestock use; invasive, nonnative species; and the inadequacy of regulatory mechanisms to address these threats. Climate change effects to Goose

Creek drainage habitats are possible, but we are unable to predict the specific impacts of this change to Goose Creek milkvetch at this time.

We originally assigned the species an LPN of 5 based on high magnitude threats that were capable of destroying entire populations, but that were nonimminent, or not currently ongoing. However, our recent review reveals that the threats have increased and are now imminent, or currently occurring, largely a result of land management actions taken since fires initially altered the habitat. We now consider the threats associated with livestock grazing and invasive species to be imminent throughout a large portion of the species' range. The increased magnitude and immediacy of threats leaves the species and its small populations more vulnerable to stochastic events. Additionally, surveys have not identified new populations that would significantly increase the range or extent of the species. Therefore, we are changing the LPN for Goose Creek milkvetch from a 5 to a 2.

Calochortus persistens (Siskiyou mariposa lily)—The following summary is based on information contained in our files and the petition we received on September 10, 2001. The Siskiyou mariposa lily is a narrow endemic that is restricted to three disjunct ridge tops in the Klamath-Siskiyou Range near the California-Oregon border. The southernmost occurrence of this species is composed of nine separate sites on approximately 17.6 hectares (ha) (43.4 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 10 kilometers (km) (6 miles (mi)) along the Gunsight-Humbug Ridge, Siskiyou County, California. In 2007, a new occurrence was confirmed in the locality of Cottonwood Peak and Little Cottonwood Peak, Siskiyou County, where several populations are distributed over 164 ha (405 ac) on three individual mountain peaks in the Klamath National Forest and on private lands. The northernmost occurrence consists of not more than five Siskiyou mariposa lily plants that were discovered in 1998, on Bald Mountain, west of Ashland, Jackson County, Oregon.

Major threats include competition and shading by native and nonnative species fostered by suppression of wildfire; increased fuel loading and subsequent risk of wildfire; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance, direct damage, and exotic weed and grass species introduction as a result of heavy recreational use and construction of fire breaks. Dyer's woad (*Isatis tinctoria*), an invasive, nonnative plant that may prevent germination of Siskiyou mariposa lily seedlings, affects 75 percent of the known lily habitat on Gunsight-Humbug Ridge, the southernmost California occurrence. U.S. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of Siskiyou mariposa lily.

The combination of restricted range, extremely low numbers (five plants) in one of three disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, low seed production, apparently poor survival rates in some years, herbivory, habitat disturbance, and competition from exotic plants threaten the continued existence of this species. However, because efforts are underway to reduce the threat of dyer's woad where it is found and because there is no evidence of a decline in the populations of any of the three *C. persistens* occurrences since the time this species was added to the list of candidate species, we now classify the magnitude of existing threats as moderate rather than high. As the threats of competition from exotic plants are not anticipated to overwhelm a large portion of the species' range in the immediate future, the threats are nonimminent. Therefore, we have changed the LPN from a 5 to an 11 to this species.

Helianthus verticillatus (whorled sunflower)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The whorled sunflower is found in moist, prairie-like openings in woodlands and along adjacent creeks. Despite extensive surveys throughout its range, only four populations are known for this species. There is one population (consisting of two subpopulations) documented in Cherokee County, Alabama; one population in Floyd County, Georgia; and one population each in Madison and McNairy Counties, Tennessee.

This species appears to have restricted ecological requirements and is dependent upon the maintenance of prairie-like openings for its survival. Active management of habitat is needed to keep competition and shading under control. Much of its habitat has been degraded or destroyed for agricultural, silvicultural, and residential purposes. Populations near roadsides or powerlines are threatened by herbicide usage in association with right-of-way maintenance. The majority of the Georgia population is protected due to its location within a conservation easement; however, only 15 to 20 plants are estimated to occur at this site. The remaining three populations are not formally protected, but efforts have been taken to abate threats associated with highway right-of-way maintenance at one Alabama subpopulation. However, timber growth, following a 2001 timber harvest that benefitted the plants, now threatens the other Alabama subpopulation. Last year, this species was assigned an LPN of 8 based on imminent threats of moderate magnitude. However this year, we have evidence that one Alabama subpopulation is facing new threats from shading by trees, and additional information on the variable reproductive fitness of the species. Because small population size poses a threat to all known populations of *H. verticillatus,* threats associated with land uses affect all populations except for the one in Georgia, and the reproductive fitness of the Georgia population is apparently diminished, we currently consider threats to be of high magnitude, and have changed the LPN to 2 for this species.

Candidate Removals

As summarized below, we have evaluated the threats to the following species and considered factors that, individually and in combination, currently or potentially could pose a risk to these species and their habitats. After a review of the best available scientific and commercial data, we conclude that listing these species under the Endangered Species Act is not warranted because these species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their ranges. Therefore, we find that proposing a rule to list them is not warranted, and we no longer consider them to be candidate species for listing. We will continue to monitor the status of these species and to accept additional information and comments concerning this finding. We will reconsider our determination in the event that new information indicates that the threats to the species are of a considerably greater magnitude or imminence than identified through assessments of information contained in our files, as summarized here.

Snails

Elongate mud meadows springsnail (*Pyrgulopsis notidicola*)—The following summary is based on information

contained in our files. *Pyrgulopsis notidicola,* a freshwater snail, is endemic to Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province, Humboldt County, Nevada. The species is currently known to occupy four separate stretches of thermal (between 45 and 32 ° Celsius, 113 and 90 ° Fahrenheit) aquatic habitat. The first stretch is the largest at approximately 600 m (1,968 ft) long and 2 m (6.7 ft) wide. The other stretches where *Pyrgulopsis notidicola* occurs are less than 6 m (19.7 ft) long and 0.5 m (1.6 ft) wide. *Pyrgulopsis notidicola* occurs only in shallow, flowing water on gravel substrate. The species does not occur in deep water (i.e., impoundments) where water velocity is low, gravel substrate is absent, and sediment levels are high.

The primary threat to *Pyrgulopsis notidicola* identified when the species was elevated to candidate status was associated with the pattern and amount of recreational use in Soldier Meadow, particularly bathing and camping in the immediate vicinity of the only spring known to contain the species at that time. However, management actions implemented by the Bureau of Land Management (BLM) have greatly reduced recreation impacts in Soldier Meadow and thus have appreciably reduced the threat of habitat destruction or modification for *Pyrgulopsis notidicola.* BLM constructed a designated central campground to preclude dispersed camping in sensitive habitats. Established walkways were also constructed to direct foot traffic away from sensitive habitats, including springs occupied by *Pyrgulopsis notidicola.* BLM implemented a campground host system during periods of peak recreation use, and the site steward interacts with recreationists, directing them to designated camping and bathing areas. Educational signs that provide information on the need to protect sensitive species like *Pyrgulopsis notidicola* and their habitats were also installed. In addition, BLM has increased on-site presence of staff, including law enforcement staff, within the area. Another conservation action implemented was construction of a 1,215-ha (3,000-ac) exclosure fence to exclude livestock, wild horses, and burros from the majority of the hot springs, including *Pyrgulopsis notidicola* habitat. Some of these conservation actions began before *Pyrgulopsis notidicola* became a candidate, but most have been implemented since that time.

Only one population was known at the time *Pyrgulopsis notidicola* was designated as a candidate in 2002. Since then, three additional populations have been discovered, indicating the species is more widely distributed and abundant than previously thought. As a result, the species is less vulnerable to stochastic events than previously thought.

Because conservation actions implemented in Soldier Meadow have greatly reduced threats to *Pyrgulopsis notidicola* and are likely to stay in place for the foreseeable future, and because the population status of the species is more secure than originally thought as a result of the discovery of three additional populations, we conclude that *Pyrgulopsis notidicola* no longer meets the definition of an endangered or threatened species under section 3 of the ESA. There are no portions of its range where threats remain, therefore, it is not threatened or endangered in a significant portion of its range. Therefore, we find that listing of *Pyrgulopsis notidicola* throughout all or a significant portion of its range is no longer warranted, and we have removed it from candidate status.

Flowering Plants

Castilleja christii (Christ's paintbrush)—The following summary is based on information contained in our files and the petition we received on January 2, 2001. *Castilleja christii* occurs as a single population within an approximately 85-ha (220-ac) area of subalpine meadow and sagebrush habitats found near the summit of Mount Harrison, Cassia County, Idaho, between 2,621 and 2,804 meters (8,600 to 9,200 feet (ft)). This endemic species is considered a hemiparasite that grows in association with native host plants found in its subalpine-meadow and sagebrush habitats. The species is subject to annual population fluctuations likely resulting from a variety of factors, such as biological interactions, anthropogenic disturbances, and environmental effects. The most recent population estimate, conducted in 2005, used distance sampling to estimate the overall population size for *C. christii* of 1,267,580 plants, with lower and upper confidence limits of 819,126 and 1,716,033 plants, respectively. The overall *C. christii* population is currently stable throughout a large portion of its range.

Castilleja christii was previously threatened by destruction, modification, and curtailment of its habitat by the effects from the nonnative smooth brome (*Bromus inermis*), recreation-based impacts, and inadequate regulatory mechanisms. It was also thought that hybridization with nearby *Castilleja* spp. may be affecting *C. christii.* The U.S. Forest Service has successfully implemented numerous conservation actions that have ameliorated most of the previously known threats and established long-term monitoring programs to document their effectiveness on conservation actions. There is a long-term commitment by the Forest Service, through a 2005 Candidate Conservation Agreement and 2012 Memorandum of Agreement with the Service, to continue to implement conservation actions for *C. christii.* Furthermore, recent research by Boise State University has demonstrated that hybridization is not a factor affecting *C. christii.* Finally, the species' estimated population is much larger—by as much as two orders of magnitude—than earlier estimates had indicated. Therefore, we find that this species is no longer warranted for listing throughout all or a portion of its range. The species no longer meets our definition of a threatened or endangered species, and we have removed it from candidate status.

Narthecium americanum (bog asphodel)—Over the last 20 years frequent monitoring activities, studies, and increases in regulatory protections have improved our understanding and outlook for the status of *Narthecium americanum.* Based on our current review of the best available information, we have determined that the species is less imperiled than previously believed and therefore does not warrant listing as threatened or endangered.

The historical range of *Narthecium americanum* included three counties in the Pinelands Area of New Jersey and one county each in Delaware and South Carolina. The Delaware and South Carolina occurrences are documented by a single sample in each state collected in 1895 and 1922, respectively. The species' current range includes the same three New Jersey counties. The species' distribution consists of 18 occurrences covering approximately 80 ac. The relatively broad distribution of the species reduces the risk or loss of the species from stochastic, habitat-modifying events. While some historical locations have been lost on the periphery of the species' range due to habitat loss, other new locations have been found.

There are no manmade or natural threats affecting *Narthecium americanum* to the level that the species meets the definition of threatened or

endangered. Approximately 97 percent of *N. americanum* occurs on public land or on private conservation land. Therefore, the historical threats of wetland filling, draining, flooding, and conversion to commercial cranberry bogs that resulted in the decline of the species are no longer occurring. Other manmade threats that we once thought were severely affecting the species such as upland development, water withdrawal, disturbance from recreational activities such as off-road vehicles (ORV), and collection are either adequately regulated (development and water withdrawal) or at most having a *de minimus* impact (ORV and collection) on a small number of populations. The regulations controlling the manmade threats are expected to stay in place, and the *de minimus* level of impacts are expected to remain stable or further decrease. The natural threats of habitat succession, deer and waterfowl browsing, and beaver flooding are also not affecting *N. americanum* as we once believed. For example, new information suggests that the species is able to persist in closed canopy conditions and that greater than 20 percent of the distribution of *N. americanum* is found in cedar forest cover that has remained relatively stable for the past 61 years. In addition, wetter microhabitat conditions created by deer trails may allow *N. americanum* to expand and colonize into forested areas. Beaver flooding of the species' habitat does occur, but only five percent of all *N. americanum* occurrences are negatively influenced by beaver activities. These natural threats are not anticipated to increase. And lastly, climate change is not now impacting the species, and we are unable to accurately predict if or how *N. americanum* may be impacted by climate change in the future. It is possible that future climate conditions in the New Jersey Pinelands may cause changes in water table, precipitation, or evapotranspiration levels. However, these climate processes may increase or decrease or the potential effects may be off-setting. Therefore, based on the best available information, we cannot conclude that climate change is a threat to *N. americanum.*

In summary, *Narthecium americanum* is secure within its current range. There are no manmade or natural threats affecting the species to such a degree that *N. americanum* warrants listing in all or a significant portion of its range. The species no longer meets our definition of a threatened or endangered species, and we have removed it from candidate status.

Petition Findings

The ESA provides two mechanisms for considering species for listing. One method allows the Secretary, on his own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. The CNOR serves several purposes as part of the petition process: (1) In some instances (in particular, for petitions to list species that the Service has already identified as candidates on its own initiative), it serves as the petition finding; (2) for candidate species for which the Service has made a warranted-but-precluded petition finding, it serves as a ''resubmitted'' petition finding that the ESA requires the Service to make each year; and (3) it documents the Service's compliance with the statutory requirement to monitor the status of species for which listing is warranted-but-precluded to ascertain if they need emergency listing.

First, the CNOR serves as a petition finding in some instances. Under section 4(b)(3)(A), when we receive a listing petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information indicating that listing may be warranted (a ''90-day finding''). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make and publish one of three possible findings within 12 months of the receipt of the petition (a ''12-month finding''):

(1) The petitioned action is not warranted;

(2) The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) of the ESA govern further procedures regardless of whether we issued the proposal in response to a petition); or

(3) The petitioned action is warranted but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals to determine whether any species is endangered or threatened, and (b) expeditious progress is being made to add qualified species to the Lists. We refer to this third option as a ''warranted-but-precluded finding.''

We define ''candidate species'' to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481; December 5, 1996). The standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

Therefore, all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings. Nevertheless, we review the status of the newly petitioned candidate species and through this CNOR publish specific section 4(b)(3) findings (i.e., substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition. On October 5, 2011, we received a petition to list the Peñasco least chipmunk (see summary above under New Candidates) after we had initiated our assessment of this species for candidate status. As part of this notice, we are making the substantial 90-day and warranted-but-precluded 12-month findings for this species. We have identified the candidate species for which we received petitions by the code ''C*'' in the category column on the left side of Table 1 below.

Second, the CNOR serves as a ''resubmitted'' petition finding. Section 4(b)(3)(C)(i) of the ESA requires that when we make a warranted-but-precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. Thus, we must make a 12-month petition finding in compliance with section 4(b)(3)(B) of the ESA at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make these annual findings for petitioned candidate species through the CNOR.

Third, through undertaking the analysis required to complete the CNOR, the Service determines if any candidate species needs emergency listing. Section 4(b)(3)(C)(iii) of the ESA requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12-month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant

risk to the well being of any such species.'' The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate we will make prompt use of the emergency listing authority under section 4(b)(7). For example, on August 10, 2011, we emergency listed the Miami blue butterfly (76 FR 49542). We have been reviewing and will continue to review, at least annually, the status of every candidate, whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms constitute the Service's system for monitoring and making annual findings on the status of petitioned species under sections 4(b)(3)(C)(i) and 4(b)(3)(C)(iii) of the ESA.

A number of court decisions have elaborated on the nature and specificity of information that must be considered in making and describing the petition findings in the CNOR. The CNOR published on November 9, 2009 (74 FR 57804), describes these court decisions in further detail. As with previous CNORs, we continue to incorporate information of the nature and specificity required by the courts. For example, we include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, below, which includes the lead region and the LPN for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species only, and we explain the priority system and why the work we have accomplished does preclude action on listing candidate species.

In preparing this CNOR, we reviewed the current status of, and threats to, the 172 candidates for which we have received a petition to list and the 5 listed species and for which we have received a petition to reclassify from threatened to endangered, where we found the petitioned action to be warranted but precluded. Included in this work is our review of the current status of, and threats to, the Canada lynx in New Mexico for which we received a petition to add that State to the listed range. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

Our review included updating the status of, and threats to, petitioned candidate or listed species for which we published findings, under section 4(b)(3)(B) of the ESA, in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species.

The immediate publication of proposed rules to list these species was precluded by our work on higher priority listing actions, listed below, during the period from October 1, 2011, through September 30, 2012. Below we describe the actions that continue to preclude the immediate proposal and final promulgation of a regulation implementing each of the petitioned actions for which we have made a warranted-but-precluded finding, and we describe the expeditious progress we are making to add qualified species to, and remove species from, the Lists. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available to determine if a change in status is warranted, including the need to emergency-list a species under section 4(b)(7) of the ESA.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why each of these candidates warrants listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet Web site: *http://ecos.fws.gov/tess_public/pub/candidateSpecies.jsp.* As described above, under section 4 of the ESA, we identify and propose species for listing based on the factors identified in section 4(a)(1), and section 4 also provides a mechanism for the public to petition us to add species to the Lists of Endangered or Threatened Wildlife and Plants under the ESA.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted-but-precluded, the Service must make two findings: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending listing proposals, and (2) that expeditious progress is being made to add qualified species to either of the lists and to remove species from the lists. 16 U.S.C. 1533(b)(3)(B)(iii).

Preclusion

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions—(1) the amount of resources available for completing the listing function, (2) the estimated cost of completing the proposed listing, and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

Available Resources

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program. This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the ESA (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the ESA; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions

(including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

We cannot spend more for the Listing Program than the amount of funds within the spending cap without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for completing Listing Program actions other than critical habitat designations (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session. June 19, 2001)). In FY 2002 and each year until FY 2006, the Service had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds were available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2012, based on the Service's workload, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations.

For FY 2012 Congress also put in place two additional subcaps within the listing cap: One for listing actions for foreign species and one for petition findings. As with the critical habitat subcap, if the Service does not need to use all of the funds within the subcap, we are able to use the remaining funds for completing proposed or final listing determinations. In FY 2012, based on the Service's workload, we were able to use some of the funds within the foreign species subcap and the petitions subcap to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the three subcaps, and the amount of funds needed to complete court-mandated actions within those subcaps, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap—other than those within the subcaps needed to comply with court orders or court-approved settlement agreements requiring critical habitat actions for already-listed species, listing actions for foreign species, and petition findings—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2012, on December 23, 2011, Congress passed a Consolidated Appropriations Act (Pub. L. 112–74) which provided funding through the end of the fiscal year. In particular, it included a spending cap of $20,902,000 for the Listing Program. Of that, no more than $7,472,000 was available for determinations of critical habitat for already listed species. In addition, no more than $1,500,000 could be used for listing actions for foreign species and no more than $1,500,000 could be used to make 90-day or 12-month findings on petitions. The Service thus had $10,430,000 available to work on proposed and final listing determinations for domestic species. In addition, if the Service had funding available within the critical habitat, foreign species, or petition subcaps after those workloads had been completed, it could use those funds to work on listing actions other than critical habitat designations or foreign species.

Costs of Listing Actions. The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

Prioritizing Listing Actions. The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) section 4 (of the Act) listing and critical habitat actions with absolute statutory deadlines; (3) essential litigation-related, administrative, and listing program-management functions; and (4) section 4 listing actions that do not have absolute statutory deadlines. In FY 2010, the Service received many new petitions and a single petition to list 404 species, significantly increasing the number of actions within the second category of our workload—actions that have absolute statutory deadlines. As a result of the petitions to list hundreds of species, we currently have over 460 12-month petition findings yet to be initiated and completed.

To prioritize within each of the four types of actions, we developed guidelines for assigning a listing priority number (LPN) for each candidate species (48 FR 43098; September 21, 1983). As discussed above, under these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus), species, or part of a species (subspecies or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species.

Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court ordered or court-approved deadline.

Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. It is therefore important that we be as efficient as possible in our listing process. Therefore, as we implement our listing work plan and

work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest-priority species. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

Listing Program Workload. Each FY we determine, based on the amount of funding Congress has made available within the Listing Program spending cap, specifically which actions we will have the resources to work on in that FY. We then prepare Allocation Tables that identify the actions that we are funding for that FY, and how much we estimate it will cost to complete each action; these Allocation Tables are part of our record for this notice and the listing program. Our Allocation Table for FY 2012, which incorporated the Service's approach to prioritizing its workload, was adopted as part of a settlement agreement in a case before the U.S. District Court for the District of Columbia (Endangered Species Act Section 4 Deadline Litigation, No.10–377 (EGS), MDL Docket No. 2165 (''MDL Litigation''), Document 31–1 (D. D.C. May 10, 2011) (''MDL Settlement Agreement'')). The requirements of paragraphs 1 through 7 of that settlement agreement, combined with the work plan attached to the agreement as Exhibit B, reflected the Service's Allocation Tables for FY 2011 and FY 2012. In addition, paragraphs 2 through 7 of the agreement require the Service to take numerous other actions through FY 2017—in particular, complete either a proposed listing rule or a not-warranted finding for all 251 species designated as ''candidates'' in the 2010 candidate notice of review (''CNOR'') before the end of FY 2016, and complete final listing determinations within one year of proposing to list any of those species. Paragraph 10 of that settlement agreement sets forth the Service's conclusion that ''fulfilling the commitments set forth in this Agreement, along with other commitments required by court orders or court-approved settlement agreements already in existence at the signing of this Settlement Agreement (listed in Exhibit A), will require substantially all of the resources in the Listing Program.'' As part of the same lawsuit, the court also approved a separate settlement agreement with the other plaintiff in the case; that settlement agreement requires the Service to complete additional actions in specific fiscal years — including 12-month petition findings for 11 species, 90-day petition findings for 477 species, and proposed listing determinations or not-warranted findings for 39 species.

These settlement agreements have led to a number of results that affect our preclusion analysis. First, the Service has been, and will continue to be, limited in the extent to which it can undertake additional actions within the Listing Program through FY 2017 beyond what is required by the MDL Settlement Agreements. Second, because the settlement is court-approved, two broad categories of actions now fall within the Service's highest priority (compliance with a court order): (1) the Service's entire prioritized workload for FY 2012, as reflected in its Allocation Table, and (2) completion, before the end of FY 2016, of proposed listings or not-warranted findings for most of the candidate species identified in this CNOR (in particular, for those candidate species that were included in the 2010 CNOR). Therefore, each year, one of the Service's highest priorities is to make steady progress towards completing by the end of 2017 proposed and final lisiting determinations for the 2010 candidate species—based on its LPN prioritization system, preparing multi-species actions when appropriate, and taking into consideration the availability of staff resources.

Based on these prioritization factors, we continue to find that proposals to list the petitioned candidate species included in Table 1 are all precluded by higher-priority listing actions including those with court-ordered and court-approved settlement agreements and listing actions with absolute statutory deadlines.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. During FY 2012, we completed delisting rules for two species.) As discussed below, given the limited resources available for listing, we find that we are making expeditious progress in FY 2012 in the Listing Program.

We provide below tables cataloguing the work of the Service's Listing Program in FY 2012. This work includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that warrant listing, (2) undertaking the evaluation of the best available scientific information about those species and the threats they face, and preparing proposed and final listing rules, and (3) adding species to the Lists by publishing proposed and final listing rules that include a summary of the data on which the rule is based and show the relationship of that data to the rule. After taking into consideration the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress to add qualified species to the Lists in FY 2012.

First, we are making expeditious progress in the third and final step: listing qualified species. In FY 2012, we resolved the status of 44 species that we determined, or had previously determined, qualified for listing. Moreover, for 43 of those 44 species, the resolution was to add them to the Lists, most with concurrent designations of critical habitat. We also proposed to list an additional 85 qualified species, most with concurrent critical habitat proposals.

Second, we are making expeditious progress in the second step: working towards adding qualified species to the Lists. In FY 2012, we worked on developing proposed listing rules for 39 species (most of them with concurrent critical habitat proposals). Although we have not yet completed those actions, we are making expeditious progress towards doing so.

Third, we are making expeditious progress in the first step towards adding qualified species to the Lists: identifying additional species that qualify for listing. In FY 2012, we completed 90-day petition findings for 76 species and 12-month petition findings for 53 species. Of those 51 species, we determined that listing 9 of the species was warranted but precluded. In FY 2012, we also worked on evaluating the best available scientific information towards preparing 90-day findings for an additional 3 species and 12-month findings for 1 additional species.

In addition to the work the Service has completed towards adding qualified species to the Lists, as we described above, on May 10, 2011, the Service filed in the MDL Litigation a settlement agreement that incorporated the Service's work plan for FY 2012; the court approved that settlement agreement on September 9, 2011. Paragraph 10 of that settlement agreement provides, ''The Parties agree that the timetables for resolving the status of candidate species outlined in this Agreement constitute expeditious progress in adding qualified species to the lists of threatened and endangered species.'' The Service also filed a second settlement agreement that required even more work in FY 2012. The Service had already begun in FY 2011 to implement that work required by the work plan, and many of these initial actions in our work plan include work on proposed rules for candidate species with an LPN of 2 or 3. Therefore, both by entering into the first settlement agreement and by completing the listing actions required by both settlement agreements, the Service is making expeditious progress to add qualified species to the lists. As provided for in the settlement agreements and the work plan incorporated into the first agreement, the Service's progress in FY 2012 included completing and publishing the following determinations:

FY 2012 COMPLETED LISTING ACTIONS [1]

Publication date	Title	Actions	FR Pages
10/4/2011	12-Month Finding on a Petition to List the Lake Sammamish Kokanee Population of *Oncorhynchus nerka* as an Endangered or Threatened Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	76 FR 61298–61307
10/4/2011	12-Month Finding on a Petition to List *Calopogon oklahomensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 61307–61321
10/4/2011	12-Month Finding on a Petition To List the Amargosa River Population of the Mojave Fringe-toed Lizard as an Endangered or Threatened Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	76 FR 61321–61330
10/4/2011	Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; with Critical Habitat.	Proposed Listing Endangered	76 FR 61482–61529
10/4/2011	90-Day Finding on a Petition To List 10 Subspecies of Great Basin Butterflies as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 61532–61554
10/5/2011	90-Day Finding on a Petition to List 29 Mollusk Species as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 61826–61853
10/5/2011	12-Month Finding on a Petition to List the Cactus Ferruginous Pygmy-Owl as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 61856–61894
10/5/2011	12-Month Finding on a Petition to List the Northern Leopard Frog in the Western United States as Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 61896–61931
10/6/2011	Endangered Status for the Ozark Hellbender Salamander	Final Listing Endangered	76 FR 61956–61978
10/6/2011	Red-Crowned Parrot	Notice of 12-month petition finding, Warranted but precluded.	76 FR 62016–62034
10/6/2011	12-Month Finding on a Petition to List Texas Fatmucket, Golden Orb, Smooth Pimpleback, Texas Pimpleback, and Texas Fawnsfoot as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 62166–62212
10/6/2011	12-Month Finding on a Petition to List the Mohave Ground Squirrel as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62214–62258
10/6/2011	Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	76 FR 62260–62280
10/7/2011	12-Month Finding on a Petition to List the Black-footed Albatross as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62504–62565
10/11/2011 ...	12-Month Finding on a Petition to List *Amoreuxia gonzalezii, Astragalus hypoxylus,* and *Erigeron piscaticus* as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62722–62740
10/11/2011 ...	12-Month Finding on a Petition to List the Tehachapi Slender Salamander as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62900–62926
10/11/2011 ...	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Final Listing Endangered	76 FR 62928–62960
10/11/2011 ...	12-Month Finding for a Petition to List the California Golden Trout as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 63094–63115
10/12/2011 ...	12-Month Petition Finding, Proposed Listing of Coquí Llanero as Endangered, and Designation of Critical Habitat for Coquí Llanero.	Notice of 12-month petition finding, Warranted; Proposed Listing Endangered.	76 FR 63420–63442
10/12/2011 ...	12-Month Finding on a Petition to List Northern Leatherside Chub as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 63444–63478
10/13/2011 ...	12-Month Finding on a Petition to List a Distinct Population Segment of the Red Tree Vole as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 63720–63762
12/19/2011 ...	90-Day Finding on a Petition To List the Western Glacier Stonefly as Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	76 FR 78601–78609
1/3/2012	90-Day Finding on a Petition to List Sierra Nevada Red Fox as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 45–52
1/12/2012	90-Day Finding on a Petition To List the Humboldt Marten as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 1900–1908
1/24/2012	90-Day Finding on a Petition to List the 'I'iwi as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 3423–3432

FY 2012 COMPLETED LISTING ACTIONS [1]—Continued

Publication date	Title	Actions	FR Pages
2/1/2012	90-Day Finding on a Petition to List the San Bernardino Flying Squirrel as Endangered or Threatened With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 4973–4980
2/14/2012	Determination of Endangered Status for the Rayed Bean and Snuffbox Mussels Throughout Their Ranges.	Final Listing Endangered	77 FR 8632–8665
2/17/2012	90-Day Finding on a Petition to List the Thermophilic Ostracod as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	77 FR 9618–9619
3/13/2012	Determination of Endangered Status for the Sheepnose and Spectaclecase Mussels Throughout Their Range.	Final Listing Endangered	77 FR 14914–14949
4/2/2012	12-month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	77 FR 19756—19797
4/6/2012	Listing of the Miami Blue Butterfly as Endangered Throughout Its Range; Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly in Coastal South and Central Florida.	Final Listing Endangered	77 FR 20948–20986
4/12/2012	90-Day Finding on a Petition to List Either the Eastern Population or the Southern Rocky Mountain Population of the Boreal Toad as an Endangered or Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Substantial.	77 FR 21920–21936
4/17/2012	Determination of Endangered Status for Three Forks Springsnail and Threatened Status for San Bernardino Springsnail Throughout Their Ranges and Designation of Critical Habitat for Both Species.	Final Listing Endangered and Threatened.	77 FR 23060–23092
4/26/2012	90-Day Finding on a Petition to List *Aliciella formosa* (Aztec gilia) as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	77 FR 24908–24915
5/1/2012	12-Month Finding on a Petition To List the Sonoran Desert Area Bald Eagle as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	77 FR 25792–25828
5/10/2012	12-Month Finding on a Petition to List the Arapahoe Snowfly as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but Precluded.	77 FR 27386—27403
5/10/2012	90-Day Finding on a Petition to List the Eastern Diamondback Rattlesnake as Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 27403—27411
5/15/2012	Threatened Status for *Eriogonum codium* (Umtanum Desert Buckwheat) and *Physaria douglasii* subsp. *tuplashensis* (White Bluffs Bladderpod) and Designation of Critical Habitat.	Proposed Listing Threatened	77 FR 28704–28740
6/5/2012	90-Day Finding on a Petition to List the Southern White-Tailed Ptarmigan and the Mt. Rainier White-Tailed Ptarmigan as Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 33143–33155
6/11/2012	Listing 38 Species on Molokai, Lanai, and Maui as Endangered and Designating Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species.	Proposed Listing Endangered	77 FR 34464–34775
6/19/2012	Withdrawal of the Proposed Rule to List Dunes Sagebrush Lizard ...	Proposed Listing Withdrawal	77 FR 36871–36899
6/21/2012	90-Day Finding on a Petition to List the Black-capped Petrel as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 37367–37373
7/5/2012	90-Day Finding on a Petition to List *Maytenus cymosa* as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	77 FR 39666–39670
7/5/2012	90-Day Finding on a Petition to List a Distinct Population Segment of the American Black Bear in Nevada as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	77 FR 39670–39674
7/12/2012	Determination of Endangered Status for the Chupadera Springsnail and Designation of Critical Habitat.	Final Listing Endangered	77 FR 41088–41106
7/18/2012	12-Month Finding on a Petition to List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	77 FR 42238–42251
7/24/2012	90-Day Finding on a Petition to List the Sonoran talussnail as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 43218–43222
7/26/2012	90-Day Finding on a Petition to List the Gila Mayfly as Endangered	Notice of 90-day Petition Finding, Substantial.	77 FR 43799–43803
7/26/2012	Endangered Status for the Diamond Darter and Designation of Critical Habitat.	Proposed Listing Endangered	77 FR 43905–43939
8/7/2012	90-Day Finding on Petitions to List the Two Spring Mountains Dark Blue Butterflies and Morand's Checkerspot Butterfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Not-substantial and Substantial.	77 FR 47003–47011
8/8/2012	90-Day Finding on a Petition to List Graptopetalum bartramii (Bartram Stonecrop) and Pectis imberbis (Beardless Chinch Weed) as Endangered or Threatened and Designate Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 47352–47356
8/9/2012	90-Day Finding on a Petition to List Desert Massasauga as Endangered or Threatened and to Designate Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 47583–47587
8/15/2012	90-Day Finding on a Petition to List the Bicknell's Thrush (Catharus bicknelli) as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 48934–48947
8/16/2012	Endangered Status for Six West Texas Aquatic Invertebrate Species and Designation of Critical Habitat.	Proposed Listing and Critical Habitat Endangered.	77 FR 49601–49651
8/17/2012	Determination of Status for the Gierisch Mallow and Designation of Critical Habitat.	Proposed Listing and Critical Habitat Endangered.	77 FR 49893–49919

FY 2012 COMPLETED LISTING ACTIONS [1]—Continued

Publication date	Title	Actions	FR Pages
8/22/2012	Endangered Status for Four Central Texas Salamanders and Designation of Critical Habitat.	Proposed Listing and Critical Habitat Endangered.	77 FR 50767–50854
8/28/2012	12-Month Finding on a Petition to List the Bay Skipper as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	77 FR 51958–51964
8/29/2012	90-Day Finding on a Petition to List *Mimulus gemmiparus* (Rocky Mountain monkeyflower) as Endangered or Threatened and to Designate Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 52293–52300
8/29/2012	90-Day Finding on a Petition to List the Prince of Wales Flying Squirrel as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	77 FR 52301–52308
8/30/2012	12-Month Finding on a Petition to List the Platte River Caddisfly as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	77 FR 52650–52673
9/4/2012	12-Month Finding on a Petition To List Four Subspecies of Great Basin Butterflies as Endangered or Threatened Species.	Notice of 12-month petition finding, Not warranted.	77 FR 54293–54329
9/4/2012	12-Month Finding on a Petition to List the Mardon Skipper as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	77 FR 54331–54352
9/5/2012	90-Day Finding on a Petition to List the Eagle Lake Rainbow Trout as an Endangered or Threatened Species.	Notice of 90-day Petition Finding, Substantial.	77 FR 54548–54553
9/5/2012	Determination of Endangered Status for Arctostaphylos franciscana (Franciscan manzanita) Throughout Its Range.	Final Listing Endangered	77 FR 54434–54450
9/11/2012	Determination of Status for Texas Golden Gladecress and Neches River Rose-mallow and Designation of Critical Habitat.	Proposed Listing Endangered, Threatened.	77 FR 55967–56026
9/12/2012	Proposed Endangered Status for the Jemez Mountains Salamander and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	77 FR 56481–56513
9/18/2012	12-Month Finding on a Petition to List 14 Aquatic Mollusks as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	77 FR 57647–57862
9/18/2012	Endangered Status for 23 Species on Oahu and Designation of Critical Habitat for 124 Species.	Final Listing Endangered	77 FR 57921–57948
9/27/2012	Proposed Listing of the Mount Charleston Blue Butterfly as Endangered and Proposed Listing of Five Blue Butterflies as Threatened Due to Similarity of Appearance.	Proposed Listing Endangered	77 FR 59517–59540
9/27/2012	Endangered Status for Grotto Sculpin and Designation of Critical Habitat.	Proposed Listing Endangered	77 FR 59487–59515
9/27/2012	12-Month Finding on a Petition to List Spring Mountains Acastus Checkerspot Butterfly as an Endangered or Threatened Species.	Notice of 12-month petition finding, Not warranted.	77 FR 59357–59371
10/2/2012	Proposed Threatened Status for Coral Pink Sand Dunes Tiger Beetle and Designation of Critical Habitat.	Proposed Listing Threatened	77 FR 60207–60235
10/2/2012	12-Month Petition Finding, Listing of the Spring Pygmy Sunfish as Threatened, and Designation of Critical Habitat.	Notice of 12-month petition finding, Warranted Proposed Listing Threatened.	77 FR 60179–60206
10/3/2012	12-month Finding for the Lemmon Fleabane; Endangered Status for the Acuña Cactus and the Fickeisen Plains Cactus and Designation of Critical Habitat.	Notice of 12-month petition finding, Not warranted Proposed Listing Endangered.	77 FR 60509–60579
10/4/2012	Proposed Endangered Species Status for the Florida Bonneted Bat	Proposed Listing Endangered	77 FR 60749–60776
10/4/2012	Determination of Endangered Species Status for Coquí Llanero Throughout Its Range and Designation of Critical Habitat.	Final Listing Endangered	77 FR 60777–60802
10/4/2012	Endangered Species Status for the Fluted Kidneyshell and Slabside Pearlymussel and Designation of Critical Habitat.	Proposed Listing Endangered	77 FR 60803–60882
10/9/2012	12-Month Finding on Petitions to List the Mexican Gray Wolf as an Endangered Subspecies or Distinct Population Segment with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	77 FR 61375–61377
10/10/2012 ...	Determination of Endangered Species Status for the Alabama Pearlshell, Round Ebonyshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Species Status for the Tapered Pigtoe, Narrow Pigtoe, Southern Sandshell, and Fuzzy Pigtoe, and Designation of Critical Habitat.	Final Listing Endangered and Threatened.	77 FR 61663–61719
10/11/2012 ...	Endangered Species Status for Cape Sable Thoroughwort, Florida Semaphore Cactus, and Aboriginal Prickly-apple, and Designation of Critical Habitat for Cape Sable Thoroughwort.	Proposed Listing Endangered	77 FR 61835–61894
10/11/2012 ...	Listing Taylor's Checkerspot Butterfly and Streaked Horned Lark and Designation of Critical Habitat.	Proposed Listing Endangered and Threatened.	77 FR 61937–62058
10/16/2012 ...	Proposed Endangered Status for the Neosho Mucket, Threatened Status for the Rabbitsfoot, and Designation of Critical Habitat for Both Species.	Proposed Listing Endangered and Threatened.	77 FR 63439–63536
10/17/2012 ...	Listing 15 Species on Hawaii Island as Endangered and Designating Critical Habitat for 3 Species.	Proposed Listing Endangered	77 FR 63927–64018

[1] While some of these actions were published in FY 13, they were all completed and submitted to the **Federal Register** in FY 12.

Our expeditious progress also included work on listing actions that we funded in previous fiscal years and in FY 2012 but have not yet been completed to date. For these species, we have completed the first step, and have been working on the second step, necessary for adding species to the Lists. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court through a court order or settlement agreement. Actions in the lower section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act.

ACTIONS FUNDED IN PREVIOUS FYS AND IN FY 2012 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Red knot (LPN = 3)	Proposed listing.
Gunnison sage-grouse (LPN = 2)	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
Arizona gartersnakes (northern Mexican gartersnake (LPN = 3) & narrowheaded gartersnake)	Proposed listing.
Zuni bluehead sucker	Proposed listing.
21 Big Island (HI) species[5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
9 Puget trough species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3)	Proposed listing.
Dakota skipper (LPN = 8) and Poweshiek skipperling (LPN = 2)	Proposed listing.
Vandenberg monkeyflower	Proposed listing.
3 Sierra amphibians (Yosemite toad, mountain yellow-legged frog—Sierra Nevada DPSs)	Proposed listing.
Actions With Statutory Deadlines	
Ashy storm-petrel	12-month petition finding.
Alexander Archipelago wolf	90-day petition finding.
Sphinx date palm (Phoenix dactylifera cv. Sphinx)	90-day petition finding
Black-backed woodpecker	90-day petition finding.

We also funded work on resubmitted petitions findings for 172 candidate species (species petitioned prior to the last CNOR). In our resubmitted petition finding for the Columbia Basin population of the greater sage-grouse in this notice, although we completed a new analysis of the threats facing the species, we did not include new information, as the significance of the Columbia Basin DPS to the greater sage-grouse will require further review and we will update our finding when we resolve the status of the greater sage-grouse at a later date (see 75 FR 13910; March 23, 2010). We also did not include an updated assessment form as part of our resubmitted petition findings for the 29 candidate species for which we are preparing proposed listing determinations. However, for both the Columbia Basin DPS to the greater sage-grouse and for the other resubmitted petition findings, in the course of preparing proposed listing determinations, we continue to monitor new information about their status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the well-being of any of these candidate species; see summaries below regarding publication of these determinations (these species will remain on the candidate list until a proposed listing rule is published). We also funded revised 12-month petition findings for the candidate species that we are removing from candidate status, which are being published as part of this CNOR (see Candidate Removals). Because the majority of these petitioned species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program, so we continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

During FY 2012, we also funded work on resubmitted petition findings for uplisting two listed species (Delta smelt and *Sclerocactus brevispinus* (Pariette cactus)), for which we had previously received a petition and made a warranted-but-precluded finding.

Another way that we have been expeditious in making progress to add qualified species to the Lists is that we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the ESA, these efforts also contribute towards finding that we are making expeditious progress to add qualified species to the Lists.

Although we have not been able to resolve the listing status of many of the candidates, several programs in the Service contribute to the conservation of these species. In particular, the Candidate Conservation Program, which is separately budgeted, focuses on providing technical expertise for developing conservation strategies and agreements to guide voluntary on-the-ground conservation work for candidate and other at-risk species. The main goal of this program is to address the threats facing candidate species. Through this program, we work with our partners (other Federal agencies, State agencies, Tribes, local governments, private landowners, and private conservation organizations) to address the threats to candidate species and other species at-risk. We are currently working with our partners to implement voluntary conservation agreements for more than 142 species covering 5.5 million ac of habitat. In some instances, the sustained implementation of strategically designed conservation efforts culminates in making listing unnecessary for species that are candidates for listing or for which listing has been proposed.

Findings for Petitioned Candidate Species

Below are updated summaries for petitioned candidates for which we published findings, under section 4(b)(3)(B). We are making continued warranted-but-precluded 12-month findings on the petitions for these species (for our revised 12-month petition findings for species that we are removing from candidate status, see summaries above under Candidate Removals).

Mammals

Pacific sheath-tailed bat, American Samoa DPS (*Emballonura semicaudata semicaudata*) — The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia, and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined substantially in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *Emballonura s. rotensis,* endemic to the Mariana Islands (Guam and the CNMI); *E. s. sulcata,* occurring in Chuuk and Pohnpei; *E. s. palauensis,* found in Palau; and *E. s. semicaudata,* occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. The candidate assessment form addresses the distinct population segment (DPS) of *E. s. semicaudata* that occurs in American Samoa.

Emballonura s. semicaudata historically occurred in American and Independent Samoa, Tonga, Fiji, and Vanuatu. It is extant in Fiji and Tonga, but may be extirpated from Vanuatu and Independent Samoa. There is some concern that it is also extirpated from American Samoa, the location of this DPS, where surveys are currently ongoing to ascertain its status. The factors that led to the decline of this subspecies and the DPS are poorly understood; however, current threats to this subspecies and the DPS include habitat loss, predation by introduced species, and its small population size and distribution, which make the taxon extremely vulnerable to extinction due to typhoons and similar natural catastrophes. Thus, the threats are high in magnitude. The Pacific sheath-tailed bat may also be susceptible to disturbance to roosting caves. The LPN for *E. s. semicaudata* is 3 because the magnitude of the threats is high; the threats are ongoing, and therefore, imminent; and the taxon is a distinct population segment of a subspecies.

Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*), Guam and the Commonwealth of the Northern Mariana Islands (CNMI)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia, and it is the only insectivorous bat recorded from a large part of this area. *Emballonura s. rotensis* is historically known from the Mariana Islands and formerly occurred on Guam and in the CNMI on Rota, Aguiguan, Tinian (known from prehistoric records only), Saipan, and possibly Anatahan and Maug. Currently, *E. s. rotensis* appears to be extirpated from all but one island in the Mariana archipelago. The single remaining population of this subspecies occurs on Aguiguan, CNMI.

Threats to this subspecies have not changed over the past year. The primary threats to the subspecies are ongoing habitat loss and degradation as a result of feral goat (*Capra hircus*) activity on the island of Aguiguan and the taxon's small population size and limited distribution. Predation by nonnative species and human disturbance are also potential threats to the subspecies. The subspecies is believed near the point where stochastic events, such as typhoons, are increasingly likely to affect its continued survival. The disappearance of the remaining population on Aguiguan would result in the extinction of the subspecies. Thus, the threats are high in magnitude. The LPN for *E. s. rotensis* remains at 3 because the magnitude of the threats is high; the threats are ongoing, and therefore, imminent; and the taxon is a subspecies.

New England cottontail (*Sylvilagus transitionalis*) — The following summary is based on information contained in our files and information received in response to our notice published on June 30, 2004, when we announced our 90-day petition finding and initiation of a status review (69 FR 39395). We received the petition on August 30, 2000.

The New England cottontail (NEC) is a medium to large-sized cottontail rabbit that may reach 1,000 grams (g) in weight, and is one of two species within the genus *Sylvilagus* occurring in New England. The NEC is considered a habitat specialist, because it is dependent upon early-successional habitats typically described as thickets. The species is the only endemic cottontail in New England. Historically, the NEC occurred in seven States and ranged from southeastern New York (east of the Hudson River) north through the Champlain Valley, southern Vermont, the southern half of New Hampshire, and southern Maine and south throughout Massachusetts, Connecticut, and Rhode Island. The current range of the NEC has declined substantially, and occurrences have become increasingly separated. The species' distribution is fragmented into five apparently isolated metapopulations. The area occupied by the cottontail has contracted from approximately 90,000 square kilometers (km^2) to 12,180 km^2. Surveys indicate that the long-term decline in NEC continues. For example, surveys for the species in 2009 documented the presence of NEC in 7 of the 23 New Hampshire locations that were known to be occupied in 2002 and 2003. Similarly, surveys in Maine found the species no longer present in 9 of the 19 towns identified in an extensive survey that spanned the years 2000 to 2004. Similar surveys were conducted during the winter of 2010–2011 in Rhode Island. Rangewide, it is estimated that less than one-third of the occupied sites occur on lands in conservation status and fewer than 10 percent are being managed for early-successional forest species.

The primary threat to the NEC is loss of habitat through succession and alteration. Isolation of occupied patches by areas of unsuitable habitat and high predation rates are resulting in local extirpation of NECs from small patches. The range of the NEC has contracted by 75 percent or more since 1960, and current land uses in the region indicate that the rate of change, about 2 percent range loss per year, will continue. Additional threats include competition for food and habitat with introduced eastern cottontails and large numbers of native white-tailed deer, inadequate regulatory mechanisms to protect habitat, and mortality from predation.

The magnitude of the threats continues to be high, because they occur rangewide and have a negative effect on the population size and survival of the species. Although conservation measures that address the threats to the species are being developed, they are not yet in place, and there is not yet any indication that they are having an effect on the magnitude of the species. The threats are imminent because they are ongoing. Thus, we retained an LPN of 2 for this species.

Fisher, West Coast DPS (*Martes pennanti*)—The following summary is based on information in our files and in the Service's initial warranted-but-precluded finding published in the **Federal Register** on April 8, 2004 (69 FR 18770). The fisher is a carnivore in the family Mustelidae and is the largest member of the genus *Martes*. Historically, the West Coast population of the fisher extended south from British Columbia into western Washington and Oregon, and in the North Coast Ranges, Klamath-Siskiyou Mountains, and Sierra Nevada in California. Because of a lack of detections with standardized survey efforts over much of the fisher's historical range, the fisher is believed to be extirpated or reduced to scattered individuals from the lower mainland of British Columbia through Washington and northern Oregon and in the central and northern Sierra Nevada in California. Extant populations of native fisher are isolated to the North Coast and Klamath-Siskiyou Mountains of northern California and southwestern Oregon, and the southern Sierra Nevada in California. Descendants of a fisher reintroduction effort also occur in the southern Cascades in Oregon. Two recent reintroduction efforts in Olympic National Park in Washington and in the northern Sierra Nevada in California have completed the movement and release of fishers to their respective study areas. Several years of monitoring are still needed to determine if these will become successfully-established populations.

Estimates of fisher numbers in native populations of the West Coast DPS vary widely. A rigorous monitoring program is lacking for the native northern California-southwestern Oregon and reintroduced southern Oregon Cascades populations, making estimates of fisher numbers for these two populations difficult. The fisher monitoring program in the southern Sierra Nevada population has provided preliminary estimates indicating no decline in the index of abundance within the monitored portion of the population. The two populations of native fisher in the northern California-southwestern Oregon and southern Sierra Nevada are separated by several times greater than the species' maximum dispersal distance. The extant fisher populations are either small (southern Sierra Nevada and southern Oregon Cascades) and isolated from one another or both.

Major threats that fragment or remove key elements of fisher habitat include various forest vegetation management practices such as timber harvest and fuels reduction treatments. Other potential major threats in portions of the range include: large stand-replacing wildfires, changes in forest composition and structure related to the effects of climate change, forest and fuels management, and urban and rural development. Threats to fishers that lead to direct mortality and injury include: collisions with vehicles; predation; rodenticides; and viral borne diseases such as rabies, parvovirus, and canine distemper virus. Existing regulatory mechanisms on Federal, State, and private lands do not provide sufficient protection for the key elements of fisher habitat, or the certainty that conservation efforts will be implemented or effective. The magnitude of threats is high as they occur across the range of the DPS, resulting in a negative impact on fisher distribution and abundance. However, the threats are nonimminent as the greatest long-term risks to the fisher in its west coast range are the subsequent ramifications of the isolation of small populations and their interactions with the listed threats. Therefore, we assigned an LPN of 6 to this DPS.

New Mexico meadow jumping mouse (*Zapus hudsonius luteus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Mazama pocket gopher (*Thomomys mazama* ssp. *couchi, douglasii, glacialis, louiei, melanops, pugetensis, tacomensis, tumuli, yelmensis*)—We continue to find that listing these subspecies is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Canada lynx, within the State of New Mexico (*Lynx canadensis*)—In our finding of December 17, 2009 (74 FR 66937), we determined that adding the lynx in New Mexico to the listing of the lynx DPS was warranted, because the lynx is now present in the State as a result of the Colorado reintroduction effort, and we assigned an LPN of 12 to amending the listing of lynx to include New Mexico. We reconfirm that assigning an LPN of 12 is appropriate based on nonimminent threats of a low magnitude. The threats to the lynx in New Mexico from human-caused mortality are low in magnitude, because they do not occur at a level that creates a significant threat to the lynx DPS in the contiguous United States. We do not consider lynx in New Mexico, or its habitat in New Mexico, to be essential to the survival or recovery of the DPS; as a result, neither human-caused mortality nor habitat modification in New Mexico creates a significant threat to the lynx DPS in the contiguous United States. Potential impacts to the habitat in New Mexico have not been documented to threaten lynx, either in New Mexico or outside of it. The amount of suitable habitat for lynx in New Mexico is considered negligible relative to the amount of habitat within the listed range, and the majority of lynx habitats within the contiguous United States are already protected by the ESA. The threats are also nonimminent, because they occur infrequently. Because lynx in the lower 48 States are already listed as a DPS and conditions affecting the lynx in New Mexico are neither imminent nor of sufficient magnitude to pose a threat to the lynx DPS throughout the contiguous United States, the appropriate LPN for this level of magnitude and immediacy of threats for a DPS is 12.

Gunnison's prairie dog (*Cynomys gunnisoni*)—Gunnison's prairie dogs occur in Arizona, Colorado, New Mexico, and Utah. In our February 5, 2008, 12-month finding (73 FR 6660), we determined that listing the Gunnison prairie dog was warranted but precluded, with an LPN of 2, due to threats in a significant portion of its range—the montane portion of the species' range within Colorado and New Mexico—where the effects from plague and other factors threaten those populations. This finding was challenged by WildEarth Guardians in

September of 2008. On September 30, 2010, the Court set aside our 2008 finding and remanded the matter back to us for further action. The Court found that we arbitrarily and capriciously ''determined that something other than a species was an endangered or threatened species which warranted listing.'' In response to the decision of the Court, we will reevaluate the status of the Gunnison's prairie dog and deliver a revised 12-month finding to the **Federal Register**. However, we are currently unable to complete a status review due to budget and workload limitations. Furthermore, initiating a revised status review for the species would be premature at this time because of a significant ongoing genetics study initiated by Colorado Parks and Wildlife (CPW) (formerly the Colorado Division of Wildlife) along with researchers at the University of Colorado Boulder addressing Gunnison's prairie dog taxonomy. This work will be essential in determining whether or not Gunnison's prairie dogs in the montane and prairie portions of the species' range constitute two subspecies. We anticipate the analysis of these genetic data will likely be completed by late 2012 and we will evaluate the information thereafter. It is critical for us to consider this potentially significant taxonomic revision in our revised status review after the CPW releases its final genetics report. Gunnison's prairie dogs will remain a candidate within the montane portion of their range until we complete this analysis.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The southern Idaho ground squirrel is endemic to 4 counties in southwest Idaho; its total known range is approximately 426,000 ha (1,050,000 ac). Threats to southern Idaho ground squirrels include: habitat degradation and fragmentation; direct killing from shooting, trapping, or poisoning; predation; competition with other ground squirrel species; and inadequacy of existing regulatory mechanisms. Habitat degradation and fragmentation appear to be the primary threats to the species. Nonnative annuals such as *Bromus tectorum* (cheatgrass) and *Taeniatherum caput-medusae* (medusahead) now dominate much of this species' range and have altered the fire regime by accelerating the frequency of wildfire. Nonnative annuals provide inconsistent forage quality for southern Idaho ground squirrels as compared to native vegetation. Habitat deterioration, destruction, and fragmentation contribute to the current patchy distribution of southern Idaho ground squirrels. Some human-altered landscapes, such as golf courses and row crops of alfalfa, provide alternative habitats that maintain high densities of southern Idaho ground squirrels. However, high densities of ground squirrels in agricultural fields sometimes cause crop damage, which results in reduced tolerance of the species by local landowners.

One programmatic Candidate Conservation Agreement with Assurances (CCAA) has been completed for this species; it includes conservation measures that minimize ground-disturbing activities, allow for the investigation of methods to restore currently degraded habitat, provide additional protection to southern Idaho ground squirrels from recreational shooting and other direct killing on enrolled lands, and allow for the translocation of squirrels to or from enrolled lands, if necessary. The acreage enrolled through the CCAA encompasses approximately 9 percent of the known range of the species. While the ongoing conservation efforts have helped to reduce the magnitude of threats to moderate, habitat degradation remains the primary threat to the species throughout most of its range. This threat is imminent due to the ongoing and increasing prevalence of nonnative vegetation, and the current patchy distribution of the species. Thus, we assign an LPN of 9 to this subspecies.

Washington ground squirrel (*Spermophilus washingtoni*) — The following summary is based on information contained in our files and in the petition we received on March 2, 2000. The Washington ground squirrel is endemic to the Deschutes-Columbia Plateau sagebrush-steppe and grassland communities in north-central Oregon and south-central Washington. Although historically abundant and widespread, approximately two-thirds of its total historical range has been converted to agricultural and residential uses. The most contiguous, least disturbed expanse of suitable habitat within the species' range occurs on land in Oregon owned by Boeing, Inc., and on the Naval Weapons Systems Training Facility near Boardman, Oregon. In Washington, the largest area of suitable habitat occurs on State and Federal lands.

Agricultural, residential, and wind power development, among other forms of development, continue to eliminate Washington ground squirrel habitat in portions of its range. Throughout much of its range, Washington ground squirrels are threatened by the establishment and spread of invasive plant species, particularly cheatgrass (*Bromus tectorum*), which alter available cover and food quantity and quality, and increase fire frequency. Additional threats include habitat fragmentation, recreational shooting, genetic isolation and drift, and predation. Potential threats include disease, drought, and possible competition with related species in disturbed habitat at the periphery of the Washington ground squirrel's range.

In Oregon, some threats are being addressed as a result of the State's listing the species as endangered under the Oregon State Endangered Species Act (OESA), and by implementation of the Threemile Canyon Farms Multi-Species CCAA. In Washington, there are currently no formal agreements with private landowners or with State or Federal agencies to protect the Washington ground squirrel. Additionally, no State or Federal management plans have been developed to specifically address the needs of the species. Since current and potential threats are widespread, and, in some priority areas, could significantly affect the survival of the species, we conclude the magnitude of threats remains high. The Washington ground squirrel has both imminent and nonimminent threats. At a rangewide scale, we conclude the threats are nonimminent based largely on the following: The Threemile Canyon Farms Multi-Species CCAA addressed the imminent loss of a large portion of habitat to agriculture; there are currently no other large-scale efforts to convert suitable habitat to agriculture; and wind power project impacts can be minimized through compliance with the OESA and the Columbia Basin Ecoregion wind energy siting and permitting guidelines. We also consider the potential development of shooting ranges on the Naval Weapons Systems Training Facility as nonimminent because the proposed action is still under development and we are unable to assess its timing and impact, which could be minimized through compliance with the OESA. We, therefore, have retained an LPN of 5 for this species.

Red tree vole, north Oregon coast DPS (*Arborimus longicaudus*)—The following summary is based on information contained in our files and in our initial warranted-but-precluded finding, published in the **Federal Register** on October 13, 2011 (76 FR 63720). Red tree voles are small, mouse-

sized rodents that live in conifer forests and spend almost all of their time in the tree canopy. They are one of the few animals that can persist on a diet of conifer needles, which is their principal food. Red tree voles are endemic to the humid, coniferous forests of western Oregon (generally west of the crest of the Cascade Range) and northwestern California (north of the Klamath River). The north Oregon coast DPS of the red tree vole comprises that portion of the Oregon Coast Range from the Columbia River south to the Siuslaw River. Red tree voles demonstrate strong selection for nesting in older conifer forests, which are now relatively rare across the DPS; they avoid nesting in younger forests.

Although data are not available to rigorously assess population trends, information from retrospective surveys indicates red tree voles have declined in the DPS and no longer occur, or are now scarce, in areas where they were once relatively abundant. Older forests that provide habitat for red tree voles are limited and highly fragmented, while ongoing forest practices in much of the DPS maintain the remaining patches of older forest in a highly fragmented and isolated condition. Modeling indicates only 11 percent within the area of the DPS currently contains tree vole habitat, largely restricted to the 22 percent of the area that is under Federal ownership. Existing regulatory mechanisms on State and private lands are inadequate to prevent continued harvest of forest stands at a scale and extent that would be meaningful for conserving red tree voles. Biological characteristics of red tree voles, such as small home ranges, limited dispersal distances, and low reproductive potential, limits their ability to respond to and persist in areas of extensive habitat loss and alteration. These biological characteristics also make it difficult for the tree voles to recolonize isolated habitat patches. Due to its reduced distribution, the red tree vole is now vulnerable to random environmental disturbances that may remove or further isolate large blocks of already limited habitat, and to extirpation within the DPS from such factors as genetic variability, inbreeding depression, and demographic stochasticity. Although the entire population is experiencing threats, the impact is less pronounced on Federal lands where much of the red tree vole habitat remains. Hence, the magnitude of threats is moderate to low. The threats are imminent because they are currently occurring within the DPS. Therefore, we have assigned the red tree vole north Oregon coast DPS an LPN of 9.

Pacific walrus (*Odobenus rosmarus divergens*)—The following information is based on information in our files and our warranted-but-precluded 12-month petition finding published on February 10, 2011 (76 FR 7634). The Pacific walrus is an ice-dependent species found across the continental shelf waters of the northern Bering and Chukchi Seas. Unlike seals that can remain in the water indefinitely, walrus must haulout onto ice or land periodically. Pacific walrus is a traditional and important source of food and products to native Alaskans, especially those living on Saint Lawrence Island, and to native Russians.

Annually, walrus migrate up to 1,500 km (932 mi) between winter breeding areas in the sub-Arctic (northern Bering Sea) and summer foraging areas in the Arctic. Historically, the females and calves remained on pack ice over the continental shelf of the Chukchi Sea throughout the summer, using it as a platform for resting after making shallow foraging dives for invertebrates on the sea floor. Sea ice also provides isolation from disturbance and terrestrial predators such as polar bears. Since 1979, the extent of summer Arctic sea ice has declined. The four lowest records of minimum sea ice extent occurred from 2007 to 2011. Based on the best scientific information available, we anticipate that sea ice will retreat northward off the Chukchi continental shelf for 1 to 5 months every year in the foreseeable future.

When the ice melts beyond the limits of the continental shelf (and the ability of the walrus to obtain food), thousands of walrus congregate at coastal haulouts. Although coastal haulouts have historically provided a place to rest, the aggregation of so many animals, in particular females and calves, at this time of year has increased in the last 5 years. Not only are the number of animals more concentrated at coastal haulouts than on widely dispersed sea ice, but also the probability of disturbance from humans and terrestrial animals is much higher. Disturbances at coastal haulouts cause stampedes, leading to mortalities and injuries. In addition, because of the amount of food these large animals need, there is also concern that the concentration of animals will cause local prey depletion leading to longer foraging trips, increased energy costs, and potential effects on female fitness and calf survival. We expect these effects to lead to a population decline.

We recognize that Pacific walrus face additional stressors from ocean warming, ocean acidification, disease, oil and gas exploration and development, increased shipping, commercial fishing, and subsistence harvest, but none rise to the level of a threat except subsistence harvest. We found that subsistence harvest will rise to the level of a threat if the population declines but harvest levels remain the same. Because the threat of sea ice loss is not having significant population-level effects currently, but is projected to, we determined the magnitude of this threat is moderate, not high. Because both the loss of sea ice habitat and subsistence harvest are presently occurring, these threats are imminent. Thus, we assigned an LPN of 9 to this subspecies.

North American wolverine, contiguous U.S. DPS (*Gulo gulo luscus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Birds

Spotless crake, American Samoa DPS (*Porzana tabuensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Porzana tabuensis* is a small, dark, cryptic rail found in wetlands and rank scrublands or forests in the Philippines, Australia, Fiji, Tonga, Society Islands, Marquesas, Independent Samoa, and American Samoa (Ofu, Tau). The genus *Porzana* is widespread in the Pacific, where it is represented by numerous island-endemic and flightless species (many of which are extinct as a result of anthropogenic disturbances) as well as several more cosmopolitan species, including *P. tabuensis.* No subspecies of *P. tabuensis* are recognized.

The American Samoa population is the only population of spotless crakes under U.S. jurisdiction. The available information indicates that distinct populations of the spotless crake, a species not noted for long-distance dispersal, are definable. The population of spotless crakes in American Samoa is discrete in relation to the remainder of

the species as a whole, which is distributed in widely separated locations. Although the spotless crake (and other rails) have dispersed widely in the Pacific, flight in island rails has atrophied or been completely lost over evolutionary time causing populations to become isolated (and vulnerable to terrestrial predators such as rats). The population of this species in American Samoa is therefore distinct based on geographic and distributional isolation from spotless crake populations on other islands in the oceanic Pacific, the Philippines, and Australia. The American Samoa population of the spotless crake links the Central and Eastern Pacific portions of the species' range. The loss of this population would result in an increase of roughly 500 mi (805 km) in the distance between the central and eastern Polynesian portions of the spotless crake's range, and could result in the isolation of the Marquesas and Society Islands populations by further limiting the potential for even rare genetic exchange. Based on the discreteness and significance of the American Samoa population of the spotless crake, we consider this population to be a distinct vertebrate population segment.

Threats to this population have not changed over the past year. The population in American Samoa is threatened by small population size, limited distribution, predation by nonnative and native animals, continued development of wetland habitat, and natural catastrophes such as hurricanes. The co-occurrence of a known predator of ground-nesting birds, the Norway rat (*Rattus norvegicus*), and native predators, the Pacific boa (*Candoia bibroni*) and the purple swamphen (*Porphyrio porphyrio*), along with the extremely restricted observed distribution and low numbers, indicate that the magnitude of the threats to the American Samoa DPS of the spotless crake continues to be high, because the threats significantly affect the species' survival. The threats are ongoing, and therefore imminent. Based on this assessment of existing information about the imminence and high magnitude of these threats, we assigned the spotless crake an LPN of 3.

Yellow-billed cuckoo, western U.S. DPS (*Coccyzus americanus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia. The genus is represented in the oceanic Pacific by six species: Three are endemic to Micronesian islands or archipelagos, two are endemic to island groups in French Polynesia, and *G. stairi* is endemic to Samoa, Tonga, and Fiji. Some authors recognize two subspecies of the friendly ground-dove, one, slightly smaller, in the Samoan archipelago (*G. s. stairi*), and one in Tonga and Fiji (*G. s. vitiensis*), but because morphological differences between the two are minimal, we are not recognizing separate subspecies at this time.

In American Samoa, the friendly ground-dove has been found on the islands of Ofu and Olosega (Manua Group). Threats to this subspecies have not changed over the past year. Predation by nonnative species and natural catastrophes such as hurricanes are the primary threats to the subspecies. Of these, predation by nonnative species is thought to be occurring now and likely has been occurring for several decades. This predation may be an important impediment to population growth. Predation by introduced species has played a significant role in reducing, limiting, and extirpating populations of island birds, especially ground-nesters like the friendly ground-dove, in the Pacific and other locations worldwide. Nonnative predators known or thought to occur in the range of the friendly ground-dove in American Samoa are feral cats (*Felis catus*), Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), and Norway rats (*R. norvegicus*).

In January 2004 and February of 2005, hurricanes virtually destroyed the habitat of *G. stairi* in the area on Olosega Island where the species had been most frequently recorded. Although this species has evolved on islands subject to severe storms, this example illustrates the potential for natural disturbance to exacerbate the effect of anthropogenic disturbance on small populations. Consistent monitoring using a variety of methods over the last 5 years yielded few observations and no change in the relative abundance of this taxon in American Samoa. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The distribution of the friendly ground-dove is limited to steep, forested slopes with an open understory and a substrate of fine scree or exposed earth; this habitat is not common in American Samoa. The threats are ongoing and therefore imminent, and the magnitude is moderate because relative abundance has remained unchanged for several years. Thus, we assign this DPS an LPN of 9.

Red knot (*Calidris canutus rufa*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Yellow-billed loon (*Gavia adamsii*)—The following summary is based on information contained in our files and the petition we received on April 5, 2004. The yellow-billed loon is a migratory bird. Solitary pairs breed on lakes in the arctic tundra of the United States, Russia, and Canada from June to September. During the remainder of the year, the species winters in more southern coastal waters of the Pacific Ocean and the Norway and North Seas.

The available information is not sufficient to dismiss subsistence harvest as a threat to the species. While subsistence harvest information, which has bias of unknown direction and magnitude, cannot be used to precisely estimate harvest, it indicates that tens to possibly low hundreds of yellow-billed loons are harvested throughout Alaska, Russia, and Canada annually. The available information suggests that the majority of harvest likely occurs during spring and fall migrations, as yellow-billed loons move along the coast of Alaska or through the Chukchi and Bering seas. As a result, what harvest actually is occurring is extracted from a migrant population that likely includes much of the species' total rangewide numbers of 16,000 to 32,000. Although uncertainty surrounding harvest levels, breeding-population composition of the migrant population, and total population size exists, the current information on subsistence harvest seems to indicate that a small proportion of the migrant population is

harvested each year. While it currently appears that fewer yellow-billed loons may be harvested than previously thought, we are continuing to gather data and refine model-based predictions to address the uncertainties regarding subsistence harvest and the effect it may have at the population level. Therefore, we conclude that subsistence harvest is a threat to the species.

Additionally, yellow-billed loons are subject to several stressors, including oil and gas exploration and development, marine pollution, the effects of climate change, the inadequacy of existing regulations, and fishing by-catch. While these stressors may not rise to the level of a threat individually, when taken collectively they could cause population-level effects.

The primary threat of subsistence harvest is currently occurring; therefore, the threat is imminent. The magnitude of subsistence harvest is moderate based on what we currently know about the level of harvest. Thus, we assigned the yellow-billed loon an LPN of 8.

Kittlitz's murrelet (*Brachyramphus brevirostris*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—The following summary is based on information contained in our files and the petition we received on April 16, 2002. The Xantus's murrelet is a small seabird in the family Alcidae that occurs along the west coast of North America in the United States, Mexico, and Canada. The species has a limited breeding distribution, only nesting on the Channel Islands in southern California and on islands off the west coast of Baja California, Mexico. Although data on population trends are scarce, scientists believe the population declined greatly over the last century, mainly due to introduced predators such as rats (*Rattus* sp.) and feral cats (*Felis catus*) to nesting islands, with possible extirpations on three islands in Mexico. A dramatic decline (up to 70 percent) from 1977 to 1991 was detected at the largest nesting colony in southern California, possibly due to high levels of predation on eggs by the endemic deer mouse (*Peromyscus maniculatus elusus*). Identified threats include introduced predators at nesting colonies, oil spills and oil pollution, reduced prey availability, human disturbance, and artificial light pollution.

Although substantial declines in the Xantus's murrelet population likely occurred over the last century, some of the largest threats are being addressed and, to some degree, ameliorated. Declines and possible extirpations at several nesting colonies were thought to have been caused by nonnative predators, which have been removed from many of the islands where they once occurred. Most notably, since 1994, Island Conservation and Ecology Group has systematically removed rats, cats, and dogs from every murrelet nesting colony in Mexico, with the exception of cats and dogs on Guadalupe Island. In 2002, rats were eradicated from Anacapa Island in southern California, which has resulted in improvements in reproductive success at that island. In southern California, efforts to restore nesting habitat on Santa Barbara Island through the Montrose Settlements Restoration Project may benefit the Xantus's murrelet population at that island.

Artificial lighting from squid fishing and other vessels, or from lights on islands, remains a potential threat to the species. Bright lights make Xantus's murrelets more susceptible to predation, and they can also become disoriented and exhausted from continual attraction to bright lights. Chicks can become disoriented and separated from their parents at sea, which could result in death of the dependent chicks. High-wattage lights on commercial market squid (*Loligo opalescens*) fishing vessels used at night to attract squid to the surface of the water in the Channel Islands was the suspected cause of unusually high predation on Xantus's murrelets by western gulls (*Larus occidentalis*) and barn owls (*Tyto alba*) at Santa Barbara Island in 1999. To address this threat, in 2000, the California Fish and Game Commission required light shields and a limit of 30,000 watts per boat; it is unknown if this is sufficient to reduce impacts. Since 1999, no significant squid fishing has occurred near any of the colonies in the Channel Islands; however, this remains a potential future threat.

A proposal to build three liquid natural gas facilities near the Channel Islands could affect the nesting colonies due to bright lights at night from the facilities and visiting tanker vessels, noise from the facilities or from helicopters visiting the facilities, and the threat of oil spills associated with visiting tanker vessels. However, these facilities are still early in the complex and long-term planning processes, and it is possible that none of these facilities will be built. In addition, none of them is directly adjacent to nesting colonies, where their impacts would be expected to be more significant. The threats from nonnative predators and artificial lighting are of a high magnitude because they have been sufficient to cause significant declines in the population. However, because of the efforts to eliminate nonnative predators and reduce artificial lighting, they are nonimminent. Therefore, we retained an LPN of 5 for this species.

Red-crowned parrot (*Amazona viridigenalis*)—The red-crowned parrot occurs in fragmented isolated habitat in the Mexican states of Veracruz, San Luis Potosi, Nuevo Leon, Tamaulipas, and northeast Queretaro; and in Hidalgo and Cameron Counties, Texas. Feral populations may also exist in southern California, Puerto Rico, Hawaii, and Florida and escaped birds have been reported in central Texas. The species generally occurs in tropical lowlands and foothills, inhabiting tropical deciduous forest, gallery forest, evergreen floodplain forest, Tamaulipan thornscrub, and semi-open areas; in Texas, the species is known to nest in cavities in the urban centers of town in palm species. Currently, the population of red-crowned parrots is extremely small (less than 5,000 individuals) and fragmented, and a large portion (approximately half) of the population occurs within the species' historical range in Mexico. The primary threats to the red-crowned parrot at this time include habitat loss, illegal capture for the pet trade, and the inadequacy of regulatory mechanisms that address those threats.

The primary threats to the red-crowned parrot are affecting a large portion of the species' population throughout the historical range of the species in Mexico. We consider the magnitude high because the current population is small, a large portion of the population is affected, and these factors may lead to extirpation in Mexico. Further, we have no information indicating the Lower Rio Grande Valley populations can persist in the absence of the Mexico populations. Threats to the red-crowned parrot are currently affecting populations and are expected to continue to occur in the future. Therefore, threats to the red-crowned parrot are imminent. As a result of the imminent, high magnitude threats, we assigned an LPN of 2 for the red-crowned parrot.

Sprague's pipit (*Anthus spragueii*)—The following summary is based on information contained in our files and in the petition we received on October 15, 2008. The Sprague's pipit is a small grassland bird characterized by its high flight display and otherwise very secretive behavior. Sprague's pipits are strongly tied to native prairie (land which has never been plowed) throughout their life cycle. Its breeding range includes portions of Minnesota, Montana, North Dakota, South Dakota, and Canada. The Sprague's pipit's wintering range includes south-central and southeast Arizona, southern New Mexico, Texas, southern Oklahoma, southern Arkansas, northwest Mississippi, southern Louisiana, and northern Mexico. The vast majority of the U.S. winter sightings have been in Texas but there have been migration sightings in Michigan, western Ontario, Ohio, Massachusetts, and Gulf and Atlantic States from Mississippi east and north to South Carolina. Sprague's pipits also have been sighted in California during fall migration.

Threats to this species include: Habitat loss and conversion, habitat fragmentation on the breeding grounds, energy development, roads, and inadequacy of existing regulatory mechanisms. Due to prairie habitat loss and fragmentation, only 15 to 18 percent of the historical breeding habitat in the United States remains in patches of sufficient size for males to establish territories. The Breeding Bird Survey and Christmas Bird Count both show a 40-year decline of 73 to 79 percent (3.23 to 4.1 percent annually), although the population seems to have stabilized in recent years. We anticipate that prairie habitat will continue to be converted and fragmented. Most of the breeding range, including those areas where grassland habitat still remains, has been identified as a prime area for wind energy development, and an oil and gas boom is occurring in the central part of the breeding range in the United States and Canada. On the wintering range, conversion of grassland to agriculture and other uses appears to be accelerating. While habitat loss has occurred and will likely to continue to occur, as noted above, approximately 15 to18 percent of the breeding range remains in suitable habitat cover and in large enough patch sizes to support nesting, and population decline seems to have slowed in recent years. Thus, the threats are moderate in magnitude. The threats are imminent because the species is currently facing them in many portions of its range. Therefore, we have assigned the Sprague's pipit an LPN of 8.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Gunnison sage-grouse (*Centrocercus minimus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Greater sage-grouse (*Centrocercus urophasianus)*—The following summary is based on information in our files and in the petition we received on January 30, 2002. Currently, greater sage-grouse occur in 11 States (Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, and North Dakota), and 2 Canadian provinces (Alberta and Saskatchewan), occupying approximately 56 percent of their historical range. Greater sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle, and are considered obligate users of several species of sagebrush.

The primary threat to greater sage-grouse is ongoing fragmentation and loss of shrub-steppe habitats through a variety of mechanisms. Most importantly, increasing fire cycles and invasive plants (and the interaction between them) in more westerly parts of the range, along with energy development and related infrastructure in more easterly areas, are negatively affecting species. In addition, direct loss of habitat and fragmentation is occurring due to agriculture, urbanization, and infrastructure such as roads and power lines built in support of several activities. We also have determined that existing regulatory mechanisms are inadequate to protect the species from these ongoing threats. However, many of these habitat impacts are being actively addressed through conservation actions taken by local working groups, and State and Federal agencies. Notably, the National Resource Conservation Service has committed significant financial and technical resources to address threats to this species on private lands through their Sage-grouse Initiative. These efforts, when fully implemented, will potentially provide important conservation benefits to the greater sage-grouse and its habitats. We consider the threats to the greater sage-grouse to be of moderate magnitude, because the threats are not occurring with uniform intensity or distribution across the wide range of the species at this time, and substantial habitat still remains to support the species in many areas. The threats are imminent because the species is currently facing them in many portions of its range. Therefore, we assigned the greater sage-grouse an LPN of 8.

Greater sage-grouse, Bi-State DPS (*Centrocercus urophasianus*)—We continue to find that listing this species is warranted, but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Greater sage-grouse, Columbia Basin DPS (*Centrocercus urophasianus*)—The following summary is based on information in our files and a petition, dated May 14, 1999, requesting the listing of the Washington population of the western sage-grouse (*C. u. phaios*). On May 7, 2001, we concluded that listing the Columbia Basin DPS of the western sage-grouse was warranted, but precluded by higher priority listing actions (66 FR 22984); this population was historically found in northern Oregon and central Washington. Following our May 7, 2001, finding, the Service received additional petitions requesting listing actions for various other greater sage-grouse populations, including one for the nominal western subspecies, dated January 24, 2002, and three for the entire species, dated June 18, 2002, and March 19 and December 22, 2003. The Service subsequently found that the petition for the western subspecies did not present substantial

information (68 FR 6500; February 7, 2003), and that listing the greater sage-grouse throughout its historical range was not warranted (70 FR 2244; January 12, 2005). These latter findings were remanded to the Service for further consideration. In response, we initiated a new rangewide status review for the entire species (73 FR 10218; February 26, 2008). On March 5, 2010, we found that listing of the greater sage-grouse was warranted but precluded by higher priority listing actions (75 FR 13909; March 23, 2010), and it was added to the list of candidates. We also found that the western subspecies of the greater sage-grouse, the taxonomic entity we relied on in our DPS analysis for the Columbia Basin population, was no longer considered a valid subspecies. In light of our conclusions regarding the taxonomic invalidity of the western sage-grouse subspecies, the significance of the Columbia Basin DPS to the greater sage-grouse will require further review. The Service intends to complete an analysis to determine if this population continues to warrant recognition as a DPS in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722; February 7, 1996) at the time we make a listing decision on the status of the greater sage-grouse. Until that time, the Columbia Basin DPS will remain a candidate for listing.

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files and the petition we received on May 8, 1989. No new information was provided in the second petition received on May 11, 2004. The band-rumped storm-petrel is a small seabird that is found in several areas of the subtropical Pacific and Atlantic Oceans. In the Pacific, there are three widely separated breeding populations—one in Japan, one in Hawaii, and one in the Galapagos. Populations in Japan and the Galapagos are comparatively large and number in the thousands, while the Hawaiian birds represent a small, remnant population of possibly only a few hundred pairs. Band-rumped storm-petrels are most commonly found in close proximity to breeding islands. The three populations in the Pacific are separated by long distances across the ocean where birds are not found. Extensive at-sea surveys of the Pacific have revealed a broad gap in distribution of the band-rumped storm-petrel to the east and west of the Hawaiian Islands, indicating that the distribution of birds in the central Pacific around Hawaii is disjunct from other nesting areas. The available information indicates that distinct populations of band-rumped storm-petrels are definable and that the Hawaiian population is distinct based on geographic and distributional isolation from other band-rumped storm-petrel populations in Japan, the Galapagos, and the Atlantic Ocean. A population also can be considered discrete if it is delimited by international boundaries that have differences in management control of the species. The Hawaiian population of the band-rumped storm-petrel is the only population within U.S. borders or under U.S. jurisdiction. Loss of the Hawaiian population would cause a significant gap in the distribution of the band-rumped storm-petrel in the Pacific, and could result in the complete isolation of the Galapagos and Japan populations without even occasional genetic exchange. Therefore, the population is both discrete and significant, and constitutes a DPS.

The band-rumped storm-petrel probably was common on all of the main Hawaiian Islands when Polynesians arrived about 1,500 years ago, based on storm-petrel bones found in middens on the island of Hawaii and in excavation sites on Oahu and Molokai. Nesting colonies of this species in the Hawaiian Islands currently are restricted to remote cliffs on Kauai and Lehua Island and high-elevation lava fields on Hawaii. Vocalizations of the species were heard in Haleakala Crater on Maui as recently as 2006; however, no nesting sites have been located on the island to date. The significant reduction in numbers and range of the band-rumped storm-petrel is due primarily to predation by nonnative species introduced by humans, including the domestic cat (*Felis catus*), small Indian mongoose (*Herpestes auropunctatus*), common barn owl (*Tyto alba*), black rat (*R. rattus*), Polynesian rat (*R. exulans*), and Norway rat (*R. norvegicus*). These nonnative predators occur throughout the main Hawaiian Islands, with the exception of the mongoose, which is not established on Kauai. Attraction of fledglings to artificial lights, which disrupts their night-time navigation, resulting in collisions with building and other objects, and collisions with artificial structures such as communication towers and utility lines are also threats. Erosion of nest sites caused by the actions of nonnative ungulates is a potential threat in some locations. Efforts are under way in some areas to reduce light pollution and mitigate the threat of collisions, but there are no large-scale efforts to control nonnative predators in the Hawaiian Islands. The threats are imminent because they are ongoing, and they are of a high magnitude because they are reducing the population size of the DPS. Therefore, we assign this distinct population segment an LPN of 3.

Elfin-woods warbler (*Dendroica angelae*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dendroica angelae,* or elfin-woods warbler, is a small entirely black and white warbler, distinguished by its white eyebrow stripe, white patches on ear covers and neck, incomplete eye ring, and black crown. The elfin-woods warbler was at first thought to occur only in high elevations at dwarf or elfin forests, but it has since been found at lower elevations including shade coffee plantations and secondary forests. These birds build a compact cup nest, usually close to the trunk and well hidden among the epiphytes of small trees. Its breeding season extends from March to June. Elfin-woods warblers forage in the middle part of trees, gleaning insects from leaves in the outer portion of tree crowns. The species has been documented from four locations in Puerto Rico: Luquillo Mountains, Sierra de Cayey, and the Commonwealth forests of Maricao and Toro Negro. However, it has not been recorded again in Toro Negro and Cayey, following the passing of Hurricane Hugo in 1989. In 2003 and 2004, surveys were conducted for the elfin-woods warbler in the Carite Commonwealth Forest, Toro Negro Forest, Guilarte Forest, Bosque del Pueblo, Maricao Forest, and the El Yunque National Forest. These surveys only reported sightings at Maricao Commonwealth Forest (778 individuals) and El Yunque National Forest (196 individuals).

The elfin-woods warbler is currently threatened by habitat modification. Elfin-woods warblers have been historically common in the elfin woodland of El Yunque National Forest and the Podocarpus forest type of Maricao Commonwealth Forest. Removal and replacement of this forest vegetation with infrastructure (e.g., telecommunication towers and recreational facilities) may have affected the species. Although this loss of habitat has been permanent and restoration would take a few decades, the present regulatory process, at both the Commonwealth and Federal levels, have curtailed this threat. Unrestricted development within the El Yunque buffer zone needs to be addressed to determine the impact on the migratory

behavior of the species. Conversion of elfin-woods warbler habitat (e.g., mature secondary forests, young secondary forests, and shaded-coffee plantations) along the periphery of the Maricao Commonwealth Forest to marginal habitat (e.g., pastures, dry slope forests, residential rural forests, gallery forests, and unshaded coffee plantations), has affected potential corridors for the elfin-woods warbler, resulting in a reduced dispersal and expansion capability of the species. These threats are not imminent because most of the range of the species is within protected lands. The magnitude of threat to the elfin-woods warbler is low to moderate because there is no indication that the two populations of the elfin-woods warbler are declining in numbers. The species can thrive in disturbed and plantation habitats, although abundance of the species on these habitats is lower than in primary habitats. Moreover, elfin-woods warblers appear to recover well, and in a relatively short time, from damaging effects of hurricanes to the forest structure. Therefore, we assign a listing priority number of 11 to the elfin-woods warbler.

Reptiles

Northern Mexican gartersnake (*Thamnophis eques megalops*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Eastern massasauga rattlesnake (*Sistrurus catenatus*)—The following summary is based on information contained in our files. The Service received a petition containing no new information on May 11, 2004. Until 2011, the eastern massasauga was considered one of three recognized subspecies of massasauga. Based on recent information, we recognized the eastern massasauga rattlesnake as a distinct species beginning in 2011. It is a small, thick-bodied rattlesnake that occupies shallow wetlands and adjacent upland habitat in portions of Illinois, Indiana, Iowa, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario.

Although the current range of *S. catenatus* resembles the species' historical range, the geographic distribution has been restricted by the loss of the species from much of the area within the boundaries of that range. Approximately 40 percent of the counties that were historically occupied by *S. catenatus* no longer support the species. *S. catenatus* is currently listed as endangered in every State and province in which it occurs, except for Michigan where it is designated as a species of special concern. Each State and Canadian province across the range of *S. catenatus* has lost more than 30 percent of its historical population of the species, and for the majority more than 50 percent. Furthermore, fewer than 35 percent of the remaining populations are considered secure. Approximately 59 percent of the remaining *S. catenatus* populations occur wholly or in part on public land, and Statewide and/or site-specific CCAAs are currently being developed for many of these areas in Illinois and Michigan. In 2004, a Candidate Conservation Agreement (CCA) with the Lake County Forest Preserve District in Illinois was completed. In 2005, a CCA with the Forest Preserve District of Cook County in Illinois was completed. In 2006, a CCAA with the Ohio Department of Natural Resources Division of Natural Areas and Preserves was completed for Rome State Nature Preserve in Ashtabula County. In 2011, a CCAA with the Wisconsin Department of Natural Resources was completed for the Lower Chippewa River Bottoms. These agreements are addressing threats in those areas and thus reduce the magnitude of threats for the species as a whole. Therefore, the magnitude of threats is considered ''moderate'' at this time. However, a recently completed extinction risk model and information provided by species experts indicate that other populations are likely to suffer additional losses in abundance and genetic diversity, and some will likely be extirpated unless threats are removed in the near future. Declines have continued or may be accelerating in several States. Thus we are monitoring the status of this species to determine if a change in listing priority is warranted. Threats of habitat modification, habitat succession, incompatible land management practices, illegal collection for the pet trade, and human persecution are ongoing and constitute imminent threats to many remaining populations, particularly those inhabiting private lands. Based on imminent threats of moderate magnitude, we assigned this species an LPN of 8.

Black pine snake (*Pituophis melanoleucus lodingi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. There are historical records for the black pine snake from one parish in Louisiana, 14 counties in Mississippi, and 3 counties in Alabama west of the Mobile River Delta. Black pine snake surveys and trapping indicate that this species has been extirpated from Louisiana and from four counties in Mississippi. Moreover, the distribution of remaining populations has become highly restricted due to the destruction and fragmentation of the remaining longleaf pine habitat within the range of the subspecies. Most of the known Mississippi populations are concentrated on the DeSoto National Forest. In Alabama, populations occurring on properties managed by State and other governmental agencies, as gopher tortoise mitigation banks or wildlife sanctuaries, represent the best opportunities for long-term survival of the subspecies there. Other factors affecting the black pine snake include vehicular mortality and low reproductive rates, which magnify the threats from destruction and fragmentation of longleaf pine habitat and increase the likelihood of local extinctions. Due to the imminent threats of high magnitude caused by the past destruction of most of the longleaf pine habitat of the black pine snake, and the continuing persistent degradation of what remains, we assigned an LPN of 3 to this subspecies.

Louisiana pine snake (*Pituophis ruthveni*)—The following summary is based on information contained in our files and the petition we received on July 20, 2000, and updated through April 30, 2011. The Louisiana pine snake historically occurred in the fire-maintained longleaf pine ecosystem within west-central Louisiana and extreme east-central Texas. Most of the historical longleaf pine habitat of the Louisiana pine snake has been destroyed or degraded due to logging, fire suppression, roadways, short-rotation silviculture, and grazing. The loss and fragmentation of the longleaf pine ecosystem has resulted in extant Louisiana pine snake populations that are isolated and small.

The Louisiana pine snake is currently restricted to seven disjunct populations; five of the populations occur on federal lands, and two occur mainly on private industrial timberlands. Currently occupied habitat in Louisiana and Texas is estimated to be approximately 159,000 ac. All remnant Louisiana pine

snake populations have been affected by habitat loss and all require active habitat management. A CCA was completed in 2003 to maintain and enhance occupied and potential habitat on public lands, and to protect known Louisiana pine snake populations. This proactive habitat management has likely slowed or reversed the rate of Louisiana pine snake habitat degradation on many portions of federal lands. Because all extant populations are currently isolated and fragmented by habitat loss in the matrix between populations, there is little potential for dispersal among remnant populations or for the natural re-colonization of vacant habitat patches.

While the extent of Louisiana pine snake habitat loss has been great in the past and much of the remaining habitat has been degraded, habitat loss does not represent an imminent threat, primarily because the rate of habitat loss appears to be declining on public lands. However, all populations require active habitat management, and the lack of adequate habitat remains a threat for several populations. The potential threats to a large percentage of extant Louisiana pine snake populations, coupled with the likely permanence of these effects and the species' low fecundity and low population sizes (based on capture rates and occurrence data), lead us to conclude that the threats have significant effect on the survival of the species and therefore remain high in magnitude. The threats are not imminent, because the rate of habitat loss appears to be declining due to proactive habitat management. Thus, based on nonimminent, high-magnitude threats, we assign a listing priority number of 5 to this species.

Tucson shovel-nosed snake (*Chionactis occipitalis klauberi*)—The Tucson shovel-nosed snake is a small, burrowing snake in the Colubridae family that occupied a roughly 35-mile-wide swath running along the Phoenix-Tucson corridor in northeastern Pima, southwestern Pinal, and eastern Maricopa Counties, Arizona. No systematic surveys have been conducted to assess the status of the subspecies throughout its range, but it has apparently disappeared from some areas.

Threats to the Tucson shovel-nosed snake include urban and rural development; road construction, use, and maintenance; concentration of solar power facilities and transmission corridors; agriculture; wildfires; and lack of adequate management and regulation. Comprehensive plans encompassing the entire range of the snake encourage large growth areas in the next 20 years and beyond. These plans also call for an increase in roads and transportation corridors, which have been documented to affect the snake through direct mortality. Additionally, development of solar energy facilities and transmission corridors throughout the State is being pursued, and demand for these facilities will likely increase. Some of these facilities are being considered within the range of the Tucson shovel-nosed snake. Wildfires due to infestations of nonnative grasses in the snake's habitat, dominated by native plants not adapted to survive wildfires, are likely to increase in frequency and magnitude in the future as these invasive grasses continue to spread rapidly. Regulations are not in place to minimize or mitigate these threats to the Tucson shovel-nosed snake and its habitat, and, therefore, they are likely to put the snake at risk of local extirpation or extinction. These threats, particularly those that lead to a loss of habitat, are likely to reduce the population of the Tucson shovel-nosed snake across its entire range. Given the limited geographic distribution of this snake and the fact that its entire range lies within the path of development in the foreseeable future, these threats are of high magnitude. Because development, wildfires, and spread of nonnative grasses are ongoing, and are likely to increase in the future, the threats are imminent. Accordingly, we have assigned an LPN of 3 to the Tucson shovel-nosed snake.

Desert tortoise, Sonoran (*Gopherus morafkai*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Gopher tortoise, eastern population (*Gopherus polyphemus*)—The following summary is based on information in our files. The gopher tortoise is a large, terrestrial, herbivorous turtle that reaches a total length up to 15 in (38 cm), and typically inhabits the sandhills, pine/scrub oak uplands, and pine flatwoods associated with the longleaf pine (*Pinus palustris*) ecosystem. A fossorial animal, the gopher tortoise is usually found in areas with well-drained, deep, sandy soils; an open tree canopy; and a diverse, abundant, herbaceous groundcover. The gopher tortoise ranges from extreme southern South Carolina south through peninsular Florida, and west through southern Georgia, Florida, southern Alabama, and Mississippi, into extreme southeastern Louisiana. The eastern population of the gopher tortoise in South Carolina, Florida, Georgia, and Alabama (east of the Mobile and Tombigbee Rivers) is a candidate species; the gopher tortoise is federally listed as threatened in the western portion of its range, which includes Alabama (west of the Mobile and Tombigbee Rivers), Mississippi, and Louisiana.

The primary threat to the gopher tortoise is habitat fragmentation, destruction, and modification (either deliberately or from inattention), including conversion of longleaf pine forests to other silvicultural or agricultural habitats, urbanization, shrub/hardwood encroachment (mainly from fire exclusion or insufficient fire management), and establishment and spread of invasive species. Other threats include disease, predation (mainly on nests and young tortoises), and inadequate regulatory mechanisms, specifically those needed to protect and enhance relocated tortoise populations in perpetuity. The magnitude of threats to the eastern range of the gopher tortoise is moderate to low, as populations extend over a broad geographic area and conservation measures are in place in some areas. However, because the species is currently being affected by a number of threats including destruction and modification of its habitat, disease, predation, exotics, and inadequate regulatory mechanisms, the threat is imminent. Thus, we have assigned a listing priority number of 8 for this species.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following summary is based on information contained in our files and the petition we received on May 1, 1989. Currently, the Great Basin DPS of Columbia spotted frogs appear to be widely distributed throughout southwest Idaho, southeast Oregon, northeast and central Nevada, but most populations within this range appear to be small and isolated from each other. Recent work by researchers in Idaho and Nevada have documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals.

Small, highly fragmented populations, characteristic of the majority of existing populations of Columbia spotted frogs in the Great Basin, are susceptible to extinction processes. Development and poor management of Columbia spotted

frog habitat—including water development, improper grazing, mining activities, and nonnative species—have contributed and continue to contribute to the degradation and fragmentation of habitat. Emerging fungal diseases such as chytridiomycosis, *Ranavirus* outbreaks, and the spread of parasites may be contributing factors to Columbia spotted frog population declines throughout portions of its range. Effects of climate change such as drought and stochastic events such as fire often have detrimental effects to small, isolated populations and can often exacerbate existing threats. A 10-year Conservation Agreement and Strategy was signed in September 2003 for both the Northeast and the Toiyabe subpopulations in Nevada. The goals of the conservation agreements are to reduce threats to Columbia spotted frogs and their habitat to the extent necessary to prevent populations from becoming extirpated throughout all or a portion of their historical range and to maintain, enhance, and restore a sufficient number of populations of Columbia spotted frogs and their habitat to ensure their continued existence throughout their historical range. Additionally, a CCAA was completed in 2006 for the Owyhee subpopulation at Sam Noble Springs, Idaho. Several habitat enhancement projects have been conducted throughout the DPS's range that have benefitted these populations. Because the DPS is widely distributed and there are management actions in place working to reduce the scope of threats to the speces, we conclude that the threats are moderate. The threats are imminent, because development and poor management of its habitat, and fungal diseases and parasites are already present. Based on imminent threats of moderate magnitude, we assigned an LPN of 9 to this DPS of the Columbia spotted frog.

Mountain yellow-legged frog, Sierra Nevada DPS (*Rana muscosa*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Oregon spotted frog (*Rana pretiosa*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Relict leopard frog (*Lithobates onca*)—The following summary is based on information contained in our files. Natural relict leopard frog populations occur in two general areas in Nevada: Near the Overton Arm area of Lake Mead, and Black Canyon below Lake Mead. These two areas represent a small fraction of the historical distribution of the species. Its historical range included springs, streams, and wetlands within the Virgin River drainage downstream from the vicinity of Hurricane, Utah; along the Muddy River, Nevada; and along the Colorado River from its confluence with the Virgin River downstream to Black Canyon below Lake Mead, Nevada and Arizona.

Factors contributing to the decline of the species include alteration, loss, and degradation of aquatic habitat due to water developments and impoundments, and scouring and erosion; changes in plant communities that result in dense growth and the prevalence of vegetation; introduced predators; climate change; and stochastic events. The presence of chytrid fungus in relict leopard frogs at Lower Blue Point Spring is a concern and warrants further evaluation of the threat of disease to the relict leopard frog. The size of natural and translocated populations is small, and, therefore, these populations are vulnerable to stochastic events, such as floods and wildfire. Climate change that results in reduced spring flow, habitat loss, and increased prevalence of wildfire would adversely affect relict leopard frog populations. In 2005, the National Park Service, in cooperation with the Fish and Wildlife Service and other Federal, State, and local partners, developed a conservation agreement and strategy intended to improve the status of the species through prescribed management actions and protection. Conservation actions identified in the agreement and strategy include captive rearing of tadpoles for translocation and refugium populations, habitat and natural history studies, habitat enhancement, population and habitat monitoring, and translocation. New sites within the historical range of the species have been successfully established with captive-reared frogs. Conservation is proceeding under the agreement and strategy; however, additional time is needed to determine whether or not the agreement and strategy will be effective in eliminating or reducing the threats to the point that the relict leopard frog can be removed from candidate status. In consideration of these conservation efforts and the overall threat level to the species, we determined the magnitude of existing threats is moderate to low. Potential water development and other habitat effects, presence of introduced predators, chytrid fungus, limited distribution, small population size, and climate change are ongoing and, therefore, imminent threats. Therefore, we assigned a listing priority number of 8 to this species.

Striped newt (*Notophthalmus perstriatus*)—The following summary is based on information contained in our files. The striped newt is a small salamander that inhabits ephemeral ponds surrounded by upland habitats of high pine, scrubby flatwoods, and scrub. Longleaf pine-turkey oak stands with intact ground cover containing wiregrass are the preferred upland habitat for striped newts, followed by scrub, then flatwoods. Life-history stages of the striped newt are complex, and include the use of both aquatic and terrestrial habitats throughout their life cycle. Striped newts are opportunistic feeders that prey on frog eggs, worms, snails, fairy shrimp, spiders, and insects (adult and larvae) that are of appropriate size. They occur in appropriate habitats from the Atlantic Coastal Plain of southeastern Georgia to the north-central peninsula of Florida and through the Florida panhandle into portions of southwest Georgia. There is a 125-km (78-mi) separation between the western and eastern portions of the striped newt's range.

The historical range of the striped newt was likely similar to the current range. However, loss of native longleaf habitat, fire suppression, and the natural patchy distribution of upland habitats used by striped newts have resulted in fragmentation of existing populations. Other threats to the species include disease, drought, and inadequate regulatory mechanisms. The magnitude of threats from habitat loss, fire suppression, and disease are moderate, as most of the known striped newt metapopulations are on conservation lands, and, although disease has been found in similar species, no known metapopulations of striped newts have shown any evidence of disease. For drought, the magnitude is high because nearly all populations are affected, and

this factor may lead to possible extirpation. Also, throughout the entire range of the striped newt, droughts are predicted to be more severe and longer in the coming years, which could have a detrimental effect on the species' long-term survival. In sum, because we find that most of the threats are of a moderate magnitude, we find the overall threats that the striped newt is facing to be moderate in magnitude. The threats are ongoing and, therefore, imminent. Thus, we assigned a listing priority number of 8 to the newt.

Berry Cave salamander (*Gyrinophilus gulolineatus*)—The following summary is based on information in our files. The Berry Cave salamander is recorded from Berry Cave in Roane County, from Mud Flats, Aycock Spring, Christian, Meades Quarry, Meades River, and Fifth caves in Knox County; from Blythe Ferry Cave in Meigs County; and from an unknown cave in Athens, McMinn County, Tennessee. In May of 2012, the species was also discovered in an additional cave, The Lost Puddle Cave, in Knox County. These cave systems are all located within the Upper Tennessee River and Clinch River drainages. A total of 113 caves in Middle and East Tennessee were surveyed from the time period of April 2004 through June 2007, resulting in observations of 63 Berry Cave salamanders. These surveys concluded that Berry Cave salamander populations are robust at Berry and Mudflats caves where population declines had been previously reported and documented two new populations of Berry Cave salamanders at Aycock Spring and Christian caves. Three Berry Cave salamanders were spotted during the May, 2012, survey in The Lost Puddle and additional surveys are planned. Ongoing threats to this species are in the form of lye leaching in the Meades Quarry Cave as a result of past quarrying activities, a proposed roadway with potential to impact the recharge area for the Meades Quarry Cave system, urban development in Knox County, water quality impacts despite existing State and Federal laws, and hybridization between spring salamanders and Berry Cave salamanders in Meades Quarry Cave. These threats, coupled with confined distribution of the species and apparent low population densities, are all factors that leave the Berry Cave salamander vulnerable to extirpation. Although these threats are ongoing, the population levels are robust at two caves, and three new populations have been found at three additional caves. Therefore, we have determined that the Berry Cave salamander faces imminent threats of moderate magnitude. Based on moderate-magnitude, imminent threats, we assigned this species a listing priority number of 8.

Yosemite toad (*Anaxyrus canorus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Black Warrior waterdog (*Necturus alabamensis*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Fishes

Headwater chub (*Gila nigra*)—The following summary is based on information contained in our files since 2006 and in the 12-month finding published in the **Federal Register** on May 3, 2006 (71 FR 26007). The headwater chub is a moderate-sized cyprinid fish. The range of the headwater chub has been reduced by approximately 60 percent. Twenty-three streams (125 mi (200 km) of stream) are thought to be occupied out of 26 streams (312 mi (500 km) of stream) formerly occupied in the Gila River Basin in Arizona and New Mexico. All remaining populations are fragmented and isolated, and threatened by a combination of factors.

Headwater chubs are threatened by introduced, nonnative fish that prey on them and compete with them for food. Habitat destruction and modification have occurred and continue to occur as a result of dewatering, impoundment, channelization, and channel changes caused by alteration of riparian vegetation and watershed degradation from mining, grazing, roads, water pollution, urban and suburban development, groundwater pumping, and other human actions. Existing regulatory mechanisms do not appear to be adequate for addressing the impact of nonnative fish and also have not removed or eliminated the threats that continue to be posed through habitat degradation. The fragmented nature and rarity of existing populations makes them vulnerable to other natural or manmade factors, such as drought and wildfire. Climate change is predicted to worsen these threats through increased aridity of the region, thus reducing stream flows and warming aquatic habitats, which makes the habitat more suitable to nonnative species.

The Arizona Game and Fish Department's Arizona Statewide Conservation Agreement for Roundtail Chub (*G. robusta*), Headwater Chub, Flannelmouth Sucker (*Catostomus latipinnis*), Little Colorado River Sucker (*Catostomus* spp.), Bluehead Sucker (*C. discobolus*), and Zuni Bluehead Sucker (*C. discobolus yarrowi*) was finalized in 2006. The New Mexico Department of Game and Fish has listed the headwater chub as endangered and in 2006 finalized a recovery plan for the species: Colorado River Basin Chubs (Roundtail Chub, Gila Chub (*G. intermedia*), and Headwater Chub) Recovery Plan. Arizona's agreement and New Mexico's recovery plan both recommend preservation and enhancement of extant populations and restoration of historical headwater-chub populations. The recovery and conservation actions prescribed by Arizona's and New Mexico's plans, which we predict will reduce and remove threats to this species, will require further discussions and authorizations as they are being implemented. The recently completed Arizona Game and Fish Department Sportfish Stocking Program's Conservation and Mitigation Program contains significant conservation actions for the headwater chub that will be implemented over the next 10 years.

Existing information indicates that existing populations are stable and persisting in the long-term; 9 of the 23 extant stream populations are currently considered stable based on abundance and evidence of recruitment. Therefore, although threats are ongoing, the threats are moderate in magnitude. We have retained an LPN of 8 for this species at this time.

Least chub (*Iotichthys phlegethontis*)—The following summary is based on information contained in our files and in the petition received on June 25, 2007. The least chub is a small, colorful fish species in Utah that follows thermal patterns for habitat use. Least chub use flooded, warmer, vegetated marsh areas to spawn in the spring, and retreat to spring heads to overwinter as the water recedes in the late summer and fall. Historically, many least chub occurrences were reported across the State of Utah, but the current distribution of the species is highly reduced from its historical range. Currently, only six known wild populations remain, but one of these is considered functionally extirpated. Least chub also currently exist at several genetic refuge sites. The species faces

threats from the effects of livestock grazing, which affects most least chub sites despite efforts to protect least chub habitat with grazing exclosures and management plans. Least chub habitat also is affected by current and proposed future groundwater withdrawals, especially when combined with the threat of drought. These threats also act cumulatively with climate change to put the least chub at further risk. Existing regulatory mechanisms are currently inadequate to regulate groundwater withdrawals and ameliorate their effects on least chub habitat. Nonnative species, particularly mosquitofish, also are a continuing threat to least chub. There is no known means of controlling mosquitofish, and they have already caused the functional extirpation of one wild least chub population.

In 1998, several State and Federal agencies, including the Service and the Utah Division of Wildlife Resources, developed a Least Chub Conservation Agreement and Strategy and formed the Least Chub Conservation Team. Their objectives are to eliminate or significantly reduce threats to the least chub and its habitat, and to ensure the continued existence of the species by restoring and maintaining a minimum number of least chub populations throughout its historical range. Recent State-led least chub conservation actions have included restoration of habitat affected by grazing, reintroduction and range expansion, nonnative removal, population monitoring, and working cooperatively with landowners to conserve water and aquatic habitat. This group also has recently begun a structured decision-making modeling process that will provide additional guidance for conservation activities.

Overall, grazing, groundwater withdrawal, and predation by nonnative species are moderate magnitude threats; some populations are more negatively affected by these threats but in others the threats are not decreasing the populations or the threats are not present. The threats are imminent because the species is currently facing them in many portions of its range. Therefore, we have assigned the least chub an LPN of 7.

Roundtail chub (*Gila robusta*), Lower Colorado River DPS—The following summary is based on information contained in our files and the 12-month finding published in the **Federal Register** on July 7, 2009 (74 FR 32352). The roundtail chub is a moderate to large cyprinid fish. The range of the roundtail chub has been reduced by approximately 68 to 82 percent. Thirty-two streams are currently occupied, representing approximately 18 to 32 percent of the species' former range, or 800 km (500 mi) to 1,350 km (840 mi) of 3,050 km (1,895 mi) of formerly occupied streams in the Gila River Basin in Arizona and New Mexico. Most of the remaining populations are fragmented and isolated, and all are threatened by a combination of factors.

Roundtail chub are threatened by introduced, nonnative fish that prey on them and compete with them for food. Habitat destruction and modification have occurred and continue to occur as a result of dewatering, impoundment, channelization, and channel changes caused by alteration of riparian vegetation and watershed degradation from mining, grazing, roads, water pollution, urban and suburban development, groundwater pumping, and other human actions. Existing regulatory mechanisms do not appear to be adequate for addressing the impact of nonnative fish and also have not removed or eliminated the threats that continue to be posed through habitat destruction or modification. The fragmented nature and rarity of existing populations make roundtail chub vulnerable to other natural or manmade factors, such as drought and wildfire. Climate change is predicted to worsen these threats through increased aridity of the region, thus reducing stream flows and warming aquatic habitats, which makes the habitat more suitable to nonnative species.

The Arizona Game and Fish Department's Arizona Statewide Conservation Agreement for Roundtail Chub, Headwater Chub (*G. nigra*), Flannelmouth Sucker (*Catostomus latipinnis*), Little Colorado River Sucker (*Catostomus* spp.), Bluehead Sucker (*C. discobolus*), and Zuni Bluehead Sucker (*C. discobolus yarrowi*) was finalized in 2006. The New Mexico Department of Game and Fish lists the roundtail chub as endangered and in 2006 finalized a recovery plan for the species: Colorado River Basin Chubs (Roundtail Chub, Gila Chub (*G. intermedia*), and Headwater Chub) Recovery Plan. Both the Arizona Agreement and the New Mexico Recovery Plan recommend preservation and enhancement of extant populations and restoration of historical roundtail chub populations. The recovery and conservation actions prescribed by the Arizona and New Mexico plans, which we predict will reduce and remove threats to this species, will require further discussions and authorizations as they are being implemented. The recently completed Arizona Game and Fish Department Sportfish Stocking Program's Conservation and Mitigation Program contains significant conservation actions for the roundtail chub that will be implemented over the next 10 years.

Although threats are ongoing, existing information indicates long-term persistence and stability of existing populations. Currently, 7 of the 32 extant stream populations are considered stable, based on abundance and evidence of recruitment. One new conservation population was initially stocked in 2012, raising the number of extant populations to 33. Based on our assessment, threats (primarily nonnative species and habitat loss from land uses) remain imminent, because they are ongoing, and are of moderate magnitude because there is evidence of long-term persistence and stability of the existing popualtions. Thus, we have retained an LPN of 9 for this distinct population segment.

Arkansas darter (*Etheostoma cragini*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This fish species occurs in Arkansas, Colorado, Kansas, Missouri, and Oklahoma. The species is found most often in sand- or pebble-bottomed pools of small, spring-fed streams and marshes, with cool water and broadleaved aquatic vegetation. Its current distribution is indicative of a species that once was widely dispersed throughout its range, but has been relegated to isolated areas surrounded by unsuitable habitat that prevents dispersal.

Factors influencing the current distribution include: Surface and groundwater irrigation resulting in decreased flows or stream dewatering; the dewatering of long reaches of riverine habitat necessary for species movement when surface flows do occur; conversion of prairie to cropland, which influences groundwater recharge and spring flows; water quality degradation from a variety of sources; and the construction of dams, which act as barriers preventing emigration upstream and downstream through the reservoir pool. The magnitude of threats facing this species is moderate to low, given the number of different locations where the species occurs and the fact that no single threat or combination of threats affects more than a portion of the widespread population occurrences. Overall, the threats are nonimminent as groundwater pumping is declining and development, spills, and runoff are not currently affecting the species rangewide. Thus, we are retaining an LPN of 11 for the Arkansas darter.

Pearl darter (*Percina aurora*)—The following summary is based on

information contained in our files. Little is known about the specific habitat requirements or natural history of the Pearl darter. Pearl darters have been collected from a variety of river/stream attributes, mainly over gravel bottom substrate. This species is historically known only from localized sites within the Pascagoula and Pearl River drainages in Mississippi and Louisiana. Currently, the Pearl darter is considered extirpated from the Pearl River drainage and rare in the Pascagoula River drainage. Since 1983, the range of the Pearl darter has decreased by 55 percent.

The Pearl darter is threatened by non-point source pollution caused by urbanization and other land use activities; gravel mining and resultant changes in river geomorphology, especially head cutting; and the possibility of water quantity decline from the proposed Department of Energy Strategic Petroleum Reserve project and a proposed dam on the Bouie River. Additional threats are posed by the apparent lack of adequate State and Federal water quality regulations due to the continuing degradation of water quality within the species' habitat. The Pearl darter's localized distribution and apparent low population numbers may indicate a species with lower genetic diversity, which would also make this species more vulnerable to catastrophic events. Threats affecting the Pearl darter are localized in nature, affecting only portions of the population within the drainage; thus, a threat magnitude of moderate to low is assigned for this species. In addition, the threats are considered imminent, as the identified threats are currently affecting this species in some portions of its range. Therefore, we have assigned a listing priority number of 8 for this species.

Arctic grayling, Upper Missouri River DPS (*Thymallus arcticus*)—The following summary is based on information contained in our files. This fish species has a broad, nearly circumpolar distribution, occurring in a variety of cold-water habitats including small streams, large rivers, lakes, and even bogs. We determined in our September 8, 2010, status review (75 FR 54708) that the upper Missouri River population of arctic grayling in Montana and Wyoming represents a DPS because it is discrete due to geographic separation and genetic differences, and it is significant to the taxon as a whole. The historical range of Arctic grayling in the upper Missouri River basin has declined dramatically in the past century. The five remaining indigenous populations are isolated from one another by dams or other factors.

All populations face potential threats from competition with and predation by nonnative trout, and most populations face threats resulting from the alteration of their habitats, such as habitat fragmentation from dams or irrigation diversion structures, stream dewatering, high summer water temperatures, loss of riparian habitats, and entrainment in irrigation ditches. Severe drought likely also affects all populations by reducing water availability and reducing the extent of thermally suitable habitat. Projected climate changes will likely influence the severity and scope of these threats in the future. As applied, existing regulatory mechanisms do not appear to be adequate to address the primary threats to arctic grayling. In addition, four of five populations are at risk from random environmental fluctuations and genetic drift due to their low abundance and isolation. The magnitude of these threats is high because one or more of these threats occurs in each known population in the Missouri River basin. The threats are imminent because they are currently occurring and are expected to continue in the foreseeable future. Therefore, we have assigned the upper Missouri River DPS of arctic grayling an LPN of 3.

Sicklefin redhorse (*Moxostoma* sp.)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Sharpnose shiner (*Notropis oxyrhynchus*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Smalleye shiner (*Notropis buccula*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*)—The following summary is based on information contained in our files and our status review published on May 14, 2008 (73 FR 27900). Rio Grande cutthroat trout is one of 14 subspecies of cutthroat trout found in the western United States. Populations of this subspecies are in New Mexico and Colorado in drainages of the Rio Grande, Pecos, and Canadian rivers. Although once widely distributed in connected stream networks, Rio Grande cutthroat trout populations now occupy about 10 percent of historical habitat, and the populations are fragmented and isolated from one another. The majority of populations occur in high-elevation streams.

Major threats include the loss of suitable habitat that has occurred and is likely to continue occurring due to water diversions, dams, stream drying, habitat quality degradation, and changes in hydrology; introduction of nonnative trout and ensuing competition, predation, and hybridization; and whirling disease. In addition, average air temperatures in the Southwest have increased about 1 °C (2.5 °F) in the past 30 years, and they are projected to increase by another 1.2 to 2.8 °C (3 to 7 °F) by 2050. Because trout require cold water, and water temperatures depend in large part on air temperature, there is concern that the habitat of Rio Grande cutthroat trout will further decrease in response to warmer water temperatures caused by climate change. Wildfire and

drought (stream drying) are additional threats to Rio Grande cutthroat trout populations that are likely to increase in magnitude in response to climate change. Research is occurring to assess the effects of climate change on this subspecies, and agencies are working to restore historically occupied streams and develop a conservation plan to direct conservation. The threats are of moderate magnitude because there is good distribution and a comparatively large number of populations across the landscape, some populations have few threats present, and in other areas management actions are being taken to help control the threat of nonnative trout. Overall, the threats are ongoing and, therefore, imminent. Based on imminent threats of moderate magnitude, we retain an LPN of 9 for this subspecies.

Clams

Texas fatmucket (*Lampsilis bracteata*)—The following summary is based on information contained in our files. The Texas fatmucket is a large, elongated freshwater mussel that is endemic to central Texas. Its shell can be moderately thick, smooth, and rhomboidal to oval in shape. Its external coloration varies from tan to brown with continuous dark brown, green-brown, or black rays, and internally it is pearly white, with some having a light salmon tint. This species historically occurred throughout the Colorado and Guadalupe-San Antonio River basins but is now known to occur only in nine streams within these basins in very limited numbers. All existing populations are represented by only one or two individuals and are not likely to be stable or recruiting.

The Texas fatmucket is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat; decrease water quality; modify stream flows; and prevent fish host migration and distribution of freshwater mussels. This species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the Texas fatmucket and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the extinction of the Texas fatmucket in the foreseeable future.

The threats are such that the Texas fatmucket warrants listing; the threats are high in magnitude because habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas fatmucket and profoundly affect its survival and recruitment. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Remaining populations are small, isolated, and highly vulnerable to stochastic events, which could lead to extirpation or extinction. We consider these threats to be imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation have already occurred and will continue as the human population continues to grow in central Texas. Texas fatmucket populations may already be below the minimum viable population requirement, which causes a reduction in the number of populations and an increase in the species' vulnerability to extinction. Based on imminent, high-magnitude threats, we assigned the Texas fatmucket an LPN of 2.

Texas fawnsfoot (*Truncilla macrodon*)—The following summary is based on information contained in our files. The Texas fawnsfoot is a small, relatively thin-shelled freshwater mussel that is endemic to central Texas. Its shell is long and oval, generally free of external sculpturing, with external coloration that varies from yellowish- or orangish-tan, brown, reddish-brown, to smoky-green with a pattern of broken rays or irregular blotches. The internal color is bluish-white or white and iridescent posteriorly. This species historically occurred throughout the Colorado and Brazos River basins and is now known from only five locations. The Texas fawnsfoot has been extirpated from nearly all of the Colorado River basin and from much of the Brazos River basin. Of the populations that remain, only three are likely to be stable and recruiting; the remaining populations are disjunct and restricted to short stream reaches.

The Texas fawnsfoot is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat, decrease water quality, modify stream flows, and prevent fish host migration and distribution of freshwater mussels, as well as by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the Texas fawnsfoot and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the extinction of the Texas fawnsfoot in the foreseeable future.

The threats are such that the Texas fawnsfoot warrants listing; the threats are high in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas fawnsfoot and profoundly affect its habitat. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Remaining populations are small, isolated, and highly vulnerable to stochastic events. These threats are imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation has already occurred and will continue as the human population continues to grow in central Texas. The Texas fawnsfoot populations may already be below the minimum viable population requirement, which causes a reduction in the number of populations and an increase in the species' vulnerability to extinction. Based on imminent, high-magnitude threats we assigned the Texas fawnsfoot an LPN of 2.

Texas hornshell (*Popenaias popei*)—The following summary is based on information contained in our files and information provided by the New Mexico Department of Game and Fish and Texas Parks and Wildlife Department. The Texas hornshell is a freshwater mussel found in the Black River in New Mexico, and in the Rio Grande and the Devils River in Texas. Until March 2008, the only known extant populations were in New Mexico's Black River and one locality in the Rio Grande near Laredo, Texas. In March 2008, two new localities were confirmed in Texas: one in the Devils River, and one in the mainstem Rio Grande in the Rio Grande Wild and Scenic River segment downstream of Big Bend National Park. In 2011, the Rio Grande population near Laredo was resurveyed and found to be large and robust.

The primary threats to this species are habitat alterations such as streambank channelization, impoundments, and diversions for agriculture and flood control (including a proposed low-water

diversion dam just downstream of the Rio Grande population near Laredo); contamination of water by oil and gas activity; alterations in the natural riverine hydrology; and increased sedimentation and flood pulses from prolonged overgrazing and loss of native vegetation. Although riverine habitats throughout the species' known occupied range are under constant threat from these ongoing or potential activities, numerous conservation actions to benefit the species are under way in New Mexico, including the completion of a State recovery plan for the species, and are beginning in Texas on the Big Bend reach of the Rio Grande. Due to these ongoing conservation efforts, and because at least one of the populations appears to be robust, the magnitude of the threats is moderate. However, the threats to the species are ongoing and remain imminent. Thus, we maintained an LPN of 8 for this species.

Golden orb (*Quadrula aurea*)—The following summary is based on information contained in our files. The golden orb is a small, round-shaped freshwater mussel that is endemic to central Texas. Its shell is smooth and unsculptured, except for concentric growth rings, and the external coloration varies from yellow-brown, gold, or orangish-brown to dark brown or black with some individuals having faint green rays. The internal color is bluish-white. This species historically occurred throughout the Nueces-Frio and Guadalupe-San Antonio River basins and is now known from only nine locations in four rivers. The golden orb has been eliminated from nearly the entire Nueces-Frio River basin. Four of these populations appear to be stable and reproducing, and the remaining five populations are small and isolated and show no evidence of recruitment. It appears that the populations in the middle Guadalupe and lower San Marcos Rivers are likely connected. The remaining extant populations are highly fragmented and restricted to short reaches.

The golden orb is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat, decrease water quality, modify stream flows, and prevent fish host migration and distribution of freshwater mussels. The species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the golden orb and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats may be likely to result in the extinction of the golden orb in the foreseeable future.

The threats are such that the golden orb warrants listing; the threats are moderate in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the golden orb, but several large populations remain, including one that was recently discovered, suggesting that the threats are not high in magnitude. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. These threats are imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation have already occurred and will continue as the human population continues to grow in central Texas. Several golden orb populations may already be below the minimum viable population requirement, which causes a reduction in the number of populations and an increase in the species' vulnerability to extinction. Based on imminent, moderate threats, we assigned the golden orb an LPN of 8.

Smooth pimpleback (*Quadrula houstonensis*)—The following summary is based on information contained in our files. The smooth pimpleback is a small, round-shaped freshwater mussel that is endemic to central Texas. Its shell is moderately thick and inflated, and the external coloration varies from tan to light brown, dark brown, and black with little to no sculpturing. The internal color is silvery white. This species historically occurred throughout the Colorado and Brazos River basins and is now known from only nine locations. The smooth pimpleback has been eliminated from nearly the entire Colorado River and all but one of its tributaries, and has been limited to the central and lower Brazos River drainage. Five of the populations are represented by no more than a few individuals while six of the existing populations appear to be relatively stable and recruiting, while the remaining populations are small, isolated, and represented by only a few individuals.

The smooth pimpleback is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat, decrease water quality, modify stream flows, and prevent fish host migration and distribution of freshwater mussels. The species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the smooth pimpleback and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats may be likely to result in the extinction of the smooth pimpleback in the foreseeable future.

The threats are such that the smooth pimpleback warrants listing; the threats are moderate in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the smooth pimpleback, but several large populations remain, including one that was recently discovered, suggesting that the threats are not high in magnitude. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. These threats are imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation have already occurred and will continue as the human population continues to grow in central Texas. Several smooth pimpleback populations may already be below the minimum viable population requirement, which causes a reduction in the number of populations and an increase in the species' vulnerability to extinction. Based on imminent, moderate threats, we assigned the smooth pimpleback an LPN of 8.

Texas pimpleback (*Quadrula petrina*)—The following summary is based on information contained in our files. The Texas pimpleback is a large, freshwater mussel that is endemic to central Texas. Its shell is generally smooth with the exception of growth lines and moderately thick and inflated. The external coloration ranges from yellowish-tan to dark brown with some individuals mottled or with dark green rays, and, internally, the nacre is white and iridescent posteriorly. This species historically occurred throughout the Colorado and Guadalupe-San Antonio River basins, but is now known to only occur in four streams within these basins. Only two populations appear large enough to be stable, but evidence of recruitment is limited in the Concho River population and is present in the

San Saba River population, which may be the only remaining recruiting populations of Texas pimpleback. The remaining two populations are represented by one or two individuals and are highly disjunct.

The Texas pimpleback is primarily threatened by habitat destruction and modification from impoundments, which scour river beds, thereby removing mussel habitat, decrease water quality, modify stream flows, and prevent fish host migration and distribution of freshwater mussels. This species is also threatened by sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of nonnative species. Threats to the Texas pimpleback and its habitat are not being adequately addressed through existing regulatory mechanisms. Because of the limited distribution of this endemic species and its lack of mobility, these threats may be likely to result in the extinction of the Texas pimpleback in the foreseeable future.

The threats are such that the Texas pimpleback warrants listing; the threats are high in magnitude because habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas pimpleback and profoundly affect its survival and recruitment. Remaining populations are small, isolated, and highly vulnerable to stochastic events, which could lead to extirpation or extinction. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. We consider these threats to be imminent because they are ongoing and will continue in the foreseeable future. Habitat loss and degradation have already occurred and will continue as the human population continues to grow in central Texas. Texas pimpleback populations may already be below the minimum viable population requirement, which causes a reduction in the number of populations and an increase in the species' vulnerability to extinction. Based on imminent, high-magnitude threats, we assigned the Texas pimpleback an LPN of 2.

Snails

Black mudalia (*Elimia melanoides*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on April 20, 2010. The black mudalia is a small snail that is found clinging to clean gravel, cobble, boulders, and logs in flowing water on shoals and riffles. The historical distribution of the black mudalia encompassed over 250 mi of stream channel in the upper Black Warrior River drainage in Alabama. The species has been extirpated from more than 80 percent of that range by the construction of two major dams on the main stem Black Warrior River and another dam on the lower Sipsey Fork. Other historical causes of range curtailment in the undammed river and stream channels of the upper Black Warrior River drainage include coal mine drainage, industrial and municipal pollution events, and agricultural runoff. The black mudalia is currently known from 10 shoal populations in five streams.

Water quality and habitat degradation are the biggest threats to the continued existence of the black mudalia. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of stream habitats. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. Most of the stream segments draining into black mudalia habitat currently support their water quality classification standards; however, the reach of the Locust Fork where the species is found is identified on the Alabama 303(d) List (a list of water bodies failing to meet their designated water-use classifications) as impaired by siltation, nutrients, and/or other habitat alterations. Overall the magnitude of threats is moderate. While all known populations are currently negatively affected by point or nonpoint source pollution, the discovery of surviving populations in shoals of five streams in the upper Black Warrior River reduces the magnitude of stochastic threats. Additional surveys that are currently underway will clarify the extent and status of black mudalia populations. The threats are ongoing, and therefore imminent. We assigned an LPN of 8 to this species.

Magnificent ramshorn (*Planorbella magnifica*)—*Planorbella magnifica,* or magnificent ramshorn, is the largest North American air-breathing freshwater snail in the family Planorbidae. The magnificent ramshorn is believed to be a southeastern North Carolina endemic, though the complete historical range of the species is unknown. The species is known from only four sites in the lower Cape Fear River Basin in North Carolina. Salinity and pH are major factors limiting the distribution of the magnificent ramshorn, as the snail prefers freshwater bodies with pH within the range of 6.8 to 7.5.

While several factors have likely contributed to the possible extirpation of the magnificent ramshorn in the wild, the primary factors include loss of habitat associated with the extirpation of beavers (and their impoundments) in the early 20th century, increased salinity and alteration of flow patterns, and increased input of nutrients and other pollutants. While efforts have been made to restore habitat for the magnificent ramshorn at one of the sites known to have previously supported the species, all of the sites continue to be affected or threatened by the same factors believed to have resulted in extirpation of the species from the wild. Currently, only two captive populations exist: a single robust captive population of the species comprised of approximately 100 adults, and a second small population of 35 individuals. Although the robust captive population of the species has been maintained since 1993, a single catastrophic event, such as a severe storm, disease, or predator infestation, affecting this captive population could result in the near extinction of the species. Thus, the threats are high in magnitude and imminent, and we assigned this species an LPN of 2.

Sisi snail (*Ostodes strigatus*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The sisi snail is a ground-dwelling species in the Potaridae family, and is endemic to American Samoa. The species is now known from a single population on the island of Tutuila, American Samoa.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. The decline of the sisi snail in American Samoa has resulted, in part, from loss of habitat to forestry and agriculture and loss of forest structure to hurricanes and nonnative weeds that establish after these storms. All live sisi snails have been found in the leaf litter beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forested areas that were severely damaged by three hurricanes (1987, 1990, and 1991). Under natural historical conditions, loss

of forest canopy to storms did not pose a great threat to the long-term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown forest canopy. However, the presence of nonnative weeds such as mile-a-minute vine (*Mikania micrantha*) may reduce the likelihood that native forests will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by expanding agriculture. Agricultural plots on Tutuila have spread from low elevation up to middle and some high elevations, greatly reducing the forested area and thus reducing the resilience of native forests and populations of native snails. These reductions also increase the likelihood that future storms will lead to the extinction of populations or species that rely on the remaining forest canopy. In an effort to eradicate the giant African snail (*Achatina fulica*), the nonnative rosy carnivore snail (*Euglandina rosea*) was introduced in 1980. The rosy carnivore snail has spread throughout the main island of Tutuila. Numerous studies show that the rosy carnivore snail feeds on endemic island snails including the sisi, and is a major agent in their declines and extirpations. At present, the major threat to long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails. These threats are ongoing and are therefore imminent. As the threats occur throughout the entire range of the species and have a severe effect on the survival of the snails, they are of a high magnitude. Therefore we assigned this species an LPN of 2.

Rosemont talussnail (*Sonorella rosemontensis*)—We continue to find that listing these species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Fragile tree snail (*Samoana fragilis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the fragile tree snail is a member of the Partulidae family of snails, and is endemic to the islands of Guam and Rota (Mariana Islands). Requiring cool and shaded native forest habitat, the species is now known from one population on Guam and from one population on Rota.

The fragile tree snail is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and flatworms. Large numbers of Philippine deer (*Cervus mariannus*) (Guam and Rota), pigs (*Sus scrofa*) (Guam), water buffalo (*Bubalus bubalis*) (Guam), and cattle (*Bos taurus*) (Rota) directly alter the understory plant community and overall forest microclimate, making it unsuitable for tree snails. Predation by the nonnative rosy carnivore snail (*Euglandina rosea*) and the Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the fragile tree snail. Field observations have established that the rosy carnivore snail and the Manokwar flatworm will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. The Manokwar flatworm has also contributed to the decline of native tree snails, in part due to its ability to ascend into trees and bushes that support native snails. Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails. Because all of the threats occur rangewide and have a significant effect on the survival of the fragile tree snail, they are high in magnitude, and the species has a relatively high likelihood of extinction. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Guam tree snail (*Partula radiolata*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Guam tree snail is a member of the Partulidae family of snails and is endemic to the island of Guam. Requiring cool and shaded native forest habitat, the species is now known from 22 populations on Guam.

This species is primarily threatened by predation from nonnative predatory snails, flatworms, and rats. In addition, the species is also threatened by habitat loss and degradation. Predation by the nonnative rosy carnivore snail (*Euglandina rosea*) and the nonnative Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the Guam tree snail (see summary for the fragile tree snail, above). In addition, predation by rats (*Rattus* spp.) is a serious and ongoing threat to the Guam tree snail. On Guam, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) by the U.S. Military. Tangantangan grows as a single species stand with no substantial understory. The microclimatic condition is dry with little accumulation of leaf litter humus and is unsuitable as Guam tree snail habitat. In addition, native forests cannot reestablish and grow where this nonnative weed has become established. Because all of the threats occur rangewide and have a significant effect on the survival of this snail species, they are high in magnitude, and the species has a relatively high likelihood of extinction. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Humped tree snail (*Partula gibba*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the humped tree snail is a member of the Partulidae family of snails, and was originally known from the island of Guam and the Commonwealth of the Northern Mariana Islands (islands of Rota, Aguiguan, Tinian, Saipan, Anatahan, Sarigan, Alamagan, and Pagan). Until recently, the species was known from a total of 14 populations on the islands of Guam, Rota, Aguiguan, Sarigan, Saipan, Alamagan, and Pagan. However, new (2011) information indicates that *P. gibba* may be found only on the islands of Guam, Saipan, Sarigan, and Pagan. This information also suggests that the individuals identified as *P. gibba* on Rota may be a different species. Although still the most widely distributed tree snail endemic in the Mariana Islands, remaining population sizes are often small.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails, flat worms, and rats. Throughout the Mariana Islands, feral ungulates (pigs (*Sus scrofa*), Philippine deer (*Cervus mariannus*), cattle (*Bos taurus*), water buffalo (*Bubalus bubalis*), and goats (*Capra hircus*)) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for the humped tree snail. Currently, populations of feral ungulates are found on the islands of Guam (deer, pigs, and water buffalo), Rota (deer and cattle), Aguiguan (goats), Saipan (deer, pigs, and cattle), Alamagan (goats, pigs, and

cattle), and Pagan (cattle, goats, and pigs). Goats were eradicated from Sarigan in 1998, and the humped tree snail has increased in abundance on that island, likely in response to the removal of all the goats. However, the population of humped tree snails on Anatahan is likely extirpated due to the massive volcanic explosions of the island beginning in 2003 and still continuing, and the resulting loss of up to 95 percent of the vegetation on the island. Predation by the nonnative rosy carnivore snail (*Euglandina rosea*), and the nonnative Manokwar flatworm (*Platydemus manokwari*) is a serious threat to the survival of the humped tree snail (see summary for the fragile tree snail, above). In addition, predation by rats (*Rattus* spp.) is a serious and ongoing threat to the humped tree snail. The magnitude of threats is high because these nonnative predators cause significant population declines to the humped tree snail rangewide. These threats are ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Langford's tree snail (*Partula langfordi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, Langford's tree snail is a member of the Partulidae family of snails, and is known from one population on the island of Aguiguan.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. In the 1930s, the island of Aguiguan was mostly cleared of native forests to support sugar cane and pineapple production. The abandoned fields and airstrip are now overgrown with nonnative weeds. The remaining native forest understory has greatly suffered from large and uncontrolled populations of alien goats and the invasion of weeds. Goats (*Capra hircus*) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This, in turn, reduces the quantity and quality of forested habitat for Langford's tree snail. Predation by the nonnative rosy carnivore snail (*Euglandina rosea*) and by the Manokwar flatworm (*Platydemus manokwari*) (see summary for the fragile tree snail, above) is also a serious threat to the survival of Langford's tree snail. In addition, predation by rats (*Rattus* spp.) is a serious and ongoing threat to Langford's tree snail. All of the threats are occurring rangewide, and no efforts to control or eradicate the nonnative predatory snail species or rats, or to reduce habitat loss, are being undertaken. The magnitude of threats is high because they result in direct mortality and significant population declines to Langford's tree snail rangewide. A survey of Aguiguan in November 2006 failed to find any live Langford's tree snails. These threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Tutuila tree snail (*Eua zebrina*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. A tree-dwelling species, the Tutuila tree snail is a member of the Partulidae family of snails, and is endemic to American Samoa. The species is known from 32 populations on the islands of Tutuila, Nuusetoga, and Ofu.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails and rats. All live Tutuila tree snails were found on understory vegetation beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forested areas that were severely damaged by three hurricanes (1987, 1990, and 1991). (See summary for the sisi snail, above, regarding impacts of nonnative weeds and of the rosy carnivore snail.) Rats (*Rattus* spp.) have also been shown to devastate snail populations, and rat-chewed snail shells have been found at sites where the Tutuila snail occurs. At present, the major threat to the long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails and rats. The magnitude of threats is high because they result in direct mortality and significant population declines to the Tutuila tree snail rangewide. The threats are also ongoing and thus are imminent. Therefore, we assigned this species an LPN of 2.

Huachuca springsnail (*Pyrgulopsis thompsoni*)—The following is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Huachuca springsnail inhabits approximately 19 springs in southeastern Arizona and two springs in Sonora, Mexico. The springsnail is typically found in shallow water habitats, often in rocky seeps at the spring source. Potential threats include habitat modification and destruction through catastrophic wildfire and unmanaged grazing at the landscape scale. Overall, the threats are low in magnitude because threats are not occurring throughout the range of the species uniformly and not all populations would likely be affected simultaneously by the known threats. We have no site-specific information indicating that grazing is currently ongoing in or adjacent to occupied habitats and catastrophic wildfire is not known to be an imminent threat. Accordingly, threats are nonimminent. Therefore, we retain an LPN of 11 for this species.

Page springsnail (*Pyrgulopsis morrisoni*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Insects

Hawaiian yellow-faced bee (*Hylaeus anthracinus*)—The following summary is based on information contained in our files and in the petition that we received for this species on March 23, 2009. *Hylaeus anthracinus* is a species of Hawaiian yellow-faced bee (family Colletidae) found in certain coastal areas and dry lowland forests containing native plant communities on the islands of Hawaii, Kahoolawe, Lanai, Maui, Molokai, and Oahu. *Hylaeus anthracinus* is currently known from 13 populations comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus anthracinus* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of populations, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

Some *Hylaeus anthracinus* populations occur in areas that are managed for one or more of the threats affecting habitat; however no population is entirely protected from impacts to habitat, and predation on the species is not currently managed at any population site. We consider the threats to *H. anthracinus* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. anthracinus* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hawaiian yellow-faced bee (*Hylaeus assimulans*)—The following summary is based on information contained in our files and in the petition that we received

for this species on March 23, 2009. *Hylaeus assimulans* is a species of Hawaiian yellow-faced bee (family Colletidae) found in certain coastal areas and dry lowland forests containing native plant communities on the islands of Hawaii, Kahoolawe, Lanai, Maui, Molokai, and Oahu. *Hylaeus assimulans* is currently known from 13 populations comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus assimulans* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of populations, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

Some *Hylaeus assimulans* populations occur in areas that are managed for one or more of the threats affecting habitat; however no population is entirely protected from impacts to habitat, and predation on the species is not currently managed at any population site. We consider the threats to *H. assimulans* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. assimulans* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hawaiian yellow-faced bee (*Hylaeus facilis*)—The following summary is based on information contained in our files and in the petition that we received for this species on March 23, 2009. *Hylaeus facilis* is a species of Hawaiian yellow-faced bee (family Colletidae) with a wide historical range of native plant community habitat including coastal areas, lowland dry and wet forests, and montane mesic forests on the islands of Lanai, Maui, Molokai, and Oahu. Now extirpated from the islands of Lanai and Maui, *H. facilis* is currently known from two populations comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus facilis* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of populations, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

Both of the *Hylaeus facilis* populations occur in areas that are managed for one or more of the threats affecting habitat; however no population is entirely protected from impacts to habitat, and predation upon the species is not currently managed within any population site. We consider the threats to *H. facilis* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. facilis* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hawaiian yellow-faced bee (*Hylaeus hilaris*)—The following summary is based on information contained in our files and in the petition that we received for this species on March 23, 2009. *Hylaeus hilaris* is a cleptoparasitic species of Hawaiian yellow-faced bee (family Colletidae) with a historical range in coastal habitat on the islands of Lanai, Maui, and Molokai. Now extirpated from the islands of Lanai and Maui, *H. hilaris* is currently known from a single population on Molokai comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus hilaris* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of its population, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

The *Hylaeus hilaris* population occurs within a private preserve that is managed for one or more of the threats affecting habitat; however the population is not entirely protected from impacts to habitat, and predation upon the species is not currently managed at all. We consider the threats to *H. hilaris* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. hilaris* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hawaiian yellow-faced bee (*Hylaeus kuakea*)—The following summary is based on information contained in our files and in the petition that we received for this species on March 23, 2009. *Hylaeus kuakea* is a species of Hawaiian yellow-faced bee (family Colletidae) found in lowland mesic forests on the island of Oahu. *Hylaeus kuakea* is currently known from two populations comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus kuakea* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of populations, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

Both *Hylaeus kuakea* populations occur in areas that are managed for one or more of the threats affecting habitat; however no population is entirely protected from impacts to habitat, and predation on the species is not currently managed within either population site. We consider the threats to *H. kuakea* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. kuakea* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hawaiian yellow-faced bee (*Hylaeus longiceps*)—The following summary is based on information contained in our files and in the petition that we received for this species on March 23, 2009. *Hylaeus longiceps* is a species of Hawaiian yellow-faced bee (family Colletidae) found in certain coastal areas and dry lowland forest containing native plant communities on the islands of Lanai, Maui, Molokai, and Oahu. *Hylaeus longiceps* is currently known from six populations comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus longiceps* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of populations, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

Some *Hylaeus longiceps* populations occur in areas that are managed for one or more of the threats affecting habitat;

however no population is entirely protected from impacts to habitat, and predation on the species is not currently managed within any population site. We consider the threats to *H. longiceps* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. longiceps* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hawaiian yellow-faced bee (*Hylaeus mana*)—The following summary is based on information contained in our files and in the petition that we received for this species on March 23, 2009. *Hylaeus mana* is a species of Hawaiian yellow-faced bee (family Colletidae) found in lowland mesic forests on the island of Oahu. *Hylaeus mana* is currently known from a single population comprised of an unknown number of individuals. This species is threatened by ongoing habitat loss and modification due to the effects of feral ungulates, nonnative plants, wildfire, and climate change. *Hylaeus mana* is directly threatened by predation from yellowjacket wasps and several species of nonnative ants. Additional indirect threats to the species include the limited number of and small size of populations, competition from European honey bees, the possibility of habitat destruction from stochastic and catastrophic events, and a lack of regulatory mechanisms affording protection to the species.

The *Hylaeus mana* population occurs in an area that is managed for one or more of the threats affecting habitat; however the population is not entirely protected from impacts to habitat, and predation on the species is not currently managed at all. We consider the threats to *H. mana* to be high in magnitude because their severity endangers the species with a high likelihood of extinction throughout its entire range. The threats to *H. mana* are imminent, because they are ongoing. Therefore, we have assigned this species an LPN of 2.

Hermes copper butterfly (*Hermelycaena* [Lycaena] *hermes*)—The following summary is based on information contained in our files. Hermes copper butterfly primarily occurs in San Diego County, California, and a few records of the species have been documented in Baja California, Mexico. The species inhabits coastal sage scrub and southern mixed chaparral and is dependent on its larval host plant, *Rhamnus crocea* (spiny redberry), to complete its lifecycle. Adult Hermes copper butterflies lay single eggs on spiny redberry stems where they hatch and feed until pupation occurs at the base of the plant. Hermes copper butterflies have one flight period occurring in mid-May to early-July, depending on weather conditions and elevation. We estimate there were at least 57 known separate historical populations throughout the species' range since the species was first described. Of the 57 known Hermes copper butterfly populations, 17 are extant, 28 are believed to have been extirpated, and 12 are of unknown status.

Primary threats to the Hermes copper butterfly are megafires (large wildfires), and small and isolated populations. Secondary threats include increased wildfire frequency that results in habitat loss, and combined impacts of existing development, possible future (limited) development, existing dispersal barriers, and megafires that result in fragmentation of habitat. The Hermes copper butterfly occupies scattered areas of sage scrub and chaparral habitat in an arid region susceptible to wildfires of increasing frequency and size. The likelihood that individuals of the species will be burned as a result of catastrophic wildfires, combined with the isolation and small size of extant populations makes the Hermes copper butterfly particularly vulnerable to population extirpation rangewide. Overall, the threats that the Hermes copper butterfly faces are high in magnitude because the major threats (particularly mortality due to wildfire and increased wildfire frequency) occur throughout all of the species' range and are likely to result in adverse impacts to the species. The threats are nonimminent overall because the presence of wildfire in the Hermes copper butterfly habitat occurs on a sporadic basis and we do not have the ability to predict when wildfires will occur. This species faces high-magnitude nonimminent threats; therefore, we assigned this species an LPN of 5.

Mariana eight spot butterfly (*Hypolimnas octucula mariannensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana eight spot butterfly is a nymphalid butterfly species that feeds upon two host plants, *Procris pedunculata* and *Elatostema calcareum.* Endemic to the islands of Guam and Saipan, the species is now only known from 10 populations on Guam. This species is currently threatened by predation and parasitism. The Mariana eight spot butterfly has extremely high mortality of eggs and larvae due to predation by nonnative ants and wasps. Because the threat of parasitism and predation by nonnative insects occurs rangewide and can cause significant population declines to this species, they are high in magnitude. The threats are imminent because they are ongoing. Therefore, we assigned an LPN of 3 for this subspecies.

Mariana wandering butterfly (*Vagrans egistina*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Mariana wandering butterfly is a nymphalid butterfly species that feeds upon a single host plant species, *Maytenus thompsonii.* Originally known from and endemic to the islands of Guam and Rota, the species is now known from one population on Rota. This species is currently threatened by nonnative predation and parasitism. The Mariana wandering butterfly is likely predated by nonnative ants and parasitized by native and nonnative parasitoids. Because the threats of parasitism and predation by nonnative insects occur rangewide and can cause significant population declines to this species, leading to a relatively high likelihood of extinction, they are high in magnitude. These threats are imminent because they are ongoing. Therefore, we assigned an LPN of 2 to this species.

Puerto Rican harlequin butterfly (*Atlantea tulita*)—The following summary is based on information in our files and in the petition we received on Feburary 29, 2009. The Puerto Rican harlequin butterfly is endemic to Puerto Rico, and one of the four species endemic to the Greater Antilles within the genus *Atlantea.* This species occurs within the subtropical moist forest life zone in the northern karst region (i.e., municipality of Quebradillas) of Puerto Rico, and in the subtropical wet forest (i.e., Maricao Commonwealth Forest, municipality of Maricao). The Puerto Rican harlequin butterfly has only been found utilizing *Oplonia spinosa* (prickly bush) as its host plant (i.e., plant used for laying the eggs, also serves as a food source for development of the larvae).

The primary threats to the Puerto Rican harlequin butterfly are development, habitat fragmentation, and other natural or manmade factors such as human-induced fires, use of herbicides and pesticides, vegetation management, and climate change. These factors would substantially affect the distribution and abundance of the species, as well as its habitat. In addition, the lack of effective enforcement makes the existing policies and regulations inadequate for the protection of the species' habitat. These threats are high in magnitude and

imminent because known populations occur in areas that are subject to development, increased traffic, and increased road maintenance and construction. Such threats directly affect populations during all life stages. We expect these threats to continue and potentially increase in the foreseeable future. Therefore, we assigned a LPN of 2 to this species.

Sequatchie caddisfly (*Glyphopsyche sequatchie*)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. The Sequatchie caddisfly is known from two spring runs that emerge from caves in Marion County, Tennessee—Owen Spring Branch (the type locality) and Martin Spring run in the Battle Creek system. In 1998, biologists estimated population sizes at 500 to 5,000 individuals for Owen Spring Branch and 2 to 10 times higher at Martin Spring, due to the greater amount of apparently suitable habitat. In spite of greater amounts of suitable habitat at the Martin Spring run, Sequatchie caddisflies are more difficult to find at this site, and in 2001 (the most recent survey), the Sequatchie caddisfly was ''abundant'' at the Owen Spring Branch location, while only two individuals were observed at the Martin Spring.

Threats to the Sequatchie caddisfly include siltation, point and nonpoint discharges from municipal and industrial activities, and introduction of toxicants during episodic events. These threats, coupled with the extremely limited distribution of the species, its apparent small population size, the limited amount of occupied habitat, ease of accessibility, and the annual life cycle of the species, are all factors that leave the Sequatchie caddisfly vulnerable to extirpation. Therefore, the magnitude of the threat is high. These threats are gradual and not imminent. Based on high-magnitude and nonimminent threats, we assigned this species an LPN of 5.

Clifton Cave beetle (*Pseudanophthalmus caecus*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Clifton Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is cave dependent, and is not found outside the cave environment. Clifton Cave beetle is only known from two privately owned Kentucky caves. Soon after the species was first collected in 1963 in one cave, the cave entrance was enclosed due to road construction. We do not know whether the species still occurs at the original location or if it has been extirpated from the site by the closure of the cave entrance. Other caves in the vicinity of this cave were surveyed for the species during 1995 and 1996, and only one additional site was found to support the Clifton Cave beetle. The limestone caves in which the Clifton Cave beetle is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances, could have serious adverse impacts on this species. Therefore, the magnitude of threat is high for this species. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Coleman cave beetle (*Pseudanophthalmus colemanensis*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on April 20, 2010. The Coleman cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. It is only known from three Tennessee caves. The limestone caves in which this species is found provide a unique and fragile environment that support a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. Caves and the species that are completely dependent upon them receive the energy that forms the basis of the cave food chain from outside the cave. This energy can be in the form of bat guano deposited by cave-dependent bats, large or small woody debris washed or blown into the cave, or tiny bits of organic matter that are carried into the cave by water through small cracks in the rocks overlaying the cave.

The Coleman cave beetle was originally known only from privately owned Coleman Cave in Montgomery County. This cave formerly supported a colony of endangered gray bats (*Myotis grisescens*). The bats have abandoned this cave because of air flow changes in the cave caused by closure of an upper entrance to the cave. Although the cave is protected by a cooperative management agreement with the landowner, the upper entrance has not been restored, and the bats have not returned to the cave. A new location for the species was discovered during a biological inventory of Foster Cave (also known as Darnell Cave). One specimen of the species was found during that survey. Foster Cave is on a preserve owned and managed by the Tennessee Department of Conservation. In 2006, specimens of this species were discovered in Bellamy Cave and in Darnell Spring Cave (part of the same cave complex as Foster Cave). All of these sites are in close proximity to each other. Bellamy Cave is owned and managed by the Tennessee Wildlife Resources Agency (TWRA). Both Foster Cave and Bellamy Cave were first acquired and protected by The Nature Conservancy and later transferred to the State for long-term protection and management. The threats are nonimminent because there are no known projects planned that would affect the species in the next few years. Because the species occurs at four locations and receives some protection under a cooperative management agreement and protective ownership, the magnitude of threats is moderate to low. Thus, we have assigned an LPN of 11 to this species.

Icebox Cave beetle (*Pseudanophthalmus frigidus*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Icebox Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is not found outside the cave environment and is only known from one privately owned Kentucky cave.

The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since it was originally collected, but species experts believe that it may still exist in the cave in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances, could have serious adverse impacts on this species.

Therefore, the magnitude of threat is high for this species because it is limited in distribution and the threats would result in a high level of mortality or reduced reproductive capacity. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Inquirer Cave beetle (*Pseudanophthalmus inquisitor*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Inquirer Cave beetle is a fairly small, eyeless, reddish-brown, predatory insect that feeds upon small cave invertebrates. It is not found outside the cave environment and is only known from one privately owned Tennessee cave.

The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species was last observed in 2006. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. The area around the only known site for the species is in a rapidly expanding urban area. The entrance to the cave is protected by the landowner through a cooperative management agreement with the Service, The Nature Conservancy and Tennessee Wildlife Resources Agency; however, a sinkhole that drains into the cave system is located away from the protected entrance and is near a highway. Events such as toxic chemical spills or discharges of large amounts of polluted water or indirect impacts from off-site construction activities could adversely affect the species and the cave habitat. The magnitude of threat is high for this species because it is limited in distribution and the threats would have severe negative impacts on its continued existence. The threats are nonimminent because there are no known projects planned that would affect the species in the near future and it receives some protection under a cooperative management agreement. We therefore have assigned an LPN of 5 to this species.

Louisville Cave beetle (*Pseudanophthalmus troglodytes*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Louisville Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon cave invertebrates. It is not found outside the cave environment and is only known from two privately owned Kentucky caves.

The limestone caves in which this species is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The magnitude of threat is high for this species, because it is limited in distribution and the threats would have severe negative impacts on the species. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Tatum Cave beetle (*Pseudanophthalmus parvus*)—The following summary is based upon information contained in our files. No new information was provided in the petition we received on May 11, 2004. Tatum Cave beetle is a small, eyeless, reddish-brown, predatory insect that feeds upon cave invertebrates. It is not found outside the cave environment and is only known from one privately owned Kentucky cave.

The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since 1965, but species experts believe that it still exists in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills or discharges of large amounts of polluted water, or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances, could have serious adverse impacts on this species. The magnitude of threat is high for this species, because its limited numbers mean that any threats could severely affect its continued existence. The threats are nonimminent because there are no known projects planned that would affect the species in the near future. We therefore have assigned an LPN of 5 to this species.

Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The orangeblack Hawaiian damselfly is a stream-dwelling species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species no longer is found on Kauai, and is now restricted to 16 populations on the islands of Oahu, Maui, Molokai, Lanai, and Hawaii. This species is threatened by predation from nonnative aquatic species such as fish and predacious insects, and by habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly, and loss of water reduces the amount of suitable naiad habitat. Invasive plants (e.g., California grass (*Brachiaria mutica*)) also contribute to loss of habitat by forming dense, monotypic stands that completely eliminate open water. Nonnative fish and plants are found in all the streams where orangeblack Hawaiian damselflies occur, except at the Oahu location, where there are no nonnative fish. Predation and habitat loss are ongoing and therefore imminent; they are of moderate magnitude, because they affect the survival of the species to varying degrees throughout the species' range. We therefore assign an LPN of 8 to this species.

Stephan's riffle beetle (*Heterelmis stephani*)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Dakota skipper (*Hesperia dacotae*)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Meltwater lednian stonefly (*Lednia tumana*)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. This species is an aquatic insect in the order Plecoptera (stoneflies). Stoneflies are primarily

associated with clean, cool streams and rivers. Eggs and nymphs (juveniles) of the meltwater lednian stonefly are found in high-elevation, alpine, and subalpine streams, most typically in locations closely linked to glacial runoff. The species is generally restricted to streams with mean summer water temperature less than 10 °C (50 °F). Adults emerge from the nymph stage and mate in streamside vegetation. The only known meltwater lednian stonefly occurrences are within Glacier National Park (NP), Montana.

Climate change, and the associated effects of glacier loss (with glaciers predicted to be gone by 2030)—including reduced streamflows, and increased water temperatures—are expected to significantly reduce the occurrence of populations and extent of suitable habitat for the species in Glacier NP. In addition, the existing regulatory mechanisms do not address environmental changes due to global climate change. We announced candidate status for the meltwater lednian stonefly in a warranted-but precluded 12-month petition finding published on April 5, 2011 (76 FR 18684). We have assigned the species an LPN of 5 based on three criteria: (1) The high magnitude of threat, which is projected to substantially reduce the amount of suitable habitat relative to the species' current range; (2) the low imminence of the threat based on the lack of documented evidence that climate change is affecting stonefly habitat; and (3) the taxonomic status of the species, which is a full species.

Highlands tiger beetle (*Cicindela highlandensis*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The Highlands tiger beetle is narrowly distributed and restricted to areas of bare sand within scrub and sandhill on ancient sand dunes of the Lake Wales Ridge in Polk and Highlands Counties, Florida. Adult tiger beetles have been most recently found at 40 sites at the core of the Lake Wales Ridge. In 2004–2005 surveys, a total of 1,574 adults were found at 40 sites, compared with 643 adults at 31 sites in 1996, 928 adults at 31 sites in 1995, and 742 adults at 21 sites in 1993. Of the 40 sites in the 2004–2005 surveys with one or more adults, results ranged from 3 sites with large populations of over 100 adults, to 13 sites with fewer than 10 adults. Results from a limited removal study at four sites and similar studies suggested that the actual population size at some survey sites can be as much as two times as high as indicated by the visual index counts. If assumptions are correct and unsurveyed habitat is included, then the total number of adults at all survey sites might be 3,000 to 4,000.

Habitat loss and fragmentation and lack of fire and disturbances to create open habitat conditions are serious threats; remaining patches of suitable habitat are disjunct and isolated. Populations occupy relatively small patches of habitat and are small and isolated; individuals have difficulty dispersing between suitable habitats. These factors pose serious threats to the species. Although significant progress in implementing prescribed fire has occurred over the last 10 years through collaborative partnerships and the Lake Wales Ridge Prescribed Fire Team, a backlog of long-unburned habitat within conservation areas remains. Overcollection and pesticide use are additional concerns. Because this species is narrowly distributed with specific habitat requirements and small populations, any of the threats could have a significant impact on the survival of the species, leading to a relatively high likelihood of extinction. Therefore, the magnitude of threats is high. Although the majority of its historical range has been lost, degraded, and fragmented, numerous sites are protected, and land managers are implementing prescribed fire at some sites; these actions are expected to restore habitat and help reduce threats and have already helped stabilize and improve the populations. Habitat management at some sites may be forestalling the threat of vegetation encroaching into bare sand areas needed by the beetle. While the species is inherently vulnerable to extinction due to its low population sizes, restricted range, small and isolated habitat patches, and difficulty in dispersal between suitable habitats, the immediacy of these threats is unknown. Thus, overall, the threats are nonimminent. Therefore, we assigned the Highlands tiger beetle an LPN of 5.

Arachnids

Warton's cave meshweaver (*Cicurina wartoni*)—The Warton's Cave meshweaver is an eyeless, cave-dwelling, unpigmented, 0.23-inch-long invertebrate known only from female specimens. This meshweaver is known to occur in only one cave (Pickle Pit) in Travis County, Texas. Primary threats to the species and its habitat are predation and competition from red-imported fire ants, surface and subsurface effects from polluted runoff from an adjacent subdivision, unauthorized entry into the area surrounding the cave, and trash dumping that may include toxic materials near the feature. The magnitude of threats is now considered low to moderate based on observations made during field visits to Pickle Pit in November 2011 and March 2012. For example, Pickle Pit is receiving some protection because it is in a mitigation preserve for the golden-cheeked warbler (*Dendroica chrysoparia*). While adequate fencing has not been completed, we did not see trails or other signs of recent human use in the immediate vicinity of the cave. Also, despite the fact that this preserve is not receiving red-imported fire ant treatment, we did not see many red-imported fire ants in the immediate area. Because fire ants have been found and fencing to eliminate human use has not been completed, the threats are ongoing (imminent). Thus, we assigned this species a LPN of 8.

Crustaceans

Anchialine pool shrimp (*Metabetaeus lohena*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Metabetaeus lohena* is an anchialine pool-inhabiting species of shrimp belonging to the family Alpheidae. This species was originally thought to be endemic to the Hawaiian Islands with populations on the islands of Oahu, Maui, and Hawaii. Recent information indicates this species may also occur in Rapa Nui, a special territory of Chile. The current status of this species in Rapa Nui and the primary threats there are unknown at this time.

The primary threats to this species in Hawaii are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss from degradation (primarily from illegal trash dumping). The pools where this species occurs on the islands of Maui and Hawaii are located within State Natural Area Reserves (NAR) and in a National Park. Both the State NARs and the National Park prohibit the collection of the species and the disturbance of the pools. However, enforcement of collection and disturbance prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. On Oahu, four pools are located in a National Wildlife Refuge and are protected from collection and disturbance to the pool; however, on State-owned land where the species occurs, there is no protection from collection or disturbance of the pools. Because of the limited number of sites where this species occurs, collection or disturbance of the species, particularly

on State-owned lands, could have a significant adverse effect on the survival of the species, leading to a relatively high likelihood of extinction, and are of a high magnitude. However, the primary threats of predation from fish and loss of habitat due to degradation are nonimminent overall, because on the islands of Maui and Hawaii no fish were observed in any of the pools where this species occurs and there has been no documented trash dumping in these pools. Only one site on Oahu had a trash dumping instance, and in that case the trash was cleaned up immediately, and the species was subsequently observed. No additional dumping events are known to have occurred. We have assigned this species an LPN of 5. The Service is currently seeking any additional information on the status of, and the threats to, the population(s) of *Metabetaeus lohena* in any location outside of the United States. The Service may consider removing this species as a candidate for listing depending upon our review of new information regarding the status and distribution of this species outside the United States.

Anchialine pool shrimp (*Palaemonella burnsi*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Palaemonella burnsi* is an anchialine pool-inhabiting species of shrimp belonging to the family Palaemonidae. This species was originally thought to be endemic to the Hawaiian Islands with populations on the islands of Maui at three sites and Hawaii in several pools at one site. Recent information indicates this species may also occur in the Ryukyu Islands, Japan. The current status of this species in the Ryukyu Islands and the primary threats there are unknown at this time.

The primary threats to this species are predation by nonnative fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation (primarily from illegal trash dumping). The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. On the island of Hawaii, the species occurs within a State NAR and a National Park, where collection and disturbance are also prohibited. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly, in part because the pools are very small. Therefore, threats to this species could have a significant adverse effect on the survival of the species, leading to a relatively high likelihood of extinction, and are of a high magnitude. However, the threats are nonimminent, because surveys in 2004 and 2007 did not find fish in the pools where these shrimp occur on Maui or the island of Hawaii. Also, there was no evidence of recent habitat degradation at those pools. We assigned this species an LPN of 5. The Service is currently seeking any additional information on the status of, and the threats to, the population(s) of *Palaemonella burnsi* in any location outside of the United States. The Service may consider removing this species as a candidate for listing depending upon our review of new information regarding the status and distribution of this species outside the United States.

Anchialine pool shrimp (*Procaris hawaiana*)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Procaris hawaiana* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae. This species is endemic to the Hawaiian Islands, and is currently known from 2 pools on the island of Maui and 13 pools on the island of Hawaii. The primary threats to this species are predation from fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation (primarily from illegal trash dumping). The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. Twelve of the pools on the island of Hawaii are also located within a State NAR. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. In addition, there are no prohibitions for either removal of the species or disturbance to the pool for the one pool located outside a NAR on the island of Hawaii. Therefore, threats to this species could have a significant adverse effect on the survival of the species, leading to a relatively high likelihood of extinction, and thus remain at a high magnitude. However, the threats to the species are nonimminent because, during 2004 and 2007 surveys, no fish were observed in the pools where these shrimp occur on Maui, and no fish were observed in the one pool on the island of Hawaii that was surveyed in 2005. In addition, there were no signs of trash dumping or fill in any of the pools where the species occurs. Therefore, we assigned this species an LPN of 5.

Flowering Plants

Abronia alpina (Ramshaw Meadows sand-verbena)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Abronia alpina* is a small perennial herb in the Nyctaginaceae (four o-clock) family, 2.5 to 15.2 cm (1 to 6 in) across, forming compact mats of lavender-pink, trumpet-shaped, and generally fragrant flowers. *Abronia alpina* is known from one main population center at Ramshaw Meadow and a smaller population at the adjacent Templeton Meadow. The meadows are located on the Kern River Plateau in the Sierra Nevada, on lands administered by the Inyo National Forest, in Tulare County, California. The total estimated area occupied is approximately 6 ha (15 ac). The population fluctuates from year to year without any clear trends. Population estimates for the years from 1985 through 2009 range from a high of approximately 130,000 plants in 1997, to a low of approximately 40,000 plants in 2003. In 2009, when the population was last monitored, the estimated total population increased again to just over 120,000 plants. The factors currently threatening *Abronia alpina* include natural and human habitat alteration, lowering of the water table due to erosion within the meadow system, and recreational use within meadow habitats. Lodgepole pines are encroaching upon meadow habitat with trees germinating within *A. alpina* habitat, occupying up to 20 percent of two *A. alpina* subpopulations. Lodgepole pine encroachment may alter soil characteristics by increasing organic matter levels, decreasing porosity, and moderating diurnal temperature fluctuations, thus reducing the competitive ability of *A. alpina* to persist in an environment more hospitable to other plant species.

The habitat occupied by *Abronia alpina* directly borders the meadow system, which is supported by the South Fork of the Kern River. The river flows through the meadow, at times coming within 15 m (50 ft) of *Abronia alpina* habitat, particularly in the vicinity of five subpopulations. Livestock trampling, along with the removal of bank stabilizing vegetation by grazing livestock, has contributed to downcutting of the river channel through the meadow, leaving the meadow subject to potential alteration by lowering of the water table. In 2001,

the U.S. Forest Service began resting the grazing allotment for 10 years, eliminating cattle use up through the present time. The U.S. Forest Service is currently assessing the data collected on the rested allotment and, if the data indicate that sufficient watershed recovery has occurred, may conduct an environmental analysis to consider resumption of grazing.

Established hiker, packstock, and cattle trails pass through *A. alpina* subpopulations. Two main hiker trails pass through Ramshaw Meadow, but in 1988 and 1997, they were rerouted out of *A. alpina* subpopulations where feasible. Occasional incidental use by horses and hikers sometimes occurs on the remnants of cattle trails that pass through subpopulations in several places The Service has funded studies to determine appropriate conservation measures for the species, and is working with the U.S. Forest Service on developing a conservation strategy for the species. The remaining threat affects individuals in the population and has not appeared to have population-level effects. Therefore, the threats are low in magnitude. In addition, because the grazing activities have been eliminated for the time being and the hiking trails have been rerouted, the threats are nonimminent. The LPN for *A. alpina* remains an 11 due to the presence of moderate to low threats, and the determination that the threats are nonimminent at this point in time.

Agave eggersiana (no common name)—*Agave eggersiana,* is an herb of the family Agavaceae endemic to the island of St. Croix in the U.S. Virgin Islands. Approximately 450 individuals in 10 localities are known to exist around this island. The species currently occurs in six areas that appear to be remnants of wild populations. The other four populations are introduced individuals planted for conservation. The primary threats to *Agave eggersiana* are from habitat modification and from natural or manmade factors. The species occurs in areas either threatened by development pressure, or currently affected by landscape practices and competition with exotic species, resulting in detrimental effects to its reproduction and recruitment. In addition, threats such as commercial interest (e.g. use as an ornamental plant), possible predation by insects or arthropod larvae, and the possibility of feral animals predating the species, makes *Agave eggersiana* vulnerable. The magnitude of the current threats is moderate because at least 450 adults and 260 bulbils are known to occur, with half of the populations showing evidence of recruitment in the wild. In addition, three populations are located in areas managed for conservation and public outreach. The immediacy of the threats to the species as a whole is imminent because the threats are occurring now within each population on St. Croix. Additionally, we do not anticipate any changes that would appreciably reduce these threats in the foreseeable future. Therefore we have assigned an LPN of 8 to this species.

Arabis georgiana (Georgia rockcress)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Argythamnia blodgettii (Blodgett's silverbush)—The following summary is based on information in our files. No new information was provided in the petition we received on May 11, 2004. Blodgett's silverbush occurs in Florida and is found in open, sunny areas in pine rockland; at the edges of rockland hammock; at the edges of coastal berm; and sometimes in disturbed areas at the edges of natural areas. Plants can be found growing from crevices on limestone, or sand. The pine-rockland habitat where the species occurs in Miami-Dade County and the Florida Keys requires periodic fires to maintain habitat with a minimum amount of hardwoods. There are approximately 22 extant occurrences, 12 in Monroe County and 10 in Miami-Dade County; many occurrences are on conservation lands. However, 4 to 5 sites are recently thought to be extirpated. The estimated population size of Blodgett's silverbush in the Florida Keys, excluding Big Pine Key, is roughly 11,000; the estimated population in Miami-Dade County is 375 to 13,650 plants.

Blodgett's silverbush is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. Threats such as road maintenance and enhancement, infrastructure, and illegal dumping threaten some occurrences. Blodgett's silverbush is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Climatic changes, including sea-level rise, are long-term threats that are expected to continue to affect pine rocklands and ultimately substantially reduce the extent of available habitat, especially in the Keys. Overall, the magnitude of threats is moderate because a number of occurrences remain with relatively high population levels, and not all of the occurrences are affected by the threats. In addition, land managers are aware of the threats from exotic plants and lack of fire, and are, to some extent, working to reduce these threats where possible. While a number of threats are occurring in some areas, the more significant threat from development is nonimminent because most occurrences are on public land, and sea-level rise is not currently affecting this species. Overall, the threats are nonimminent. Thus, we assigned an LPN of 11 to this species.

Artemisia borealis var. *wormskioldii* (Northern wormwood)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Historically known from eight sites, northern wormwood is currently known from two populations, one in Klickitat County and one in Grant County, Washington. This plant is restricted to exposed basalt, cobbly-sandy terraces, and sand habitat along the shore of, and on islands in, the Columbia River. The two populations are separated by 186 river miles (300 km) and three reservoirs (formed behind large hydroelectric dams). Annual monitoring indicates both populations are declining and both remain vulnerable to environmental variability. Surveys have not detected any additional plants.

Threats to northern wormwood include direct loss of habitat through regulation of water levels in the Columbia River and placement of riprap along the river bank; human trampling of plants from recreation; competition with nonnative, invasive species; burial by wind- and water-borne sediments; small population sizes; susceptibility to genetic drift and inbreeding; and the potential for hybridization with two other species of *Artemisia.* Ongoing conservation actions have reduced trampling, but have not eliminated or reduced the other threats at the Grant County site. Active conservation measures are not currently in place at the Miller Island site in Klickitat County. The magnitude of threat is high for this subspecies. Although the two remaining populations are demographically isolated, loss of habitat through regulation of water levels, competition with invasive species, burial by wind- and water-borne

sediments, and hybridization could eliminate one or both populations with a single disturbance. The threats are imminent because recreational use is ongoing; invasive, nonnative species occur at both sites; erosion of the substrate is ongoing at the Klickitat County site; and high water flows are random, naturally occurring events that may occur unpredictably in any year. Therefore, we have retained an LPN of 3 for this subspecies.

Astragalus anserinus (Goose Creek milkvetch)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Astragalus microcymbus (Skiff milkvetch)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. Skiff milkvetch is a perennial forb that dies back to the ground every year. It has a very limited range and a spotty distribution within Gunnison and Saguache Counties in Colorado, where it is found in open, park-like landscapes in the sagebrush steppe ecosystem on rocky or cobbly, moderate to steep slopes of hills and draws. The most significant threats to skiff milkvetch are recreation, roads, trails, the overall inadequacy of existing regulatory mechanisms, and habitat fragmentation and degradation. Recreational impacts are likely to increase given the close proximity of skiff milkvetch to the town of Gunnison and the increasing popularity of mountain biking, motorcycling, and all-terrain vehicles. Furthermore, the Hartman Rocks Recreation Area draws users and contains over 40 percent of the skiff milkvetch units. Other threats to the species include residential and urban development; livestock, deer, and elk use; climate change; and increasing periodic drought, nonnative invasive cheatgrass; and wildfire. We consider the threats to skiff milkvetch to be moderate in magnitude because while serious and occurring rangewide, they do not collectively result in population declines on a short time scale. The threats are imminent because the species is currently facing them in many portions of its range. Therefore, we have assigned skiff milkvetch an LPN of 8.

Astragalus schmolliae (Schmoll milkvetch)—The following summary is based on information contained in our files and in the petition we received on July 30, 2007. Schmoll milkvetch is a narrow endemic perennial plant that grows in the mature pinyon-juniper woodland of mesa tops in the Mesa Verde National Park area and in the Ute Mountain Ute Tribal Park in Colorado. The most significant threats to the species are degradation of habitat by fire, followed by invasion by nonnative cheatgrass and subsequent increase in fire frequency. These threats currently affect about 40 percent of the species' entire known range. Cheatgrass is likely to increase given its rapid spread and persistence in habitat disturbed by wildfires, fire and fuels management, development of infrastructure, and the inability of land managers to control it on a landscape scale. Other threats to Schmoll milkvetch include fires, fire break clearings, drought, and inadequate regulatory mechanisms. We consider the threats to the species overall to be imminent and moderate in magnitude, because the species is currently facing them in many portions of its range, but the threats do not collectively result in population declines on a short time scale. Therefore, we have assigned Schmoll milkvetch an LPN of 8.

Astragalus tortipes (Sleeping Ute milkvetch)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Sleeping Ute milkvetch is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on the Ute Mountain Ute Indian Reservation in Montezuma County, Colorado. In 2000, 3,744 plants were recorded at 24 locations covering 500 ac within an overall range of 6,400 ac. Available information from 2000 indicates that the species remains stable. Threats from borrow pit excavation, off-highway vehicles, irrigation canal construction, and a prairie dog colony have had minor impacts that reduced the range and number of plants by small amounts. Off-road-vehicle use of the habitat has reportedly been controlled by fencing. Oil and gas development is active in the general area, but the Service has received no information to indicate that there is development within plant habitat. The Tribe reported that the status of the species remains unchanged, the population is healthy, and a management plan for the species is currently in draft form. Despite these positive indications, we have no documentation concerning the current status of the plants, condition of habitat, or terms of the species management plan being drafted by the Tribe. Thus, at this time, we cannot accurately assess whether populations are being adequately protected from previously existing threats. The threats are moderate in magnitude, as their effects on the species have been minor and the species appears to be stable. Based on information we have, the population appears to be stable. Until the management plan is completed and made available, there are no regulatory mechanisms in place to protect the species. Overall, we conclude that threats are nonimminent because the more significant threats are not currently occurring; off-road-vehicle use has been controlled by fencing, and there are no plans for oil and gas development within the plant's habitat. Therefore, we assigned an LPN of 11 to this species.

Boechera pusilla (Fremont County rockcress)—The following summary is based on information in our files and in the petition received on July 24, 2007. *Boechera pusilla* is a perennial herb that occupies sparsely vegetated, coarse granite soil pockets in exposed granite-pegmatite outcrops, with slopes generally less than 10 degrees, at an elevation between 2,438 to 2,469 m (8,000 to 8,100 ft). The only known population of *B. pusilla* is located in Wyoming on lands administered by the Bureau of Land Management's, Rock Springs Field Office in the southern foothills of the Wind River Range. *B. pusilla* is likely restricted in distribution by the limited occurrence of pegmatite in the area. The specialized habitat requirements of *B. pusilla* have allowed the plant to persist without competition from other herbaceous plants or sagebrush-grassland species that are present in the surrounding landscape.

Boechera pusilla has a threat that is not identified, but that is indicated by the small and declining population size. The population size may be declining from a variety of unknown causes, with drought or disease possibly contributing to the trend. The trend may have been reversed somewhat recently, but without improved population numbers, the species may reach a population level at which other stressors become threats. We are unable to determine how climate change may affect the species in the future. To the extent that we understand the species, other potential habitat-related threats have been removed through the implementation of Federal regulatory mechanisms and associated actions. Overutilization, predation, and the inadequacy of regulatory mechanisms are not viewed as threats to the species. We consider the threats that *B. pusilla* faces to be moderate in magnitude primarily because the population decline has been somewhat reversed. Although the threat is not fully understood, we know it exists as indicated by the declining population, but we have not detected the source or nature of the threat. The threat to *B. pusilla* is imminent because, although not fully identified, we have evidence

that the species is currently facing a threat indicated by reduced population size. The threat appears to be ongoing, although we are unsure of the extent and timing of its effects on the species. Thus, we have assigned *B. pusilla* an LPN of 8.

Brickellia mosieri (Florida brickell-bush)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is restricted to pine rocklands of Miami-Dade County, Florida. This habitat requires periodic prescribed fires to maintain the low understory and prevent encroachment by native tropical hardwoods and exotic plants, such as Brazilian pepper. Only one large occurrence is known to exist; 15 other occurrences contain fewer than 100 individuals. Eleven occurrences are on conservation lands, while the rest of the extant populations are on private land and are currently vulnerable to habitat loss and degradation.

Climatic changes, including sea-level rise, are long-term threats that will reduce the extent of habitat. This species is threatened by habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Remaining habitats are fragmented. The species is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. Ongoing conservation efforts include projects aimed at facilitating restoration and management of public and private lands in Miami-Dade County and projects to reintroduce and establish new populations at suitable sites within the species' historical range. The Service is also pursuing additional habitat restoration projects, which could help further improve the status of the species. Because of these efforts, the overall magnitude of threats is moderate. The threats are ongoing and thus imminent. We assigned this species an LPN of 8.

Calamagrostis expansa (Maui reedgrass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Calamagrostis expansa* is a perennial grass found in wet forests and bogs, and in bog margins, on the islands of Maui and Hawaii, Hawaii. This species is known from 13 populations totaling fewer than 750 individuals.

Calamagrostis expansa is threatened by habitat degradation and loss by feral pigs (*Sus scrofa*), and by competition with nonnative plants. Herbivory by feral pigs is a potential threat to this species. All of the known populations of *C. expansa* on Maui occur in managed areas. Pig exclusion fences have been constructed, and control of nonnative plants is ongoing within the exclosures but still pose a significant threat. On the island of Hawaii, the population in the Upper Waiakea Forest Reserve has been fenced entirely. This species is not represented in an *ex situ* collection. Threats to this species from feral pigs and nonnative plants are ongoing, or imminent, and of high magnitude because they significantly affect the species throughout its range, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 2 for this species.

Calochortus persistens (Siskiyou mariposa lily)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This pea is endemic to the lower Florida Keys, and restricted to pine rocklands, hardwood hammock edges, and roadsides and firebreaks within these ecosystems. Historically, it was known from Big Pine, Cudjoe, No Name, Ramrod, and Little Pine Keys (Monroe County, Florida). In 2005, a small population was detected on lower Sugarloaf Key, but this population was not located after Hurricane Wilma; plants were likely killed by the tidal surge from this storm. It presently occurs on Big Pine Key, with a very small population on Cudjoe Key. It is fairly well distributed in Big Pine Key pine rocklands, which encompass approximately 580 ha (1,433 ac), approximately 360 ha (890 ac) of which are within the Service's National Key Deer Refuge (NKDR). Over 80 percent of the population probably exists on NKDR, with the remainder distributed among State, County, and private properties. Hurricane Wilma (October 2005) resulted in a storm surge that covered most of Big Pine Key with sea water. The surge reduced the population by as much as 95 percent in some areas.

Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees encroach on pine rockland, and this subspecies is eventually shaded out. NKDR has a prescribed fire program, although with many constraints on implementation. Habitat loss due to development was historically the greatest threat to the pea. Much of the remaining habitat is now protected on public lands. Absence of fire now appears to be the greatest of the deterministic threats. Given the recent increase in hurricane activity, storm surges are the greatest of the stochastic threats. The small range and patchy distribution of the variety increase risk from stochastic events. Climatic changes, including sea-level rise, are serious long-term threats. Models indicate that even under the best of circumstances, a significant proportion of upland habitat will be lost on Big Pine Key by 2100. Additional threats include restricted range, invasive nonnative plants, roadside dumping, loss of pollinators, seed predators, and development.

We maintain the previous assessment that hurricanes, storm surges, lack of fire, and limited distribution result in a moderate magnitude of threat because a large part of the range is on conservation lands wherein threats are being addressed, although fire management is at much slower rate than is required. The immediacy of hurricane threats is difficult to characterize, but imminence is considered high given that hurricanes (and storm surges) of various magnitudes are frequent and recurrent events in the area. Sea-level rise remains uncontrolled but, overall, is nonimminent. Overall, the threats from limited distribution and inadequate fire management are imminent because they are ongoing. In addition, the most consequential threats (hurricanes, storm surges) are frequent, recurrent, and imminent. Therefore, we retained an LPN of 9 for Big Pine partridge pea.

Chamaesyce deltoidea ssp. *pinetorum* (Pineland sandmat)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. The pineland sandmat is only known from Miami-Dade County, Florida. The largest occurrence, estimated at more than 10,000 plants, is located on Long Pine Key within Everglades National Park. All other occurrences are smaller and are in isolated pine rockland fragments in heavily urbanized Miami-Dade County.

Occurrences on private (non-conservation) lands and on one County-owned parcel are at risk from development and habitat degradation and fragmentation. Conditions related to

climate change, particularly sea-level rise, will be a factor over the long term. All occurrences of the species are threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire, and exotic plants. These threats are severe within small and unmanaged fragments in urban areas. However, the threats of fire suppression and exotics are reduced on lands managed by the National Park Service. Hydrologic changes are considered to be another threat. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and by the construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades could negatively affect the pinelands of Long Pine Key in the future. At this time, we do not know whether the proposed restoration and associated hydrological modifications will have a positive or negative effect on pineland sandmat. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Overall, the magnitude of threats to this species is moderate; by applying regular prescribed fire, the National Park Service has kept Long Pine Key's pineland vegetation intact and relatively free of exotic plants, and partnerships are in place to help address the continuing threat of exotics on other pine rockland fragments. Overall, the threats are nonimminent because fire management at the largest occurrence is regularly conducted and sea-level rise and hurricanes are longer-term threats and because regional water management actions are only proposed, so they will not be implemented in the immediate future. Therefore, we assigned a LPN of 12 to this subspecies.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Systematic surveys of publicly owned pine rockland throughout this plant's range were conducted during 2005–2006 and 2007–2008 to determine population size and distribution. Wedge spurge is a small prostrate herb. It was historically, and remains, restricted to pine rocklands on Big Pine Key in Monroe County, Florida. Pine rocklands encompass approximately 580 ha (1,433 ac) on Big Pine Key, approximately 360 ha (890 ac) of which are within the Service's National Key Deer Refuge (NKDR). Most of the species' range falls within the NKDR, with the remainder on State, County, and private properties. It is not widely dispersed within the limited range. Occurrences are sparser in the southern portion of Big Pine Key, which contains smaller areas of NKDR lands than does the northern portion. Wedge spurge inhabits sites with low woody cover (e.g., low palm and hardwood densities) and usually, exposed rock or gravel.

Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, shrubs and trees encroach on pine rockland, and the subspecies is eventually shaded out. NKDR has a prescribed fire program, although with many constraints on implementation. Habitat loss due to development was historically the greatest threat to the wedge spurge. Much of the remaining habitat is now protected on public lands. Absence of fire now appears to be the greatest of the deterministic threats. Given the recent increase in hurricane activity, storm surges are the greatest of the stochastic threats. The small range and patchy distribution of the subspecies increases risk from stochastic events. Climatic changes, including sea-level rise, are serious long-term threats. Models indicate that even under the best of circumstances, a significant proportion of upland habitat will be lost on Big Pine Key by 2100. Additional threats include restricted range, invasive nonnative plants, roadside dumping, loss of pollinators, seed predators, and development.

We maintain the previous assessment that low fire-return intervals plus hurricane-related storm surges, in combination with a limited, fragmented distribution and threats from sea-level rise, result in a moderate magnitude of threat, in part, because a large part of the range is on conservation lands, where some threats can be substantially controlled. The immediacy of hurricane threats is difficult to categorize, but in this case threats are imminent given that hurricanes (and storm surges) of various magnitudes are frequent and recurrent events in the area. Sea-level rise remains uncontrolled, but over much of the range is nonimminent compared to other prominent threats. Threats resulting from limited fire occurrences are imminent. As major threats are ongoing, overall, the threats are imminent. Therefore, we retained an LPN of 9 for this subspecies.

Chorizanthe parryi var. *fernandina* (San Fernando Valley spineflower)—The following summary is based on information contained in our files and the petition we received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* is a low-growing, herbaceous, annual plant in the buckwheat family. Germination occurs following the onset of late-fall and winter rains and typically represents different cohorts from the seed bank. Flowering occurs in the spring, generally between April and June. *Chorizanthe parryi* var. *fernandina* grows up to 30 cn in height and 5 to 40 cn across. The plant currently is known from two disjunct localities: One in the southeastern portion of Ventura County, California, on a site within the Upper Las Virgenes Canyon Open Space Preserve, formerly known as Ahmanson Ranch, and the other in an area of southwestern Los Angeles County known as Newhall Ranch. Investigations of historical locations and seemingly suitable habitat within the range of the species have not revealed any other occurrences.

The threats facing *Chorizanthe parryi* var. *fernandina* include threatened destruction, modification, or curtailment of its habitat or range; inadequacy of existing regulatory mechanisms; and other natural or manmade factors. The threats to *Chorizanthe parryi* var. *fernandina* from habitat destruction or modification are slightly less than they were 7 years ago. One of the two populations (Upper Las Virgenes Canyon Open Space Preserve) is in permanent, public ownership and is being managed by an agency that is working to conserve the plant; however, the use of adjacent habitat for Hollywood film productions was brought to our attention in 2007, and the potential impacts to *Chorizanthe parryi* var. *fernandina* have not yet been evaluated. During a site visit in April 2012, we noted an abundance of nonnative species that, if not managed, could degrade the quality of the habitat for *C. parryi* var. *fernandina* over time. It is not clear whether this presents an imminent threat at this time. We will be working with the landowners to manage the site for the benefit of *Chorizanthe parryi* var. *fernandina.* The other population (Newhall Ranch) is under the threat of development; however, a Candidate Conservation Agreement (CCA) is being developed with the landowner, and it is possible that the remaining plants can also be conserved. Until such an agreement is finalized, the threat of development and the potential damage to the Newhall Ranch population still exists, as shown by the destruction of some plants during installation of an agave farm. Furthermore, cattle grazing on Newhall Ranch may be a threat but we lack information to determine if it is currently occurring at a level that would threaten this species. Cattle grazing may

harm *Chorizanthe parryi* var. *fernandina* by trampling and soil compaction. Grazing activity could also alter the nutrient (e.g., elevated organic material levels) content of the soils for *Chorizanthe parryi* var. *fernandina* habitat through fecal inputs, which in turn may favor the growth of other plant species that would otherwise not grow so readily on the mineral-based soils. Over time, changes in species composition may render the sites less favorable for the persistence of *Chorizanthe parryi* var. *fernandina. Chorizanthe parryi* var. *fernandina* may be threatened by invasive nonnative plants, including grasses, which could potentially displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment.

Chorizanthe parryi var. *fernandina* is particularly vulnerable to extinction due to its concentration in two isolated areas. The existence of only two areas of occurrence, and a relatively small range, makes the variety highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, and erosion as these threats would result in a high level of mortality. We retained an LPN of 6 for *Chorizanthe parryi* var. *fernandina* due to high-magnitude, nonimminent threats.

Cirsium wrightii (Wright's marsh thistle)—The following summary is based on information from the 12-month warranted but precluded finding published November 4, 2010 (75 FR 67925). There are eight general confirmed locations of Wright's marsh thistle in New Mexico: Santa Rosa, Guadalupe County; Bitter Lake National Wildlife Refuge, Chaves County; Blue Spring, Eddy County; La Luz Canyon, Karr Canyon, Silver Springs, and Tularosa Creek, Otero County; and Alamosa Creek, Socorro County. The Wright's marsh thistle has been extirpated from all previously known locations in Arizona, and was misidentified and likely not ever present in Texas. The status of the species in Mexico is uncertain, with few verified collections.

The Wright's marsh thistle faces threats primarily from natural and human-caused modifications of its habitat due to ground and surface water depletion, drought, invasion of *Phragmites australis,* and from the inadequacy of existing regulatory mechanisms. The species occupies relatively small areas of seeps, springs, and wetland habitat in an arid region plagued by drought and ongoing and future water withdrawals. The species' highly specific requirements of saturated soils with surface or subsurface water flow make it particularly vulnerable.

We consider the threats that the Wright's marsh thistle faces to be moderate in magnitude because the major threats (habitat loss and degradation due to alteration of the hydrology of its rare wetland habitat), while serious and occurring rangewide, do not collectively result in serious population declines on a short time scale. Still, long-term drought, in combination with ground and surface water withdrawal, pose a current and future threat to Wright's marsh thistle and its habitat. All of the threats are ongoing and therefore imminent. In addition to their current existence, we expect these threats to likely intensify in the foreseeable future. Thus, we continue to assign an LPN of 8 to this species.

Cordia rupicola (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Cordia rupicola* is a small shrub that has been described from southwestern Puerto Rico, Vieques Island, and Anegada Island (British Virgin Islands). All these sites lay within the subtropical dry forest life zone overlying a limestone substrate. *Cordia rupicola* has a restricted distribution. Currently, approximately 227 individuals are known from 4 locations: Peñuelas, Yauco, Guánica Commonwealth Forests, and Vieques National Wildlife Refuge. Additionally, the species is reported as common in Anegada.

This species is threatened by maintenance of trails and power line right-of-way in the Guánica Commonwealth Forest, and residential and commercial development in Peñuelas, Yauco, and Anegada Island. *Cordia rupicola* is also vulnerable to natural (e.g., hurricanes) or manmade (e.g., human-induced fires) threats. Furthermore, the population on Anegada Island, which is considered the healthiest population, is expected to be affected by sea level rise as most of the suitable habitat for the species is below 3 m above sea level. Therefore, even a small rise in sea level could devastate the healthiest population, and lead to a significantly greater likelihood of extinction. For these reasons, the magnitude of the current threats is high. Although the threats faced by this species are expected to increase in the future if conservation measures are not implemented and long-term impacts are not averted, we conclude that the threats are nonimminent. About 60 percent of known adult plants are located in protected lands managed for conservation by the Puerto Rico Department of Natural and Environmental Resources or the Service. The staff from the Royal Botanical Garden (Kew) has developed germination and cultivation protocols for the species and is planning to conduct studies to determine the genetic variation of the populations. We therefore have assigned to *Cordia rupicola* an LPN of 5 for threats that on the whole are high in magnitude and nonimminent.

Dalea carthagenensis ssp. *floridana* (Florida prairie-clover)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dalea carthagenensis* var. *floridana* occurs in Big Cypress National Preserve (BCNP) in Monroe and Collier Counties and at six locations within Miami-Dade County, Florida, albeit mostly in limited numbers. There are a total of nine extant occurrences, seven of which are on conservation lands. In addition, 25 plants were reintroduced to a park in Miami-Dade County in 2006, but only 4 remained after 8 months.

Existing occurrences are extremely small and may not be viable, especially some of the occurrences in Miami-Dade County. Remaining habitats are fragmented. Climatic changes, including sea-level rise, are long-term threats that are expected to reduce the extent of habitat. This plant is threatened by habitat loss and degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from exotic plants. Damage to plants by off-road vehicles is a serious threat within the BCNP; damage attributed to illegal mountain biking at the R. Hardy Matheson Preserve has been reduced. One location within BCNP is threatened by changes in mowing practices; this threat is low in magnitude. This species is being parasitized by the introduced insect lobate lac scale (*Paratachardina pseudolobata*) at some localities (e.g., R. Hardy Matheson Preserve), but we do not know the extent of this threat. This plant is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. Due to its restricted range and the small sizes of most isolated occurrences, this species is vulnerable to environmental (catastrophic hurricanes), demographic (potential episodes of poor reproduction), and genetic (potential inbreeding depression) threats. The magnitude of threats is high because of the extremely limited number of occurrences, the small number of

individual plants at each occurrence, and poor reproduction. The threats are imminent; even though many sites are on conservation lands, these plants still face significant ongoing threats. Therefore, we have assigned an LPN of 3 to Florida prairie-clover.

Dichanthelium hirstii (Hirst Brothers' panic grass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Dichanthelium hirstii* is a perennial grass that produces erect, leafy, flowering stems from May to October. The species occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats, and is known to occur at only three sites in New Jersey, one site in Delaware, and two sites in North Carolina. While all six extant *D. hirstii* populations are located on public land or privately owned conservation lands, threats to the species from encroachment of woody and herbaceous vegetation, competition from rhizomatous perennials, fluctuations in hydrology, and threats associated with small population number and size are significant. Given the naturally fluctuating number of plants found at each site and the isolated nature of the wetlands (limiting dispersal opportunities), even small changes in the species' habitat could result in local extirpation. Loss of any known sites would constitute a significant contraction of the species' range. Therefore, we consider the threats to be high in magnitude. Because most of the potential threats to *D. hirstii* evolve over a period of years before they rise to the level of becoming imminent threats, and, in some cases, are being managed to some extent, we consider the threats to be nonimminent. Based on nonimminent threats of a high magnitude, we retain an LPN of 5 for this species.

Digitaria pauciflora (Florida pineland crabgrass)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This perennial grass was historically found in central to southern Miami-Dade County, Florida, most commonly in habitat along the border between pine rockland and marl prairie. Pine rocklands in Miami-Dade County have largely been destroyed by residential, commercial, and urban development and by agriculture. With most remaining habitat having been negatively altered, this species has been extirpated from much of its historical range, including extirpation from all areas outside of National Parks. Two large occurrences remain within Everglades National Park and Big Cypress National Preserve; plants on Federal lands are protected from the threat of habitat loss due to development. However, any unknown plants, indefinite occurrences, and suitable habitat remaining on private or non-conservation land are threatened by development. Continued development of suitable habitat diminishes the potential for reintroduction into its historical range. Extant occurrences are in low-lying areas and will be affected by climatic changes, including rising sea level.

Fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from nonnative plants are ongoing threats. As the only known remaining occurrences are on lands managed by the National Park Service, the threats of fire suppression and exotics are somewhat reduced. The presence of the exotic Old World climbing fern is of particular concern due to its ability to spread rapidly and reduce the populations of this species. In Big Cypress National Preserve, plants are threatened by off-road-vehicle use. Changes to hydrology are a potential threat. Hydrology has been altered within Long Pine Key due to artificial drainage, which lowered ground water, and construction of roads, which either impounded or diverted water. Regional water management intended to restore the Everglades has the potential to affect the pinelands of Long Pine Key, where a large population occurs. At this time, it is not known whether Everglades restoration will have a positive or negative effect. This narrow endemic may be vulnerable to catastrophic events and natural disturbances, such as hurricanes. Overall, the magnitude of threats is high. Only two known occurrences remain, and the likelihood of establishing a sizable population on other lands is diminished due to continuing habitat loss. Impacts from climatic changes, including sea-level rise, are currently low, but expected to be severe in the future. The majority of threats are nonimminent as they are long-term in nature (water management, hurricanes, and sea-level rise). Therefore, we assigned an LPN of 5 to this species.

Eriogonum corymbosum var. *nilesii* (Las Vegas buckwheat)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Eriogonum kelloggii (Red Mountain buckwheat)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Eriogonum soredium (Frisco buckwheat)—The following summary is based on information in our files and the petition we received on July 30, 2007. Frisco buckwheat is a low, mound-forming, perennial plant with oval leaves covered by short, white, woolly hairs. Flowers are pink or white and grow in tight clusters that resemble drumsticks. Frisco buckwheat is a narrow endemic restricted to soils derived from Ordovician limestone outcrops. The range of the species is less than 5 mi^2 (13 km^2) with only four known populations. All four populations occur exclusively on private lands in Beaver County, Utah, and each population occupies a very small area with large, localized densities of plants. Available population estimates are highly variable and inaccurate due to the limited access for surveys associated with private lands.

The primary threat to Frisco buckwheat is habitat destruction from precious metal and gravel mining. Mining for precious metals historically occurred within the vicinity of all four populations. Three of the populations are currently in the immediate vicinity of active limestone quarries. Ongoing mining in the species' habitat has the potential to extirpate one population in the near future and extirpate all populations in the foreseeable future. Ongoing exploration for precious metals and gravel indicate that mining will continue, resulting in the loss and fragmentation of Frisco buckwheat populations. Other threats to species include nonnative species, vulnerability associated with small population size, climate change, and the overall inadequacy of existing regulatory mechanisms. We consider threats that Frisco buckwheat faces to be moderate in magnitude, because while serious and occurring rangewide, the threats do

not significantly reduce populations on a short time scale. The threats are imminent because three of the populations are currently in the immediate vicinity of active limestone quarries. Therefore, we have assigned Frisco buckwheat an LPN of 8.

Festuca hawaiiensis (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a cespitose (growing in dense, low tufts) annual found in dry forests on the island of Hawaii, Hawaii. *Festuca hawaiiensis* is known from 4 populations totaling approximately 1,000 individuals in and around the Pohakuloa Training Area. Historically, this species was also found on Hualalai and Puu Huluhulu, but it no longer occurs at these sites. In addition, *Festuca hawaiiensis* possibly occurred on Maui. This species is threatened by pigs (*Sus scrofa*), goats (*Capra hircus*), mouflon (*Ovis musimon*), and feral sheep (*O. aries*) that degrade and destroy habitat; fire; military training activities; and nonnative plants that outcompete and displace it. Feral pigs, goats, mouflon, and feral sheep have been fenced out of a portion of the populations of *F. hawaiiensis,* and nonnative plants have been reduced in the fenced area, but the majority of the populations are still affected by threats from ungulates. The threats are imminent because they are not controlled and are ongoing in the remaining, unfenced populations. Firebreaks have been established at two populations, but fire is an imminent threat to the remaining populations that have no firebreaks. There are no *ex situ* collections. The threats are of a high magnitude because they could adversely affect the majority of *F. hawaiiensis* populations, resulting in a high level of direct mortality or reduced reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Festuca ligulata (Guadalupe fescue)—The following summary is based on information obtained from the original species petition, received in 1975, and from our files, on-line herbarium databases, and scientific publications. Six small populations of Guadalupe fescue, a member of the Poaceae (grass family), have been documented in mountains of the Chihuahuan desert in Texas and in Coahuila, Mexico. Only two extant populations have been confirmed in the last 5 years: one in the Chisos Mountains, Big Bend National Park, Texas, and one in the privately owned *Area de Protección de Flora y Fauna* (Protected Area for Flora and Fauna—APFF) Maderas del Carmen in northern Coahuila. Despite intensive searches, a population known from Guadalupe Mountains National Park, Texas, has not been found since 1952, and is presumed extirpated. In 2009, botanists confirmed Guadalupe fescue at one site in APFF Maderas del Carmen, but could not find the species at the original site, known as Sierra El Jardín, which was first reported in 1973. Two additional Mexican populations, near Fraile in southern Coahuila, and the Sierra de la Madera in central Coahuila, have not been monitored since 1941 and 1977, respectively. A great amount of potentially suitable habitat in Coahuila and adjacent Mexican states has never been surveyed. An historically unprecedented period of exceptional drought and high temperatures prevailed throughout the species' range from October 2010 until November 2011. We will not know what impacts this unusual weather had on Guadalupe fescue populations until monitoring is completed during the September 2012 flowering season.

The potential threats to Guadalupe fescue include changes in the wildfire cycle and vegetation structure, trampling from humans and pack animals, possible grazing, trail runoff, fungal infection of seeds, small sizes and isolation of populations, and limited genetic diversity. The Service and the National Park Service established a candidate conservation agreement (CCA) in 2008, to provide additional protection for the Chisos Mountains population, and to promote cooperative conservation efforts with U.S. and Mexican partners. The threats to Guadalupe fescue are of moderate magnitude and are not imminent due to the provisions of the CCA and other conservation efforts which address threats from trampling, grazing, trail runoff, and genetic diversity, as well as the likelihood that other populations exist in mountains of Coahuila and adjacent Mexican states that have not been surveyed. Thus, we maintained an LPN of 11 for this species.

Gardenia remyi (Nanu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Gardenia remyi* is a tree found in mesic to wet forests on the islands of Kauai, Molokai, Maui, and Hawaii, Hawaii. *Gardenia remyi* is known from 19 populations totaling between 85 and 87 individuals. This species is threatened by pigs (*Sus scrofa*), goats (*Capra hircus*), and deer (*Axis axis* and *Odocoileus hemionus*) that degrade and destroy habitat and possibly forage upon the species, and by nonnative plants that outcompete and displace it. *Gardenia remyi* is also threatened by landslides and reduced reproductive vigor on the island of Hawaii. This species is represented in *ex situ* collections. On Kauai, *G. remyi* individuals have been outplanted within ungulate-proof exclosures in two locations. Feral pigs have been fenced out of the west Maui populations of *G. remyi,* and nonnative plants have been reduced in those areas. However, these threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. In addition, the threat from goats and deer is ongoing and imminent throughout the range of the species, because no goat or deer control measures have been undertaken for any of the populations of *G. remyi.* All of the threats are of a high magnitude because habitat destruction, predation, and landslides could significantly affect the entire species, resulting in direct mortality or reduced reproductive capacity, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 2 for this species.

Gonocalyx concolor (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Gonocalyx concolor* is a small evergreen epiphytic or terrestrial shrub. This species in currently known from two populations: one at Cerro La Santa and the other at Charco Azul, both in the Carite Commonwealth Forest. This forest is located in the Sierra de Cayey and extends through the municipalities of Guayama, Cayey, Caguas, San Lorenzo, and Patillas in southeastern Puerto Rico. A population previously reported in the Caribbean National Forest apparently no longer exists. In 1996, approximately 172 plants were reported at Cerro La Santa. However, in 2006, only 25 individuals were reported at this site, and 4 were located in Charco Azul. At Cerro La Santa, the species is found growing on trees located close to communication towers, roads, plantations, and trails.

The *Gonocalyx concolor* population found at Cerro La Santa is threatened by habitat destruction and modification caused by vegetation clearing around telecommunication towers. Although the species is located within a Commonwealth forest and protected by Law No. 133 (''Ley de Bosques de Puerto Rico'' or The Puerto Rico Forest Law), unauthorized maintenance of existing communication facilities results in loss of individuals. *Gonocalyx concolor* is not currently listed in the Commonwealth Regulation No. 6766

(''Reglamento para Regir las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico''), which provides protection for threatened and endangered species. However, the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources recognizes *Gonocalyx concolor* as a critical element. In addition, the Carite Commonwealth Forest is designated as a Critical Wildlife Area by the Commonwealth of Puerto Rico. Despite these conservation efforts, damage to the species still occurs due to its location near telecommunication facilities. In addition, due to its restricted distribution, the species is vulnerable to the effects of natural events (e.g., hurricanes, landslides). Existing laws and regulations have not been effectively enforced to protect these populations. Because of small population size and limited distribution, any loss of individuals due to maintenance of communication facilities or natural events could significantly affect the entire species, leading to a relatively high likelihood of extinction. Therefore, the threats to *Gonocalyx concolor* are high in magnitude. Overall the threats are nonimminent because the damage to the species from clearing of land near telecommunication facilities and the threats from natural events occur only periodically. Therefore, we have assigned an LPN of 5 to *Gonocalyx concolor.*

Hazardia orcuttii (Orcutt's hazardia)—The following summary is based on information contained in our files and the petition we received on March 8, 2001. *Hazardia orcuttii* is an evergreen shrubby species in the Asteraceae (sunflower family). The erect shrubs are 50–100 cm (20–40 in) high. The only known extant native occurrence of this species in the United States covers an area of 2 ha (5 ac) in the Manchester Conservation Area in northwestern San Diego County, California. This site is managed by Center for Natural Lands Management (CNLM). Using material derived from the native population, the CNLM facilitated the establishment of test populations at four additional sites in northwest San Diego County, California, including sites in the Manchester Conservation Area, Kelly Ranch Habitat Conservation Area, Rancho La Costa Habitat Conservation Area, and San Elijo Lagoon. *Hazardia orcuttii* also occurs at a few coastal sites in Mexico, where it recently became listed as endangered under Mexican environmental law. The total number of plants at the only native site in the United States is approximately 669 adults, and it is unknown if reproduction is occurring. The five additional test populations collectively support approximately 483 adults, 17 juveniles, and 322 seedlings, and reproduction is occurring in three test populations. The population in Mexico is estimated to be 1,100 plants.

The occurrences in Mexico are threatened by coastal development from Tijuana to Ensenada. The native population in the United States is within an area that receives public use; however, management at this site has minimized impacts associated with habitat degradation. This species has a very low reproductive output, although the causes are as yet unknown. Competition from invasive, nonnative plants may pose a threat to the reproductive potential of this species. In one limited study, 95 percent of the flowers examined were damaged by insects or fungal agents or aborted prematurely, and insects or fungal agents damaged 50 percent of the seeds produced. All of the populations in the United States are small, and one test population is declining. Small populations are considered subject to random events and reductions in fitness due to low genetic variability. Threats associated with small population size are further exacerbated by the limited range and low reproductive output of this species. However, if low seed production is because of ecosystem disruptions, such as loss of effective pollinators, there could be additional threats that need to be addressed. Due to low abundance and a very small area of occupancy, any regional fire would be a rangewide threat. Furthermore, because the soil seed bank is poor and seed viability is low, recovery from a fire may be especially challenging. The response mechanism of this species to fire is unknown. Overall, the threats to *H. orcuttii* are of a high magnitude because they have the potential to significantly reduce the reproductive potential of this species. The threats are nonimminent overall because invasive, nonnative plants and low reproductive output are long-term in nature, and it is not clear that they have risen to the level of becoming imminent threats. This species faces high-magnitude nonimminent threats; therefore, we assigned this species an LPN of 5.

Hedyotis fluviatilis (Kamapuaa)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Hedyotis fluviatilis* is a scandent (climbing) shrub found in mixed shrubland to wet lowland forests on the islands of Oahu and Kauai, Hawaii. This species is known from 11 populations totaling between 400 and 900 individuals. *Hedyotis fluviatilis* is threatened by pigs (*Sus scrofa*) and goats (*Capra hircus*) that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Landslides and hurricanes are a potential threat to populations on Kauai. Herbivory by pigs and goats is a likely threat. This species is not represented in an *ex situ* collection. We retained an LPN of 2 because the severity of the threats to the species is high given the low number of individuals and the potential for whole populations to be eliminated, and the threats are ongoing and, therefore, imminent.

Helianthus verticillatus (Whorled sunflower)—See above in ''Listing Priority Changes in Candidates.'' The above summary is based on information contained in our files.

Ivesia webberi (Webber ivesia)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Joinvillea ascendens ssp. *ascendens* (Ohe)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Joinvillea ascendens* ssp. *ascendens* is an erect herb found in wet to mesic *Metrosideros polymorpha-Acacia koa* (ohia-koa) lowland and montane forests on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, Hawaii. This subspecies is known from 44 widely scattered populations totaling approximately 200 individuals. Plants are typically found as only one or two individuals, with miles between populations. This subspecies is threatened by destruction or modification of habitat by pigs (*Sus scrofa*), goats (*Capra hircus*), and deer (*Axis axis* and *Odocoileus hemionus*), and by nonnative plants that outcompete and displace native plants. Herbivory by pigs, goats, deer, and rats (*Rattus exulans, R. norvegicus,* and *R. rattus*) is a likely threat to this species. Landslides are a potential threat to populations on Kauai and Molokai.

Seedlings have rarely been observed in the wild. Seeds germinate in cultivation, but most die soon thereafter. It is uncertain if this rarity of reproduction is typical of this subspecies, or if it is related to habitat disturbance. Feral pigs have been fenced out of a few of the populations of this subspecies, and nonnative plants have been reduced in those populations that are fenced. However, these threats are not controlled and are ongoing in the remaining, unfenced populations. This species is represented in *ex situ* collections. The threats are of high magnitude because habitat degradation, nonnative plants, and predation result in mortality or severely affect the reproductive capacity of the majority of populations of this species, leading to a relatively high probability of extinction. The threats are ongoing and thus are imminent. Therefore, we retained an LPN of 3 for this subspecies.

Leavenworthia crassa (Gladecress)—The following information is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species of gladecress is a component of glade flora, occurring in association with limestone outcroppings. *Leavenworthia crassa* is endemic to a 13-mile radius area in north central Alabama in Lawrence and Morgan Counties, where only six populations of this species are documented. Glade habitats today have been reduced to remnants fragmented by agriculture and development. Populations of this species are now located in glade-like areas exhibiting various degrees of disturbance including pastureland, roadside rights-of-way, and cultivated or plowed fields. The most vigorous populations of this species are located in areas which receive full, or near full, sunlight with limited herbaceous competition. The magnitude of threat is high for this species, because with the limited number of populations, the threats could result in direct mortality or reduced reproductive capacity of the species. This species appears to be able to adjust to periodic disturbances, and although competition, exotics, and herbicide use are potential threats, there is no evidence that they are ongoing, and they therefore are considered nonimminent. Thus, we assigned an LPN of 5 to this species.

Lepidium ostleri (Ostler's peppergrass)—The following summary is based on information in our files and the petition we received on July 30, 2007. Ostler's peppergrass is a long-lived perennial herb in the mustard family that grows in dense, cushion-like tufts. The leaves are hairy and grayish-green and the flowering stalks have 5 to 35 white or purple-tinted flowers. Ostler's peppergrass is a narrow endemic restricted to soils derived from Ordovician limestone outcrops. The range of the species is less than 5 mi^2(13 km^2) with only four known populations. All four populations occur exclusively on private lands in the southern San Francisco Mountains of Beaver County, Utah. Available population estimates are highly variable and inaccurate due largely to the limited access for surveys associated with private lands.

The primary threat to Ostler's peppergrass is habitat destruction from precious metal and gravel mining. Mining for precious metals historically occurred within the vicinity of all four populations. Three of the populations are currently in the immediate vicinity of active limestone quarries, but mining is only currently occurring in the area of one population. Ongoing mining in the species' habitat has the potential to extirpate one population in the near future. Ongoing exploration for precious metals and gravel indicate that mining will continue, resulting in the loss and fragmentation of Ostler's peppergrass populations. Other threats to species include nonnative species, vulnerability associated with small population size, climate change, and the overall inadequacy of existing regulatory mechanisms. We consider threats that Ostler's peppergrass faces to be moderate in magnitude, because while serious and occurring rangewide, the threats do not collectively result in significant population declines on a short time scale. The threats are imminent because the species is currently facing them across its entire range. Therefore, we have assigned Ostler's peppergrass an LPN of 8.

Linum arenicola (Sand flax)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Sand flax is found in pine rockland and marl prairie habitats, which require periodic wildfires in order to maintain an open, shrub-free subcanopy and reduce leaf-litter levels. Based upon available data, there are 12 extant occurrences of sand flax; 11 others have been extirpated or destroyed. For the most part, only small and isolated occurrences remain in low-lying areas in a restricted range of southern Florida and the Florida Keys. In general, viability is uncertain for 10 of 12 occurrences.

Sand flax is threatened by habitat loss and degradation due to development; climatic changes, including sea-level rise, which ultimately are likely to substantially reduce the extent of available habitat; fire suppression and difficulty in applying prescribed fire; road maintenance activities; exotic species; illegal dumping; natural disturbances, such as hurricanes, tropical storms, and storm surges; and the small and fragmented nature of the current population. Reduced pollinator activity and suppression of pollinator populations from pesticides used in mosquito control and decreased seed production due to increased seed predation in a fragmented wildland urban interface may also affect sand flax; however, not enough information is known on this species' reproductive biology or life history to assess these potential threats. Some of the threats to the species—including fire suppression, difficulty in applying prescribed fire, road maintenance activities, exotic species, and illegal dumping—threaten nearly all remaining populations. However, some efforts are under way to use prescribed fire to control exotics on conservation lands where this species occurs.

There are some circumstances that may mitigate the impacts of the threats upon the species. For example, a survey conducted in 2009 showed approximately 74,000 plants on a non-conservation, public site in Miami-Dade County; this is far more plants than was previously known. Although a portion of the plants will be affected by development, approximately 60,000 are anticipated to be protected and managed. Still, this project will need to be carefully monitored because impacts would affect the largest known occurrence of the species. In addition, much of the pine rockland on Big Pine Key, the location of the largest occurrence in the Keys, is protected from development.

Nevertheless, due to the small and fragmented nature of the current population, stochastic events, disease, or genetic bottlenecks may strongly affect this species in the Keys. One example is Hurricane Wilma, which inundated most of the species' habitat on Big Pine Key in 2005, and plants were not found 8 to 9 weeks post-storm; the density of sand flax declined to zero in all management units at The Nature Conservancy's preserve in 2006. In a 2007 post-hurricane assessment, sand flax was found in northern plots, but not in any of the southern plots on Big Pine Key. More current data are not available.

Overall, the magnitude of threats is high, because the threats affect all 12 known occurrences of the species and can result in a precipitous decline to the population levels, particularly when combined with the potential impacts

from hurricanes or other natural disasters. Because development is not immediate for the majority of the largest population in Miami-Dade County and another population in the Keys is also largely protected from development because much of it is within public and private conservation lands, the threat of habitat loss remains nonimminent. In addition, sea-level rise is a long-term threat because we do not have evidence that it is present in any population of sand flax. Therefore, we retained an LPN of 5 for this species.

Linum carteri var. *carteri* (Carter's small-flowered flax)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This plant occupies open and disturbed sites in pinelands of Miami-Dade County, Florida. Currently, there are nine known occurrences. Occurrences with fewer than 100 individuals are located on three county-owned preserves. A site with more than 100 plants is owned by the U.S. government, but the site is not managed for conservation.

Climatic changes, including sea-level rise, are long-term threats that will likely reduce the extent of habitat. The nine existing occurrences are small and vulnerable to habitat loss, which is exacerbated by habitat degradation due to fire suppression, the difficulty of applying prescribed fire to pine rocklands, and threats from nonnative plants. Remaining habitats are fragmented. Incompatible management practices are also a threat at most protected sites; several sites are mowed during the flowering and fruiting season. In the absence of fire, periodic mowing can, in some cases, help maintain open, shrub-free understory and provide benefits to this plant. However, mowing can also eliminate reproduction entirely in very young plants, delay reproductive maturation, and kill adult plants. With flexibility in timing and proper management, threats from mowing practices can be reduced or negated. Carter's small-flowered flax is vulnerable to natural disturbances, such as hurricanes, tropical storms, and storm surges. This species exists in such small numbers at so few sites that it may be difficult to develop and maintain viable occurrences on the available conservation lands. Although no population viability analysis has been conducted for this plant, indications are that existing occurrences are at best marginal, and it is possible that none are truly viable. As a result, the magnitude of threats is high. The threats are ongoing, and thus are imminent. Therefore, we assigned an LPN of 3 to this plant variety.

Myrsine fosbergii (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Myrsine fosbergii* is a branched shrub or small tree found in lowland mesic and wet forests, on watercourses or stream banks, on the islands of Kauai and Oahu, Hawaii. This species is currently known from 14 populations totaling a little more than 100 individuals. *Myrsine fosbergii* is threatened by feral pigs (*Sus scrofa*) and goats (*Capra hircus*) that degrade and destroy habitat and may forage upon the plant, and by nonnative plants that compete for light and nutrients. This species is represented in an *ex situ* collection. Although there are plans to fence and remove ungulates from the Helemano area of Oahu, which may benefit this species, no conservation measures have yet been taken to protect this species from nonnative herbivores. Feral pigs and goats are found throughout the known range of *M. fosbergii,* as are nonnative plants. The threats from feral pigs, goats, and nonnative plants are of a high magnitude because they pose a severe threat throughout the limited range of this species, and they are ongoing and therefore imminent. We retained an LPN of 2 for this species.

Nothocestrum latifolium ('Aiea)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Nothocestrum latifolium* is a small tree found in dry to mesic forests on the islands of Kauai, Oahu, Maui, Molokai, and Lanai, Hawaii. *Nothocestrum latifolium* is known from 17 declining populations totaling fewer than 1,200 individuals. This species is threatened by feral pigs (*Sus scrofa*), goats (*Capra hircus*), and deer (*Axis axis* and *Odocoileus hemionus*) that degrade and destroy habitat and may forage upon it; by nonnative plants that compete for light and nutrients; and by the loss of pollinators that negatively affect the reproductive viability of the species. This species is represented in an *ex situ* collection. Ungulates have been fenced out of four areas where *N. latifolium* currently occurs, hundreds of *N. latifolium* individuals have been outplanted in fenced areas, and nonnative plants have been reduced in some populations that are fenced. However, these ongoing conservation efforts for this species benefit only a few of the known populations. The threats are not controlled and are ongoing in the remaining unfenced populations. In addition, little regeneration is observed in this species. The threats are of a high magnitude, as they are severe enough to affect the continued existence of the species, leading to a relatively high likelihood of extinction. The threats are imminent, because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Ochrosia haleakalae (Holei)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ochrosia haleakalae* is a tree found in dry to mesic forests, often on lava, on the islands of Hawaii and Maui. This species is currently known from 8 populations totaling between 64 and 76 individuals. *Ochrosia haleakalae* is threatened by fire; by feral pigs (*Sus scrofa*), goats (*Capra hircus*), and cattle (*Bos taurus*) that degrade and destroy habitat and may directly forage upon it; and by nonnative plants that compete for light and nutrients. This species is represented in *ex situ* collections. Feral pigs, goats, and cattle have been fenced out of one wild and one outplanted population on private lands on the island of Maui and out of one outplanted population in Hawaii Volcanoes National Park on the island of Hawaii. Nonnative plants have been reduced in the fenced areas. The threat from fire is of a high magnitude and imminent because no control measures have been undertaken to address this threat that could adversely affect *O. haleakalae* as a whole. The threats from feral pigs, goats, and cattle are ongoing to the unfenced populations of *O. haleakalae.* The threat from nonnative plants is ongoing, imminent, and of a high magnitude to the wild populations on both islands as this threat adversely affects the survival and reproductive capacity of the majority of the individuals of this species, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 2 for this species.

Penstemon scariosus var. *albifluvis* (White River beardtongue)—The following summary is based on information contained in our files and the petition we received on October 27, 1983. This species is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. There are 20 occurrences known in Utah and 1 in Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. The location of the species' habitat exposes it to destruction from road, pipeline, and well site

construction in connection with oil and gas development. Grazing by wildlife and livestock is an additional threat. A future threat (and potentially the greatest threat) to the species is oil shale development. Traditional oil and gas energy development is currently occurring and expected to increase within habitat areas for this species, and therefore the threat is imminent. However, the BLM has adopted a Special Status Species policy and has included in its current Resource Management Plan actions to protect this species. These protections lessen the extent of traditional oil and gas development impacts to this species, so that although oil and gas development will continue to increase within this species' range, the threat is of moderate magnitude. The threats are ongoing and therefore imminent. Thus, we assigned an LPN of 9 to this plant variety.

Physaria globosa (Desvaux) O'Kane & Al-Shehbaz (Short's bladderpod)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Short's bladderpod is a perennial member of the mustard family that occurs in Indiana (1 location), Kentucky (6 locations), and Tennessee (22 locations). It grows on steep, rocky, wooded slopes; on talus areas; along cliff tops and bases; and on cliff ledges. It is usually associated with south- to west-facing calcareous outcrops adjacent to rivers or streams. Road construction and road maintenance have played a significant role in the decline of *P. globosa.* Specific activities that have affected the species in the past and may continue to threaten it include bank stabilization, herbicide use, mowing during the growing season, grading of road shoulders, and road widening or repaving. Sediment deposition during road maintenance or from other activities also potentially threatens the species. Because the natural processes that maintained habitat suitability and competition from invasive, nonnative vegetation have been interrupted at many locations, active habitat management is necessary at those sites. Threats associated with roadside maintenance activities and habitat alterations by invasive plant encroachment are imminent because they are ongoing. These threats are of moderate magnitude as they are not affecting all locations of this species at this time, the viability of 10 of the 22 occurrences observed in Tennessee were rated as fair or better, and efforts undertaken to restore suitable habitat conditions at the Indiana site apparently have shown early signs of success. Therefore, we assigned an LPN of 8 to this species.

Pinus albicaulis (Whitebark pine)—The following summary is based on information in our files and in the petition received on December 9, 2008. *Pinus albicaulis* is a hardy conifer found at alpine tree line and subalpine elevations in Washington, Oregon, Nevada, California, Idaho, Montana, and Wyoming, and in British Columbia and Alberta, Canada. In the United States, approximately 96 percent of land where the species occurs is federally owned or managed, primarily by the U.S. Forest Service. *Pinus albicaulis* is a slow-growing, long-lived tree with a life span of up to 500 years and sometimes more than 1,000 years. It is considered a keystone, or foundation, species in western North America, where it increases biodiversity and contributes to critical ecosystem functions.

The primary threat to the species is from disease in the form of the nonnative white pine blister rust and its interaction with other threats. *Pinus albicaulis* also is currently experiencing significant mortality from predation by the native mountain pine beetle. We also anticipate that continuing environmental effects resulting from climate change will result in direct habitat loss for *P. albicaulis.* Bioclimatic models predict that suitable habitat for *P. albicaulis* will decline precipitously within the next 100 years. Past and ongoing fire suppression is also negatively affecting populations of *P. albicaulis* through direct habitat loss. Additionally, environmental changes resulting from changing climatic conditions are acting alone and in combination with the effects of fire suppression to increase the frequency and severity of wildfires. Lastly, the existing regulatory mechanisms are inadequate to address the threats presented above. The threats that face *P. albicaulis* are high in magnitude because the major threats occur throughout all of the species' range and are having a major population-level effect on the species. The threats are imminent because rangewide disease, predation, fire and fire suppression, and environmental effects of climate change are affecting *P. albicaulis* currently and are expected to continue and likely intensify in the foreseeable future. Thus, we have assigned *P. albicaulis* an LPN of 2.

Platanthera integrilabia (Correll) Leur (White fringeless orchid)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Platanthera integrilabia* is a perennial herb that grows in partially, but not fully, shaded, wet, boggy areas at the head of streams and on seepage slopes in Alabama, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee. Historically, there were at least 90 populations of *P. integrilabia.* It is presumed extirpated from North Carolina and Virginia. Currently there are about 60 extant sites supporting the species.

Several populations have been destroyed due to road, residential, and commercial construction, and to projects that altered soil and site hydrology such that suitability for the species was reduced. Several of the known populations are in or adjacent to powerline rights-of-way. Mechanical clearing of these areas may benefit the species by maintaining adequate light levels, but can promote development of dense, shrubby vegetation due to extensive suckering of woody species; however, the indiscriminant use of herbicides in these areas could pose a significant threat to the species. All-terrain vehicles have damaged several sites and pose a threat at most sites. Some of the known sites for the species occur in areas that are managed specifically for timber production. Timber management is not necessarily incompatible with the protection and management of the species, but care must be taken during timber management to ensure that the hydrology of bogs supporting the species is not altered. Natural succession can result in decreased light levels. Because of the species' dependence upon moderate-to-high light levels, some type of active management to prevent complete canopy closure is required at most locations. Collecting for commercial and other purposes is a potential threat. Herbivory (primarily deer) threatens the species at several sites. Due to the alteration of habitat and changes in natural conditions, protection and recovery of this species is dependent upon active management rather than just preservation of habitat. Invasive, nonnative plants such as Japanese honeysuckle and kudzu also threaten several sites. The threats are widespread; however, the impact of those threats on the species' survival is moderate in magnitude. Several of the sites are protected to some degree from the threats by being within State parks, national forests, wildlife management areas, or other protected land and the species is spread out over sites in several States. The threats, however, are imminent because they are ongoing, and

we have therefore assigned an LPN of 8 to this species.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Pseudognaphalium (= *Gnaphalium*) *sandwicensium* var. *molokaiense* (Enaena)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Pseudognaphalium sandwicensium* var. *molokaiense* is a perennial herb found in strand vegetation in dry consolidated dunes on the islands of Molokai and Maui. Historically, this variety was also found on Oahu and Lanai. This variety is known from 5 populations totaling approximately 200 to 20,000 individuals (depending upon rainfall) in the Moomomi area on the island of Molokai, and from 2 populations of a few individuals at Waiehu dunes and at Puu Kahulianapa on west Maui. *Pseudognaphalium sandwicensium* var. *molokaiense* is threatened by feral goats (*Capra hircus*) and axis deer (*Axis axis*) that degrade and destroy habitat and possibly prey upon it, and by nonnative plants that compete for light and nutrients. Potential threats also include collection for lei-making and off-road vehicles that directly damage plants and degrade habitat. Weed control is conducted for one population on Molokai; however, no conservation efforts have been initiated to date for the other populations on Molokai or for the individuals on Maui. This species is represented in an *ex situ* collection. The ongoing threats from feral goats, axis deer, nonnative plants, collection, and off-road vehicles are of a high magnitude because no control measures have been undertaken for the Maui population or for four of the five Molokai populations, and the threats result in direct mortality for a plant that already has very low population numbers, or significantly reduce reproductive capacity for the majority of the populations, leading to a relatively high likelihood of extinction. Therefore, we retained an LPN of 3 for this plant variety.

Ranunculus hawaiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus hawaiensis* is an erect or ascending perennial herb found in mesic to wet forests dominated by *Metrosideros polymorpha* (ohia) and *Acacia koa* (koa) with scree substrate (loose stones or rocky debris on a slope) on the islands of Maui and Hawaii, Hawaii. This species is currently known from 14 individuals in 6 populations on the island of Hawaii. This does not include one population on Maui (Kukui Planeze) that was not relocated on a survey conducted in 2006 or one wild population at Waikamoi (also on Maui) has not been observed since 1995. *Ranunculus hawaiensis* is threatened by direct predation by slugs (*Limax maximus, Vaginulus plebeius,* and *Milax gagates*), feral pigs (*Sus scrofa*), goats (*Capra hircus*), cattle (*Bos taurus*), mouflon (*Ovis musimon*), and feral sheep (*O. aries*); by pigs, goats, cattle, mouflon, and feral sheep that degrade and destroy habitat; and by nonnative plants that compete for light and nutrients. This species is represented in *ex situ* collections, and three populations have been outplanted into protected exclosures; however, feral ungulates and nonnative plants are not controlled in the remaining, unfenced populations. In addition, the threat from introduced slugs is of a high magnitude because slugs occur throughout the limited range of this species and no effective measures have been undertaken to control them or prevent them from causing significant adverse impacts to this species which currently is only known to have a small number of individuals. Overall, the threats from pigs, goats, cattle, mouflon, feral sheep, slugs, and nonnative plants are of a high magnitude and are ongoing (imminent) for *R. hawaiensis.* We retained an LPN of 2 for this species.

Ranunculus mauiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Ranunculus mauiensis* is an erect to weakly ascending perennial herb found in open sites in mesic to wet forests and along streams on the islands of Maui, Kauai, and Molokai, Hawaii. This species is currently known from 14 populations totaling 198 individuals. *Ranunculus mauiensis* is threatened by feral pigs (*Sus scrofa*), goats (*Capra hircus*), mule deer (*Odocoileus hemionus*), axis deer (*Axis axis*), and slugs (*Limax maximus, Vaginulus plebeius,* and *Milax gagates*) that consume it; by habitat degradation and destruction by feral pigs, goats, and deer; and by nonnative plants that compete for light and nutrients. This species is represented in an *ex situ* collection. Feral pigs have been fenced out of one Maui population of *R. mauiensis,* and nonnative plants have been reduced in the fenced area. One individual occurs in the Kamakou Preserve on Molokai, managed by The Nature Conservancy. However, ongoing conservation efforts benefit only two populations. The threats are of high magnitude because the threats result in direct mortality for a plant that already has low population numbers, or significantly reduce reproductive capacity for the majority of the populations, leading to a relatively high likelihood of extinction. They are imminent because they are ongoing in the Kauai and the majority of the Maui populations. Therefore, we retained an LPN of 2 for this species.

Rorippa subumbellata (Tahoe yellow cress)—The following summary is based on information contained in our files and the petition we received on December 27, 2000. *Rorippa subumbellata* is a small, branching, perennial herb with umbel-like inflorescences and yellow flowers. *Rorippa subumbellata* is known only from the shores of Lake Tahoe in California and Nevada. Data collected over the last 25 years generally indicate that species occurrence fluctuates yearly as a function of both lake level and the amount of exposed habitat. Records kept since 1900 show a preponderance of years with high lake levels that would isolate and reduce *R. subumbellata* occurrences at higher beach elevations. From the standpoint of the species, less favorable peak years have occurred almost twice as often as more favorable low-level years. Annual surveys are conducted to determine population numbers, site occupancy, and general disturbance regime. During the 2003 and 2004 annual survey periods, the lake level was approximately 6,224 ft (1,897.08m); 2004 was the fourth consecutive year of low water. *Rorippa subumbellata* was present at 46 of the 60 sites surveyed, up from 31 occupied sites in 2001, when the lake level was higher at 6,225 ft (1,897.38 m). Approximately 25,200 stems were present in 2003, whereas during the 2001 annual survey, the estimated number of stems was 6,136. Lake levels rose again in 2006, and less habitat was available. Lake levels dropped again in 2008 through 2010, leading to an

increase in both occupied sites and estimated stem counts. During very low lake levels in 2009, an estimated 27,522 stems were observed at 46 sites, equal to the highest number of occupied sites previously recorded. In 2011, the lake level was 6,228.4 ft (1,898.4 m), 3.8 ft (1.2 m) higher than in 2010, and an estimated 6,494 stems were observed at 25 sites.

Many *Rorippa subumbellata* sites are intensively used for commercial and public purposes and are subject to various activities such as erosion control, marina developments, pier construction, and recreation. The U.S. Forest Service, California Tahoe Conservancy, and California Department of Parks and Recreation have management programs for *R. subumbellata* that include monitoring, fenced enclosures, and transplanting efforts when funds and staff are available. Public agencies (including the Service), private landowners, and environmental groups collaborated to develop a Conservation Strategy coupled with a Memorandum of Understanding-Conservation Agreement. The Conservation Strategy, completed in 2003, lays out goals and objectives for recovery and survival, contains a research and monitoring agenda, and serves as the foundation for an adaptive management program. Because of the continued commitments to conservation demonstrated by regulatory and land management agencies participating in the conservation strategy, we have determined the threats to *R. subumbellata* from various land uses have been reduced to a moderate magnitude. In high lake level years such as 2011, however, recreational use is concentrated within *R. subumbellata* habitat, and we consider this threat in particular to be ongoing and imminent. Therefore, we are maintaining an LPN of 8 for this species.

Schiedea pubescens (Maolioli)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Schiedea pubescens* is a reclining or weakly climbing vine found in diverse mesic to wet forests on the islands of Maui, Molokai, and Hawaii, Hawaii. It is presumed extirpated from Lanai. Currently, this species is known from 8 populations totaling between 30 and 32 individuals on Maui, from 4 populations totaling between 21 and 22 individuals on Molokai, and from 1 population of 4 to 6 individuals on the island of Hawaii. *Schiedea pubescens* is threatened by feral pigs (*Sus scrofa*) and goats (*Capra hircus*) that consume it and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Feral ungulates have been fenced out of the population of *S. pubescens* on the island of Hawaii. Feral goats have been fenced out of a few of the west Maui populations of *S. pubescens.* Nonnative plants have been reduced in the populations that are fenced on Maui. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and the four populations on Molokai. Additional fenced areas are planned at Pohakuloa Training Area on the island of Hawaii. Nonnative feral ungulates and nonnative plants will be controlled within these fenced areas. Fire is a potential threat to the Hawaii Island population. This species is not represented in an *ex situ* collection. Due to the extremely low number of individuals of this species, the threats from goats and nonnative plants are of a high magnitude. These threats cause mortality and reduced reproductive capacity for the majority of the populations, leading to a relatively high likelihood of extinction. The threats are imminent because they are ongoing with respect to most of the populations. Therefore, we retained an LPN of 2 for this species.

Sedum eastwoodiae (Red Mountain stonecrop)—We continue to find that listing this species is warranted but precluded as of the date of publication of this notice. However, we are working on a proposed listing rule that we expect to publish prior to making the next annual resubmitted petition 12-month finding. In the course of preparing the proposed listing rule, we are continuing to monitor new information about this species' status so that we can make prompt use of our authority under Section 4(b)(7) in the case of an emergency posing a significant risk to the species.

Sicyos macrophyllus ('Anunu)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Sicyos macrophyllus* is a perennial vine found in wet *Metrosideros polymorpha* (ohia) forests and subalpine *Sophora chrysophylla-Myoporum sandwicense* (mamane-naio) forests. *Sicyos macrophyllus* was historically known from Kipahulu Valley on Maui and was widely distributed on the island of Hawaii. Currently, this species is known from 10 populations totaling between 24 and 26 individuals in the Kohala and Mauna Kea areas, and in Hawaii Volcanoes National Park (Puna area) on the island of Hawaii. It appears that a naturally occurring population at Kipuka Ki in Hawaii Volcanoes National Park is reproducing by seeds, but seeds have not been successfully germinated under nursery conditions.

This species is threatened by feral pigs (*Sus scrofa*), cattle (*Bos taurus*), and mouflon (*Ovis musimon*) that degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. This species is represented in *ex situ* collections. Feral pigs have been fenced out of some of the areas where *S. macrophyllus* currently occurs, but the fences do not exclude mouflon. Nonnative plants have been reduced in the populations that are fenced. However, the threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, imminent. Similarly the threat from mouflon is ongoing and imminent in all populations, because the current fences do not exclude them. In addition, all of the threats are of a high magnitude because habitat degradation and competition from nonnative plants present a risk to the species, resulting in direct mortality for a species that already has very low population numbers, or significantly reducing the reproductive capacity. Therefore, we retained an LPN of 2 for this species.

Solanum conocarpum (marron bacora)—The following summary is based on information in our files and in the petition we received on November 21, 1996. *Solanum conocarpum* is a dry-forest shrub in the island of St. John, U.S. Virgin Islands. Its current distribution includes eight localities in the island of St. John, each ranging from 1 to 144 individuals. The species has been reported to occur on dry, poor soils. It can be locally abundant in exposed topography on sites disturbed by erosion, areas that have received moderate grazing, and around ridgelines as an understory component in diverse woodland communities. A habitat suitability model suggests that the vast majority of *Solanum conocarpum* habitat is found in the lower elevation coastal scrub forest. Efforts have been conducted to propagate the species to enhance natural populations, and planting of seedlings has been conducted in the island of St. John.

Solanum conocarpum is threatened by the lack of natural recruitment, absence of dispersers, fragmented distribution, lack of genetic variation, climate change, and habitat destruction or modification by exotic mammal species. These threats are evidenced by the reduced number of individuals, low number of populations, and lack of connectivity between populations. Overall, we determined the magnitude of the threats to be high as shown by the

poor quality of the populations. The majority of threats are ongoing and, therefore, imminent. We assigned an LPN of 2 to this species.

Solanum nelsonii (popolo)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Solanum nelsonii* is a sprawling or trailing shrub found in coral rubble or sand in coastal sites. This species is known from populations on Molokai (approximately 300 individuals), the island of Hawaii (5 individuals), and the northwestern Hawaiian Islands (NWHI), Hawaii. The current populations in the NWHI are found on Kure (unknown number of individuals), Midway (approximately 260 individuals), Laysan (approximately 490 individuals), Pearl and Hermes (unknown number of individuals), and Nihoa (8,000 to 15,000 individuals). On Molokai, *S. nelsonii* is moderately threatened by ungulates that degrade and destroy habitat, and may eat *S. nelsonii.* On Molokai and the NWHI, this species is threatened by nonnative plants that outcompete and displace it. *Solanum nelsonii* is threatened by herbivory by a nonnative grasshopper (*Schistocerca nitens*) in the NWHI. On Kure, Midway, Laysan, and Pearl and Hermes in the NWHI, tsunamis are also a potential threat to *S. nelsonii.* This species is represented in *ex situ* collections. Ungulate exclusion fences, routine fence monitoring and maintenance, and weed control protect the population of *S. nelsonii* on Molokai. Limited weed control is conducted in the NWHI. These threats are of moderate magnitude because of the relatively large number of plants, and the fact that this species is found on more than one island. The threats are imminent for the majority of the populations because they are ongoing and are not being controlled. We therefore retained an LPN of 8 for this species.

Solidago plumosa (Yadkin River goldenrod)—The following information is based on information in our files. No new information was provided in the petition we received on April 20, 2010. The global distribution of *Solidago plumosa* consists of a single population that occurs in two discrete locations along a 2.5-mile stretch of the Yadkin River in North Carolina.

The availability of suitable habitat and the fate of the single known population of this species are primarily determined by the manner in which two hydroelectric projects (the Yadkin River and Yadkin-Pee Dee River Hydroelectric Projects) are operated. Any detrimental effects to *S. plumosa* resulting from the construction of these reservoirs occurred decades ago when these projects were built (during the years of 1917 to 1928), and the Service is not aware of any plans to construct additional reservoirs within the current range of this species. However, *S. plumosa* continues to be subject to threats from the continued operation of these reservoirs (which has reduced the frequency and severity of scouring floods that help to prevent the establishment of other species within the species' limited habitat) and the encroachment of nonnative, invasive species. Because the species' global distribution consists of a single population, its entire range is affected by these threats. However, because scouring floods (prior to reservoir construction) likely only occurred episodically, and in light of the relatively slow progression of nonnative species into areas of occupied habitat and efforts to reduce these nonnative plants, the magnitude of these threats is moderate to low. However, because these threats (especially those presented by nonnative, invasive plant species) are currently occurring, they are imminent. Thus, we assigned this species an LPN of 8.

Symphyotrichum georgianum (Georgia aster) — The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. Georgia aster is a relict species of post oak savanna/prairie communities that existed in the Southeast prior to widespread fire suppression and extirpation of large, native, grazing animals. Georgia aster currently occurs in the States of Alabama, Georgia, North Carolina, and South Carolina. The species is presumed extant in 8 counties in Alabama, 22 counties in Georgia, 9 counties in North Carolina, and 15 counties in South Carolina. The species appears to have been eliminated from Florida.

Most remaining populations survive adjacent to roads, utility rights-of-way, and other openings where current land management mimics natural disturbance regimes. Most populations are small (10 to 100 stems), and because the species' main mode of reproduction is vegetative, each isolated population may represent only a few genotypes. Many populations are currently threatened by one or more of the following factors: woody succession due to fire suppression, development, highway expansion or improvement, and herbicide application. However, the species is still relatively widely distributed, and information indicates that the species is more abundant than when we initially identified it as a candidate for listing. Taking into account its distribution and abundance, and the fact that it is increasing, the magnitude of threats is moderate. The threats are currently occurring and therefore are imminent. Thus we assigned an LPN of 8 for this species.

Trifolium friscanum (Frisco clover)—The following summary is based on information in our files and the petition we received on July 30, 2007. Frisco clover is a dwarf mat-forming or tufted perennial herb with a woody stem, silver hairy leaves, and reddish-purple flowers. The species is a narrow endemic found only in Utah, with five known populations restricted to sparsely vegetated, pinion-juniper-sagebrush communities and shallow, gravel soils derived from volcanic gravels, Ordovician limestone, and dolomite outcrops. The majority (68 percent) of Frisco clover plants occur on private lands, with the remaining plants found on Federal and State lands.

On the private and State lands, the most significant threat to Frisco clover is habitat destruction from mining for precious metals and gravel. Active mining claims, recent prospecting, and an increasing demand for precious metals and gravel indicate that mining in Frisco clover habitats will increase in the foreseeable future, likely resulting in the loss of large numbers of plants. Other threats to Frisco clover include nonnative, invasive species; vulnerability associated with small population size; drought associated with climate change; and the overall inadequacy of existing regulatory mechanisms. We consider the threats to Frisco clover to be moderate in magnitude because, while serious and occurring rangewide, they are not acting independently or cumulatively to have a highly significant negative impact on its survival or reproductive capacity. The threats are imminent because the species is currently facing them across its entire range. Therefore, we have assigned Frisco clover an LPN of 8.

Ferns and Allies

Cyclosorus boydiae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is a small- to medium-sized fern found in mesic to wet forests along stream banks on the islands of Oahu and Maui, Hawaii. Historically, this species was also found on the island of Hawaii, but it has been extirpated there. Currently, this species is known from 7 populations totaling

approximately 400 individuals. This species is threatened by feral pigs (*Sus scrofa*) that degrade and destroy habitat and may eat this plant, and by nonnative plants that compete for light and nutrients. Feral pigs have been fenced out of two populations, including the largest population, on Maui, and nonnative plants are being controlled in the fenced areas at these sites. No conservation efforts are under way to alleviate threats to the other populations on Maui, or the two populations on Oahu. This species is represented in an *ex situ* collection. The magnitude of the threats acting upon the currently extant populations is moderate because two of the seven populations, including the largest population that contains 40 percent of the total population for the species, are protected from pigs, and nonnative plants are being controlled in these areas. The threats are ongoing and therefore imminent. Therefore, we retained an LPN of 8 for this species.

Huperzia stemmermanniae (Waewaeiole)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. This species is an epiphytic pendant clubmoss found in mesic-to-wet *Metrosideros polymorpha-Acacia koa* (ohia-koa) forests on the islands of Maui and Hawaii, Hawaii. Only 3 populations are known, totaling approximately 20 individuals. The Maui population has not been observed since 1995. *Huperzia stemmermanniae* is threatened by feral pigs (*Sus scrofa*), goats (*Capra hircus*), cattle (*Bos taurus*), and axis deer (*Axis axis*) that degrade and destroy habitat, and by nonnative plants that compete for light, space, and nutrients. *Huperzia stemmermanniae* is also threatened by randomly occurring natural events due to its small population size. One individual at Waikamoi Preserve may benefit from fencing for axis deer and pigs. This species is represented in *ex situ* collections. The threats from pigs, goats, cattle, axis deer, and nonnative plants are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its limited range, resulting in direct mortality for a species that already has very low population numbers, or significantly reducing reproductive capacity and leading to a relatively high likelihood of extinction. The threats are imminent because they are ongoing. Therefore, we retained an LPN of 2 for this species.

Microlepia strigosa var. *mauiensis* (Palapalai)—The following summary is based on information contained in our files. No new information was provided in the petition we received on May 11, 2004. *Microlepia strigosa* var. *mauiensis* is a terrestrial fern found in mesic-to-wet forests. It is currently found in Hawaii on the islands of Maui, Oahu, and Hawaii, from at least 9 populations totaling at least 50 individuals. There is a possibility that the range of this plant variety could be larger and include the other main Hawaiian Islands. *Microlepia strigosa* var. *mauiensis* is threatened by feral pigs (*Sus scrofa*) that degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Pigs have been fenced out of some areas on east and west Maui, Oahu, and on Hawaii, where *M. strigosa* var. *mauiensis* currently occurs, and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui, Oahu, and Hawaii. Therefore, the threats from feral pigs and nonnative plants are imminent. The threats are of a high magnitude because they are sufficiently severe to adversely affect the species throughout its range, resulting in direct mortality for a species that already has very low population numbers, or significantly reducing reproductive capacity and leading to a relatively high likelihood of extinction. We therefore retained an LPN of 3 for *M. strigosa* var. *mauiensis.*

Petitions To Reclassify Species Already Listed or To Add to the Listed Range

We previously made warranted-but-precluded findings on five petitions seeking to reclassify threatened species to endangered status. The taxa involved in the reclassification petitions are three populations of the grizzly bear (*Ursus arctos horribilis*), delta smelt (*Hypomesus transpacificus*), and *Sclerocactus brevispinus* (Pariette cactus). Because these species are already listed under the ESA, they are not candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms or 5-year review documents also constitute the resubmitted petition findings for these species. For the three grizzly bear populations, our recently completed 5-year review serves as our assessment. For delta smelt and *Sclerocactus brevispinus,* our updated assessments are provided below. We find that reclassification to endangered status for the three grizzly bear populations, delta smelt, and *Sclerocactus brevispinus* are all currently warranted but precluded by work identified above (see ''Findings for Petitioned Candidate Species''). One of the primary reasons that the work identified above is considered to have higher priority is that the grizzly bear populations, delta smelt, and *Sclerocactus brevispinus* are currently listed as threatened, and therefore already receive certain protections under the ESA. We promulgated regulations extending take prohibitions for wildlife and plants under section 9 to threatened species (50 CFR 17.31 and 50 CFR 17.71, respectively). Prohibited actions under section 9 for wildlife include, but are not limited to, take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). For plants, prohibited actions under section 9 include removing or reducing to possession any listed plant from an area under Federal jurisdiction (50 CFR 17.61). Other protections that apply to these threatened species even before we complete proposed and final reclassification rules include those under section 7(a)(2) of the ESA whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

Grizzly bear (*Ursus arctos horribilis*) North Cascades ecosystem, Cabinet-Yaak, and Selkirk populations (Region 6)—Between 1986 and 2007, we have received and reviewed 10 petitions requesting a change in status for individual grizzly bear populations (51 FR 16363, May 2, 1986; 55 FR 32103, August 7, 1990; 56 FR 33892, July 24, 1991; 57 FR 14372, April 20, 1992; 58 FR 8250, February 12, 1993; 58 FR 38552, July 19, 1993; 58 FR 43856, August 18, 1993; 58 FR 43857, August 18, 1993; 59 FR 46611, September 9, 1994; 64 FR 26725, May 17, 1999; 72 FR 14866, March 29, 2007). Through this process, we determined that the Cabinet-Yaak, Selkirk, and North Cascade ecosystems warrant endangered status. On April 18, 2007, the Service initiated a 5-year review to evaluate the current status of grizzly bears in the lower 48 States (72 FR 19549–19551). This status review, completed on August 29, 2011, and available online at: *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A001,* recommended that reclassifying as endangered the Cabinet-Yaak, Selkirk, and North Cascades Ecosystems remain warranted but precluded.

Delta smelt (*Hypomesus transpacificus*) (Region 8) (see 75 FR 17667, April 7, 2010, for additional information on why reclassification to endangered is warranted but precluded)—The following summary is based on information contained in our files. In April 2010, we completed a 12-

month finding for delta smelt in which we determined a change in status from threatened to endangered was warranted, although precluded by other high-priority listings. The primary evidence is the continuing downward trend in delta smelt abundance indices since the significant decline that occurred in 2002. A 2005 population viability analysis calculated a 50-percent likelihood that the species could reach effective extinction (8,000 individuals) within 20 years.

The primary threats to the delta smelt are direct entrainments by State and Federal water export facilities, summer and fall increases in salinity and water clarity resulting from decreases in freshwater flow into the estuary, and effects from introduced species. Ammonia in the form of ammonium may also be a significant threat to the survival of the delta smelt. Additional potential threats are predation by striped and largemouth bass and inland silversides, entrainment into power plants, contaminants, and small population size. Existing regulatory mechanisms have not proven adequate to halt the decline of delta smelt since the time of listing as a threatened species.

As a result of our analysis of the best available scientific and commercial information, we have retained the recommendation of uplisting the delta smelt to an endangered species with a LPN of 2, based on high magnitude and imminent threats. The magnitude of the threats is high, because the threats occur rangewide and result in direct mortality for a species that already has low population numbers, or significantly reduce the reproductive capacity of the species. Threats are imminent because they are ongoing and, in some cases (e.g., nonnative species), considered irreversible.

Sclerocactus brevispinus (Pariette cactus) (Region 6) (see 72 FR 53211, September 18, 2007, and the species assessment form (see **ADDRESSES**) for additional information on why reclassification to endangered is warranted but precluded)—*Sclerocactus brevispinus* is restricted to clay badlands of the Wagon Hound member of the Uinta Formation in the Uinta Basin of northeastern Utah. The species is restricted to one population with an overall range of approximately 10 miles by 5 miles in extent. The species' entire population is within a developed and expanding oil and gas field. The location of the species' habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. The species may be collected as a specimen plant for horticultural use. Recreational off-road vehicle use and livestock trampling are additional potential threats. The species is currently federally listed as threatened by its previous inclusion within the species *Sclerocactus glaucus.* The threats are of a high magnitude because any one of the threats has the potential to severely affect this species, a narrow endemic with a highly limited range and distribution. Threats are ongoing and, therefore, are imminent. Thus, we assigned an LPN of 2 to this species for uplisting.

Current Notice of Review

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists). This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants, and DPSes of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings, and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) Flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an ''equals'' sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sort plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species, plus species currently proposed for listing under the ESA. We emphasize that in this notice we are not proposing to list any of the candidate species; rather, we will develop and publish proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the ''category'' column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. We made new findings on all petitions for which we previously made ''warranted-but-precluded'' findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code ''C*'' in the category column (see *''Findings for Petitioned Candidate Species''* section for additional information).

The ''Priority'' column indicates the LPN for each candidate species, which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats, as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, ''Lead Region,'' identifies the Regional Office to which you should direct information, comments, or questions (see addresses under Request for Information at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or

subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are those we included either as proposed species or as candidates in the previous CNOR (published October 26, 2011, at 76 FR 66370) that are no longer proposed species or candidates for listing. Since October 26, 2011, we listed 41 species, withdrew a proposed rule for one species, and removed 6 species from candidate status for the reason indicated by the code. The first column indicates the present status of each species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp—Species we removed from because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a candidate or proposed species using the following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing.

F—Species whose range no longer includes a U.S. territory.

I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the ESA's definition of ''species'' and current taxonomic understanding.

U—Species that are not subject to the degree of threats sufficient to warrant issuance of a proposed listing or continuance of candidate status due, in part or totally, to conservation efforts that remove or reduce the threats to the species.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit information, materials, or comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (503/231–6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102 (505/248–6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458 (612/713–5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (404/679–4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486 (303/236–7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199 (907/786–3505).

Region 8. California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, CA 95825 (916/414–6464).

We will provide information received in response to the previous CNOR to the Region having lead responsibility for each candidate species mentioned in the submission. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing under section 4(b)(7) of the ESA is appropriate). Information and comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

Before including your address, phone number, email address, or other personal identifying information in your submission, be advised that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 6, 2012.

Rowan W. Gould,

Deputy Director, Fish and Wildlife Service.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
MAMMALS						
PE	2	R4	*Eumops floridanus*	Molossidae	Bat, Florida bonneted	U.S.A. (FL).
C*	3	R1	*Emballonura semicaudata rotensis.*	Emballonuridae	Bat, Pacific sheathtailed (Mariana Islands subspecies).	U.S.A. (GU, CNMI).
C*	3	R1	*Emballonura semicaudata semicaudata.*	Emballonuridae	Bat, Pacific sheath-tailed (American Samoa DPS).	U.S.A. (AS), Fiji, Independent Samoa, Tonga, Vanuatu.
C*	6	R2	*Tamias minimus atristriatus.*	Sciuridae	Chipmunk, Peñasco least.	U.S.A. (NM).
C*	2	R5	*Sylvilagus transitionalis*	Leporidae	Cottontail, New England	U.S.A. (CT, MA, ME, NH, NY, RI, VT).
C*	6	R8	*Martes pennanti*	Mustelidae	Fisher (west coast DPS)	U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD, ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada.
C*	12	R6	*Lynx canadensis*	Felidae	Lynx, Canada (New Mexico population).	U.S.A. (CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY), Canada.
C*	3	R2	*Zapus hudsonius luteus*	Zapodidae	Mouse, New Mexico meadow jumping.	U.S.A. (AZ, CO, NM).
C*	3	R1	*Thomomys mazama couchi.*	Geomyidae	Pocket gopher, Shelton	U.S.A. (WA).
C*	3	R1	*Thomomys mazama douglasii.*	Geomyidae	Pocket gopher, Brush Prairie.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama glacialis.*	Geomyidae	Pocket gopher, Roy Prairie.	U.S.A. (WA).
C*	3	R1	*Thomomys mazama louiei.*	Geomyidae	Pocket gopher, Cathlamet.	U.S.A. (WA)
C*	3	R1	*Thomomys mazama melanops.*	Geomyidae	Pocket gopher, Olympic	U.S.A. (WA).
C*	3	R1	*Thomomys mazama pugetensis.*	Geomyidae	Pocket gopher, Olympia	U.S.A. (WA).
C*	3	R1	*Thomomys mazama tacomensis.*	Geomyidae	Pocket gopher, Tacoma	U.S.A. (WA).
C*	3	R1	*Thomomys mazama tumuli.*	Geomyidae	Pocket gopher, Tenino	U.S.A. (WA).
C*	3	R1	*Thomomys mazama yelmensis.*	Geomyidae	Pocket gopher, Yelm	U.S.A. (WA).
C*	2	R6	*Cynomys gunnisoni*	Sciuridae	Prairie dog, Gunnison's (populations in central and south-central Colorado, north-central New Mexico).	U.S.A. (CO, NM).
C*	9	R1	*Spermophilus brunneus endemicus.*	Sciuridae	Squirrel, Southern Idaho ground.	U.S.A. (ID).
C*	5	R1	*Spermophilus washingtoni.*	Sciuridae	Squirrel, Washington ground.	U.S.A. (WA, OR).
C*	9	R1	*Arborimus longicaudus*	Cricetidae	Vole, Red (north Oregon coast DPS).	U.S.A. (OR).
C*	9	R7	*Odobenus rosmarus divergens.*	Odobenidae	Walrus, Pacific	U.S.A. (AK), Canada, Russia.
C*	6	R6	*Gulo gulo luscus*	Mustelidae	Wolverine, North American (Contiguous U.S. DPS).	U.S.A. (CA, CO, ID, MT, OR, UT, WA, WY).
BIRDS						
C*	3	R1	*Porzana tabuensis*	Rallidae	Crake, spotless (American Samoa DPS).	U.S.A. (AS), Australia, Fiji, Independent Samoa, Marquesas, Philippines, Society Islands, Tonga.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	3	R8	*Coccyzus americanus*	Cuculidae	Cuckoo, yellow-billed (Western U.S. DPS).	U.S.A. (Lower 48 States), Canada, Mexico, Central and South America.
C*	9	R1	*Gallicolumba stairi*	Columbidae	Ground-dove, friendly (American Samoa DPS).	U.S.A. (AS), Independent Samoa.
PT	3	R1	*Eremophila alpestris strigata.*	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC).
C*	3	R5	*Calidris canutus rufa*	Scolopacidae	Knot, red	U.S.A. (Atlantic coast), Canada, South America.
C*	8	R7	*Gavia adamsii*	Gaviidae	Loon, yellow-billed	U.S.A. (AK), Canada, Norway, Russia, coastal waters of southern Pacific and North Sea.
C*	8	R7	*Brachyramphus brevirostris.*	Alcidae	Murrelet, Kittlitz's	U.S.A. (AK), Russia.
C*	5	R8	*Synthliboramphus hypoleucus.*	Alcidae	Murrelet, Xantus's	U.S.A. (CA), Mexico.
C*	8	R6	*Anthus spragueii*	Motacillidae	Pipit, Sprague's	U.S.A. (AR, AZ, CO, KS, LA, MN, MS, MT, ND, NE, NM, OK, SD, TX), Canada, Mexico.
C*	2	R2	*Amazona viridigenalis*	Psittacidae	Parrot, red-crowned	U.S.A. (TX), Mexico.
C*	2	R2	*Tympanuchus pallidicinctus.*	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX).
C*	8	R6	*Centrocercus urophasianus.*	Phasianidae	Sage-grouse, greater	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	3	R8	*Centrocercus urophasianus.*	Phasianidae	Sage-grouse, greater (Bi-State DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	6	R1	*Centrocercus urophasianus.*	Phasianidae	Sage-grouse, greater (Columbia Basin DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	2	R6	*Centrocercus minimus*	Phasianidae	Sage-grouse, Gunnison	U.S.A. (AZ, CO, NM, UT).
C*	3	R1	*Oceanodroma castro*	Hydrobatidae	Storm-petrel, band-rumped (Hawaii DPS).	U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan.
C*	11	R4	*Dendroica angelae*	Emberizidae	Warbler, elfin-woods	U.S.A. (PR).
			REPTILES			
C*	3	R2	*Thamnophis eques megalops.*	Colubridae	Gartersnake, northern Mexican.	U.S.A. (AZ, NM, NV), Mexico.
C*	8	R3	*Sistrurus catenatus*	Viperidae	Massasauga (= rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MN, MO, NY, OH, PA, WI), Canada.
C*	3	R4	*Pituophis melanoleucus lodingi.*	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS).
C*	5	R4	*Pituophis ruthveni*	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX).
C*	3	R2	*Chionactis occipitalis klauberi.*	Colubridae	Snake, Tucson shovel-nosed.	U.S.A. (AZ).
C*	5	R2	*Gopherus morafkai*	Testudinidae	Tortoise, Sonoran desert	U.S.A. (AZ, CA, NV, UT).
C*	8	R4	*Gopherus polyphemus*	Testudinidae	Tortoise, gopher (eastern population).	U.S.A. (AL, FL, GA, LA, MS, SC).
C*	6	R2	*Kinosternon sonoriense longifemorale.*	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
AMPHIBIANS						
C*	9	R8	*Rana luteiventris*	Ranidae	Frog, Columbia spotted (Great Basin DPS).	U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC).
C*	3	R8	*Rana muscosa*	Ranidae	Frog, mountain yellow-legged (Sierra Nevada DPS).	U.S.A (CA, NV).
C*	2	R1	*Rana pretiosa*	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC).
C*	8	R8	*Lithobates onca*	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT).
C*	8	R4	*Notophthalmus perstriatus.*	Salamandridae	Newt, striped	U.S.A. (FL, GA).
PE	2	R2	*Eurycea waterlooensis*	Plethodontidae	Salamander, Austin blind	U.S.A. (TX).
C*	8	R4	*Gyrinophilus gulolineatus*	Plethodontidae	Salamander, Berry Cave	U.S.A. (TN).
PE	8	R2	*Eurycea naufragia*	Plethodontidae	Salamander, Georgetown.	U.S.A. (TX).
PE	2	R2	*Plethodon neomexicanus*	Plethodontidae	Salamander, Jemez Mountains.	U.S. A. (NM).
PE	8	R2	*Eurycea tonkawae*	Plethodontidae	Salamander, Jollyville Plateau.	U.S.A. (TX).
PE	2	R2	*Eurycea chisholmensis*	Plethodontidae	Salamander, Salado	U.S.A. (TX).
C*	11	R8	*Anaxyrus canorus*	Bufonidae	Toad, Yosemite	U.S.A. (CA).
C	3	R2	*Hyla wrightorum*	Hylidae	Treefrog, Arizona (Huachuca/Canelo DPS).	U.S.A. (AZ), Mexico (Sonora).
C*	2	R4	*Necturus alabamensis*	Proteidae	Waterdog, black warrior (= Sipsey Fork).	U.S.A. (AL).
FISHES						
C*	8	R2	*Gila nigra*	Cyprinidae	Chub, headwater	U.S.A. (AZ, NM).
C*	7	R6	*Iotichthys phlegethontis*	Cyprinidae	Chub, least	U.S.A. (UT).
C*	9	R2	*Gila robusta*	Cyprinidae	Chub, roundtail (Lower Colorado River Basin DPS).	U.S.A. (AZ, CO, NM, UT, WY).
C*	11	R6	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C	9	R4	*Etheostoma sagitta sagitta.*	Percidae	Darter, Cumberland arrow.	U.S.A. (KY, TN).
PE	2	R5	*Crystallaria cincotta*	Percidae	Darter, diamond	U.S.A. (KY, OH, TN, WV).
C	3	R4	*Etheostoma sagitta spilotum.*	Percidae	Darter, Kentucky arrow	U.S.A. (KY).
C*	8	R4	*Percina aurora*	Percidae	Darter, Pearl	U.S.A. (LA, MS).
C*	3	R6	*Thymallus arcticus*	Salmonidae	Grayling, Arctic (upper Missouri River DPS).	U.S.A. (AK, MI, MT, WY), Canada, northern Asia, northern Europe.
C*	5	R4	*Moxostoma* sp	Catostomidae	Redhorse, sicklefin	U.S.A. (GA, NC, TN).
PE	2	R3	*Cottus* sp	Cottidae	Sculpin, grotto	U.S.A. (MO).
C*	5	R2	*Notropis oxyrhynchus*	Cyprinidae	Shiner, sharpnose	U.S.A. (TX).
C*	5	R2	*Notropis buccula*	Cyprinidae	Shiner, smalleye	U.S.A. (TX).
C*	3	R8	*Spirinchus thaleichthys*	Osmeridae	Smelt, longfin (San Francisco bay-delta DPS).	U.S.A. (AK, CA, OR, WA), Canada.
C*	3	R2	*Catostomus discobolus yarrowi.*	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM).
PT		R4	*Elassoma alabamae*	Elassomatidae	Sunfish, spring pygmy	U.S.A. (AL).
PSAT	N/A	R1	*Salvelinus malma*	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
C*	9	R2	*Oncorhynchus clarki virginalis.*	Salmonidae	Trout, Rio Grande cutthroat.	U.S.A. (CO, NM).
CLAMS						
C*	2	R2	*Lampsilis bracteata*	Unionidae	Fatmucket, Texas	U.S.A. (TX).
C*	2	R2	*Truncilla macrodon*	Unionidae	Fawnsfoot, Texas	U.S.A. (TX).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
C*	8	R2	*Popenaias popei*	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico.
PE	2	R4	*Ptychobranchus subtentum.*	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA).
PE	2	R4	*Lampsilis rafinesqueana*	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK).
C*	8	R2	*Quadrula aurea*	Unionidae	Orb, golden	U.S.A. (TX).
PE	2	R4	*Lexingtonia dolabelloides*	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA).
C*	8	R2	*Quadrula houstonensis*	Unionidae	Pimpleback, smooth	U.S.A. (TX).
C*	2	R2	*Quadrula petrina*	Unionidae	Pimpleback, Texas	U.S.A. (TX).
PT	9	R4	*Quadrula cylindrica cylindrica.*	Unionidae	Rabbitsfoot	U.S.A. (AL, AR, GA, IN, IL, KS, KY, LA, MS, MO, OK, OH, PA, TN, WV).
SNAILS						
C*	8	R4	*Elimia melanoides*	Pleuroceridae	Mudalia, black	U.S.A. (AL).
C*	2	R4	*Planorbella magnifica*	Planorbidae	Ramshorn, magnificent	U.S.A. (NC).
C*	2	R1	*Ostodes strigatus*	Potaridae	Sisi snail	U.S.A. (AS).
PE	2	R2	*Pseudotryonia adamantina.*	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX).
C*	2	R1	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU, MP).
C*	2	R1	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU).
C*	2	R1	*Partula gibba*	Partulidae	Snail, Humped tree	U.S.A. (GU, MP).
PE	2	R1	*Partulina semicarinata*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
PE	2	R1	*Partulina variabilis*	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (MP).
PE	2	R2	*Cochliopa texana*	Hydrobiidae	Snail, Phantom cave	U.S.A. (TX).
PE	2	R1	*Newcombia cumingi*	Achatinellidae	Snail, Newcomb's tree	U.S.A. (HI).
C*	2	R1	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
PE	2	R2	*Tryonia circumstriata* (= *stocktonensis*).	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX).
C*	11	R2	*Pyrgulopsis thompsoni*	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico.
C*	11	R2	*Pyrgulopsis morrisoni*	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).
PE	2	R2	*Tryonia cheatumi*	Hydrobiidae	Springsnail (= Tryonia), Phantom.	U.S.A. (TX).
C*	5	R2	*Sonorella rosemontensis*	Helminthoglyptidae	Talussnail, Rosemont	U.S.A. (AZ).
INSECTS						
C*	2	R1	*Hylaeus anthracinus*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus assimulans*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus facilis*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus hilaris*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus kuakea*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus longiceps*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
C*	2	R1	*Hylaeus mana*	Colletidae	Bee, Hawaiian yellow-faced.	U.S.A. (HI).
PSAT		R8	*Plebejus lupine texanus*	Lycaenidae	Blue, Lupine	U.S.A. (AZ, CA, CO, NE, NM, NV, TX, UT), Mexico.
PE	3	R8	*Plebejus shasta charlestonensis.*	Lycaenidae	Blue, Mt. Charleston	U.S.A. (NV).
PSAT		R8	*Echinargus isola*	Lycaenidae	Blue, Reakirt's	U.S.A. (AR, AZ, CA, CO, IA, IL, IN, KS, LA, MI, MN, MO, MS, ND, NE, NM, NV, OH, OK, SD, TN, TX, UT, WA, WI, WY), Mexico.
PSAT		R8	*Euphilotes ancilla cryptica.*	Lycaenidae	Blue, Spring Mountains dark.	U.S.A. (NV).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
PSAT		R8	*Euphilotes ancilla purpura.*	Lycaenidae	Blue, Spring Mountains dark.	U.S.A. (NV).
PSAT		R8	*Plebejus icarioides austinorum.*	Lycaenidae	Blue, Spring Mountains icariodes.	U.S.A. (NV).
C	3	R4	*Strymon acis bartrami*	Lycaenidae	Butterfly, Bartram's hairstreak.	U.S.A. (FL).
C	3	R4	*Anaea troglodyta floridalis.*	Nymphalidae	Butterfly, Florida leafwing.	U.S.A. (FL).
C*	5	R8	*Hermelycaena* [*Lycaena*] *hermes.*	Lycaenidae	Butterfly, Hermes copper	U.S.A. (CA).
C*	3	R1	*Hypolimnas octucula mariannensis.*	Nymphalidae	Butterfly, Mariana eight-spot.	U.S.A. (GU, MP).
C*	2	R1	*Vagrans egistina*	Nymphalidae	Butterfly, Mariana wandering.	U.S.A. (GU, MP).
C*	2	R4	*Atlantea tulita*	Nymphalidae	Butterfly, Puerto Rican harlequin.	U.S.A. (PR).
C*	5	R4	*Glyphopsyche sequatchie.*	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN).
C	5	R4	*Pseudanophthalmus insularis.*	Carabidae	Cave beetle, Baker Station (= insular).	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus caecus.*	Carabidae	Cave beetle, Clifton	U.S.A. (KY).
C*	11	R4	*Pseudanophthalmus colemanensis.*	Carabidae	Cave beetle, Coleman	U.S.A. (TN).
C	5	R4	*Pseudanophthalmus fowlerae.*	Carabidae	Cave beetle, Fowler's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus frigidus.*	Carabidae	Cave beetle, icebox	U.S.A. (KY).
C	5	R4	*Pseudanophthalmus tiresias.*	Carabidae	Cave beetle, Indian Grave Point (= Soothsayer).	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus inquisitor.*	Carabidae	Cave beetle, inquirer	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus troglodytes.*	Carabidae	Cave beetle, Louisville	U.S.A. (KY).
C	5	R4	*Pseudanophthalmus paulus.*	Carabidae	Cave beetle, Noblett's	U.S.A. (TN).
C*	5	R4	*Pseudanophthalmus parvus.*	Carabidae	Cave beetle, Tatum	U.S.A. (KY).
PE	3	R1	*Euphydryas editha taylori.*	Nymphalidae	Checkerspot butterfly, Taylor's (= Whulge).	U.S.A. (OR, WA), Canada (BC).
C*	8	R1	*Megalagrion xanthomelas.*	Coenagrionidae	Damselfly, orangeblack Hawaiian.	U.S.A. (HI).
C	2	R8	*Ambrysus funebris*	Naucoridae	Naucorid bug (= Furnace Creek), Nevares Spring.	U.S.A. (CA).
PE	2	R1	*Drosophila digressa*	Drosophilidae	fly, Hawaiian Picture-wing.	U.S.A. (HI).
C*	11	R2	*Heterelmis stephani*	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ).
C*	8	R3	*Hesperia dacotae*	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada.
C	2	R3	*Oarisma poweshiek*	Hesperiidae	Skipperling, Poweshiek	U.S.A. (IA, IL, IN, MI, MN, ND, SD, WI), Canada (MB).
C*	5	R6	*Capnia arapahoe*	Capniidae	Snowfly, Arapahoe	U.S.A. (CO).
C*	5	R6	*Lednia tumana*	Nemouridae	Stonefly, meltwater lednian.	U.S.A. (MT).
PT	2	R6	*Cicindela albissima*	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes.	U.S.A. (UT).
C*	5	R4	*Cicindela highlandensis*	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL).
			ARACHNIDS			
C*	8	R2	*Cicurina wartoni*	Dictynidae	Meshweaver, Warton's cave.	U.S.A. (TX).
			CRUSTACEANS			
PE	2	R2	*Gammarus hyalleloides*	Gammaridae	Amphipod, diminutive	U.S.A. (TX).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
PE		R2	*Gammarus pecos*	Gammaridae	Amphipod, Pecos	U.S.A. (TX).
C	8	R5	*Stygobromus kenki*	Crangonyctidae	Amphipod, Kenk's	U.S.A. (DC).
C*	5	R1	*Metabetaeus lohena*	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	*Palaemonella burnsi*	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	*Procaris hawaiana*	Procarididae	Shrimp, anchialine pool	U.S.A. (HI).
PE	4	R1	*Vetericaris chaceorum*	Procaridae	Shrimp, anchialine pool	U.S.A. (HI).
			FLOWERING PLANTS			
C*	11	R8	*Abronia alpina*	Nyctaginaceae	Sand-verbena, Ramshaw Meadows.	U.S.A. (CA).
C*	8	R4	*Agave eggersiana*	Agavaceae	No common name	U.S.A. (VI).
C*	8	R4	*Arabis georgiana*	Brassicaceae	Rockcress, Georgia	U.S.A. (AL, GA).
C*	11	R4	*Argythamnia blodgettii*	Euphorbiaceae	Silverbush, Blodgett's	U.S.A. (FL).
C*	3	R1	*Artemisia borealis var. wormskioldii.*	Asteraceae	Wormwood, northern	U.S.A. (OR, WA).
C*	2	R6	*Astragalus anserinus*	Fabaceae	Milkvetch, Goose Creek	U.S.A. (ID, NV, UT).
C	3	R1	*Astragalus cusickii* var. *packardiae.*	Fabaceae	Milkvetch, Packard's	U.S.A. (ID).
C*	8	R6	*Astragalus microcymbus*	Fabaceae	Milkvetch, skiff	U.S.A. (CO).
C*	8	R6	*Astragalus schmolliae*	Fabaceae	Milkvetch, Schmoll	U.S.A. (CO).
C*	11	R6	*Astragalus tortipes*	Fabaceae	Milkvetch, Sleeping Ute	U.S.A. (CO).
PE	2	R1	*Bidens amplectens*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
PE	3	R1	*Bidens campylotheca pentamera.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
PE	3	R1	*Bidens campylotheca waihoiensis.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
PE	8	R1	*Bidens conjuncta*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
PE		R1	*Bidens hillenbrandiana hillebrandina.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
PE	3	R1	*Bidens micrantha ctenophylla.*	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R6	*Boechera* (*Arabis*) *pusilla*	Brassicaceae	Rockcress, Fremont County or small.	U.S.A. (WY).
C*	8	R4	*Brickellia mosieri*	Asteraceae	Brickell-bush, Florida	U.S.A. (FL).
C*	2	R1	*Calamagrostis expansa*	Poaceae	Reedgrass, Maui	U.S.A. (HI).
PE	2	R1	*Calamagrostis hillebrandii.*	Poaceae	Reedgrass, Hillebrand's	U.S.A. (HI).
C*	11	R8	*Calochortus persistens*	Liliaceae	Mariposa lily, Siskiyou	U.S.A. (CA, OR).
PE	2	R1	*Canavalia pubescens*	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	9	R4	*Chamaecrista lineata* var. *keyensis.*	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL).
C*	12	R4	*Chamaesyce deltoidea pinetorum.*	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
C*	9	R4	*Chamaesyce deltoidea serpyllum.*	Euphorbiaceae	Spurge, wedge	U.S.A. (FL).
C*	6	R8	*Chorizanthe parryi* var. *fernandina.*	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
PE	2	R4	*Chromolaena frustrata*	Asteraceae	Thoroughwort, Cape Sable.	U.S.A. (FL).
C*	8	R2	*Cirsium wrightii*	Asteraceae	Thistle, Wright's	U.S.A. (AZ, NM), Mexico.
PE	2	R4	*Consolea corallicola*	Cactaceae	Cactus, Florida semaphore.	U.S.A. (FL).
C*	5	R4	*Cordia rupicola*	Boraginaceae	No common name	U.S.A. (PR), Anegada.
PE	2	R1	*Cyanea asplenifolia*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea duvalliorum*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea horrida*	Campanulaceae	Haha	U.S.A. (HI).
PE	2	R1	*Cyanea kunthiana*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea magnicalyx*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea maritae*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea mauiensis*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea marksii*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea munroi*	Campanulaceae	Haha	U.S.A. (HI).
PE	2	R1	*Cyanea obtusa*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea profuga*	Campanulaceae	Haha	U.S.A. (HI).
PE		R1	*Cyanea solanacea*	Campanulaceae	Haha	U.S.A. (HI).
PE	2	R1	*Cyanea tritomantha*	Campanulaceae	'Aku	U.S.A. (HI).
PE		R1	*Cyrtandra ferripilosa*	Gesneriaceae	Ha'iwale	U.S.A. (HI).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
PE	2	R1	*Cyrtandra filipes*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
PE		R1	*Cyrtandra nanawaleensis.*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
PE	2	R1	*Cyrtandra oxybapha*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
PE		R1	*Cyrtandra wagneri*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C*	3	R4	*Dalea carthagenensis* var. *floridana.*	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
C*	5	R5	*Dichanthelium hirstii*	Poaceae	Panic grass, Hirst Brothers'.	U.S.A. (DE, GA, NC, NJ).
C*	5	R4	*Digitaria pauciflora*	Poaceae	Crabgrass, Florida pineland.	U.S.A. (FL).
PE	3	R2	*Echinomastus erectocentrus* var. *acunensis.*	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico.
PT	2	R1	*Eriogonum codium*	Polygonaceae	Buckwheat, Umtanum Desert.	U.S.A. (WA).
C*	6	R8	*Eriogonum corymbosum* var. *nilesii.*	Polygonaceae	Buckwheat, Las Vegas	U.S.A. (NV).
C	5	R8	*Eriogonum diatomaceum*	Polygonaceae	Buckwheat, Churchill Narrows.	U.S.A (NV).
C*	5	R8	*Eriogonum kelloggii*	Polygonaceae	Buckwheat, Red Mountain.	U.S.A. (CA).
C*	8	R6	*Eriogonum soredium*	Polygonaceae	Buckwheat, Frisco	U.S.A. (UT).
C*	2	R1	*Festuca hawaiiensis*	Poaceae	No common name	U.S.A. (HI).
C*	11	R2	*Festuca ligulata*	Poaceae	Fescue, Guadalupe	U.S.A. (TX), Mexico.
PE		R1	*Festuca molokaiensis*	Poaceae	No common name	U.S.A. (HI).
C*	2	R1	*Gardenia remyi*	Rubiaceae	Nanu	U.S.A. (HI).
PE	8	R1	*Geranium hanaense*	Geraniaceae	Nohoanu	U.S.A. (HI).
PE	8	R1	*Geranium hillebrandii*	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	5	R4	*Gonocalyx concolor*	Ericaceae	No common name	U.S.A. (PR).
PE	2	R4	*Harrisia aboriginum*	Cactaceae	Pricklyapple, aboriginal (shellmound applecactus).	U.S.A. (FL).
C*	5	R8	*Hazardia orcuttii*	Asteraceae	Orcutt's hazardia	U.S.A. (CA), Mexico.
C*	2	R1	*Hedyotis fluviatilis*	Rubiaceae	Kampua'a	U.S.A. (HI).
C*	2	R4	*Helianthus verticillatus*	Asteraceae	Sunflower, whorled	U.S.A. (AL, GA, TN).
PT	2	R2	*Hibiscus dasycalyx*	Malvaceae	Rose-mallow, Neches River.	U.S.A. (TX).
C*	5	R8	*Ivesia webberi*	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV).
C*	3	R1	*Joinvillea ascendens ascendens.*	Joinvilleaceae	'Ohe	U.S.A. (HI).
C*	5	R4	*Leavenworthia crassa*	Brassicaceae	Gladecress, unnamed	U.S.A. (AL).
C	3	R4	*Leavenworthia exigua* var. *laciniata.*	Brassicaceae	Gladecress, Kentucky	U.S.A. (KY).
PE	2	R2	*Leavenworthia texana*	Brassicaceae	Gladecress, Texas golden.	U.S.A. (TX).
C*	8	R6	*Lepidium ostleri*	Brassicaceae	Peppergrass, Ostler's	U.S.A. (UT).
C*	5	R4	*Linum arenicola*	Linaceae	Flax, sand	U.S.A. (FL).
C*	3	R4	*Linum carteri* var. *carteri*	Linaceae	Flax, Carter's small-flowered.	U.S.A. (FL).
C	3	R8	*Mimulus fremontii* var. *vandenbergensis.*	Phrymaceae	Monkeyflower, Vandenberg.	U.S.A. (CA).
PE		R1	*Mucuna sloanei* var. *persericea.*	Fabaceae	Sea bean	U.S.A. (HI).
C*	2	R1	*Myrsine fosbergii*	Myrsinaceae	Kolea	U.S.A. (HI).
PE	2	R1	*Myrsine vaccinioides*	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	*Nothocestrum latifolium*	Solanaceae	'Aiea	U.S.A. (HI).
C*	2	R1	*Ochrosia haleakalae*	Apocynaceae	Holei	U.S.A. (HI).
PE	3	R2	*Pediocactus peeblesianus* var. *fickeiseniae.*	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ).
PT	2	R6	*Penstemon grahamii*	Scrophulariaceae	Beardtongue, Graham's	U.S.A. (CO, UT).
C*	9	R6	*Penstemon scariosus* var. *albifluvis.*	Scrophulariaceae	Beardtongue, White River.	U.S.A. (CO, UT).
PE	2	R1	*Peperomia subpetiolata*	Piperaceae	'Ala 'ala wai nui	U.S.A. (HI).
C	5	R8	*Phacelia stellaris*	Hydrophyllaceae	Phacelia, Brand's	U.S.A. (CA), Mexico.
PE	2	R1	*Phyllostegia bracteata*	Lamiaceae	No common name	U.S.A. (HI).
PE	8	R1	*Phyllostegia floribunda*	Lamiaceae	No common name	U.S.A. (HI).
PE		R1	*Phyllostegia haliakalae*	Lamiaceae	No common name	U.S.A. (HI).

TABLE 1—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Category	Priority					
PE		R1	*Phyllostegia pilosa*	Lamiaceae	No common name	U.S.A. (HI).
PT	9	R1	*Physaria douglasii tuplashensis.*	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA).
C*	8	R4	*Physaria globosa*	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN).
C*	2	R6	*Pinus albicaulis*	Pinaceae	Pine, whitebark	U.S.A. (CA, ID, MT, NV, OR, WA, WY), Canada (AB, BC).
PE		R1	*Pittosporum halophilum*	Pittosporaceae	Hoawa	U.S.A. (HI).
PE		R1	*Pittosporum hawaiiense*	Pittosporaceae	Hoawa	U.S.A. (HI).
C*	8	R4	*Platanthera integrilabia*	Orchidaceae	Orchid, white fringeless	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
PE	2	R1	*Platydesma remyi*	Rutaceae	No common name	U.S.A. (HI).
PE	2	R1	*Pleomele fernaldii*	Agavaceae	Hala pepe	U.S.A. (HI).
C*	11	R8	*Potentilla basaltica*	Rosaceae	Cinquefoil, Soldier Meadow.	U.S.A. (NV).
PE		R1	*Pritchardia lanigera*	Arecaceae	Loulu	U.S.A. (HI).
C*	3	R1	*Pseudognaphalium* (= *Gnaphalium*) *sandwicensium* var. *molokaiense.*	Asteraceae	ʻEnaʻena	U.S.A. (HI).
C*	2	R1	*Ranunculus hawaiensis*	Ranunculaceae	Makou	U.S.A. (HI).
C*	2	R1	*Ranunculus mauiensis*	Ranunculaceae	Makou	U.S.A. (HI).
C*	8	R8	*Rorippa subumbellata*	Brassicaceae	Cress, Tahoe yellow	U.S.A. (CA, NV).
PE		R1	*Schiedea diffusa macraei.*	Caryophyllaceae	No common name	U.S.A. (HI).
PE		R1	*Schiedea hawaiiensis*	Caryophyllaceae	No common name	U.S.A. (HI).
PE		R1	*Schiedea jacobii*	Caryophyllaceae	No common name	U.S.A. (HI).
PE		R1	*Schiedea laui*	Caryophyllaceae	No common name	U.S.A. (HI).
C*	2	R1	*Schiedea pubescens*	Caryophyllaceae	Maʻoliʻoli	U.S.A. (HI).
PE	2	R1	*Schiedea salicaria*	Caryophyllaceae	No common name	U.S.A. (HI).
C*	5	R8	*Sedum eastwoodiae*	Crassulaceae	Stonecrop, Red Mountain.	U.S.A. (CA).
C*	2	R1	*Sicyos macrophyllus*	Cucurbitaceae	ʻAnunu	U.S.A. (HI).
C	12	R4	*Sideroxylon reclinatum austrofloridense.*	Sapotaceae	Bully, Everglades	U.S.A. (FL).
C*	2	R4	*Solanum conocarpum*	Solanaceae	Bacora, marron	U.S.A. (PR).
C*	8	R1	*Solanum nelsonii*	Solanaceae	Popolo	U.S.A. (HI).
C*	8	R4	*Solidago plumosa*	Asteraceae	Goldenrod, Yadkin River	U.S.A. (NC).
PE	2	R2	*Sphaeralcea gierischii*	Malvaceae	Mallow, Gierisch	U.S.A. (AZ, UT).
PE	2	R1	*Stenogyne cranwelliae*	Lamiaceae	No common name	U.S.A. (HI).
PE		R1	*Stenogyne kauaulaensis*	Lamiaceae	No common name	U.S.A. (HI).
C	8	R2	*Streptanthus bracteatus*	Brassicaceae	Twistflower, bracted	U.S.A. (TX).
C*	8	R4	*Symphyotrichum georgianum.*	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC).
C*	8	R6	*Trifolium friscanum*	Fabaceae	Clover, Frisco	U.S.A. (UT).
PE		R1	*Wikstroemia villosa*	Thymelaeaceae	Akia	U.S.A. (HI).
FERNS AND ALLIES						
C*	8	R1	*Cyclosorus boydiae*	Thelypteridaceae	No common name	U.S.A. (HI).
C*	2	R1	*Huperzia* (= *Phlegmariurus*) *stemmermanniae.*	Lycopodiaceae	Wawaeʻiole	U.S.A. (HI).
C*	3	R1	*Microlepia strigosa* var. *mauiensis* (= *Microlepia mauiensis*).	Dennstaedtiaceae	Palapalai	U.S.A. (HI).
C	3	R4	*Trichomanes punctatum floridanum.*	Hymenophyllaceae	Florida bristle fern	U.S.A. (FL).

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
REPTILES						
Rp	U	R2	*Sceloporus arenicolus*	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM).
AMPHIBIANS						
E	L	R3	*Cryptobranchus alleganiensis bishopi.*	Crytobranchidae	Hellbender, Ozark	U.S.A. (AR, MO).
E	L	R4	*Eleutherodactylus juanariveroi.*	Leptodactylidae	Coqui, Llanero	U.S.A. (PR).
CLAMS						
E	L	R4	*Villosa choctawensis*	Unionidae	Bean, Choctaw	U.S.A. (AL, FL).
E	L	R3	*Villosa fabalis*	Unionidae	Bean, rayed	U.S.A. (IL, IN, KY, MI, NY, OH, TN, PA, VA, WV), Canada (ON).
E	L	R4	*Fusconaia rotulata*	Unionidae	Ebonyshell, round	U.S.A. (AL, FL).
E	L	R4	*Ptychobranchus jonesi*	Unionidae	Kidneyshell, southern	U.S.A. (AL, FL).
E	L	R3	*Plethobasus cyphyus*	Unionidae	Mussel, sheepnose	U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV).
E	L	R4	*Margaritifera marrianae*	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL).
T	L	R4	*Pleurobema strodeanum*	Unionidae	Pigtoe, fuzzy	U.S.A. (AL, FL).
T	L	R4	*Fusconaia escambia*	Unionidae	Pigtoe, narrow	U.S.A. (AL, FL).
T	L	R4	*Fusconaia* (= *Quincuncina*) *burkei.*	Unionidae	Pigtoe, tapered	U.S.A. (AL, FL).
T	5	R4	*Hamiota* (= *Lampsilis*) *australis.*	Unionidae	Sandshell, southern	U.S.A. (AL, FL).
E	L	R3	*Epioblasma triquetra*	Unionidae	Snuffbox	U.S.A. (IN, MI, NY, OH, PA, WV), Canada (ON).
E	L	R3	*Cumberlandia monodonta.*	Margaritiferidae	Spectaclecase	U.S.A. (AL, AR, IA, IN, IL, KS, KY, MO, MN, NE, OH, TN, VA, WI, WV).
E	L	R4	*Elliptio spinosa*	Unionidae	Spinymussel, Altamaha	U.S.A. (GA).
SNAILS						
E	L	R2	*Pyrgulopsis bernardina*	Hydrobiidae	Springsnail, San Bernardino.	U.S.A. (AZ), Mexico (Sonora).
E	L	R2	*Pyrgulopsis chupaderae*	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
Rc	U	R8	*Pyrgulopsis notidicola*	Hydrobiidae	Springsnail, elongate mud meadows.	U.S.A. (NV).
E	L	R2	*Pyrgulopsis trivialis*	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ).
INSECTS						
E	L	R1	*Megalagrion nigrohamatum nigrolineatum.*	Coenagrionidae	Damselfly, blackline Hawaiian.	U.S.A. (HI).
E	L	R1	*Megalagrion leptodemas*	Coenagrionidae	Damselfly, crimson Hawaiian.	U.S.A. (HI).
E	L	R1	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic Hawaiian.	U.S.A. (HI).
Rc	U	R1	*Polites mardon*	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA).
FLOWERING PLANTS						
E	L	R8	*Arctostaphylos franciscana.*	Ericaceae	Manzanita, Franciscan	U.S.A. (CA).
Rc	U	R1	*Castilleja christii*	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID).
E	L	R1	*Cyanea calycina*	Campanulaceae	Haha	U.S.A. (HI).
E	L	R1	*Cyanea lanceolata*	Campanulaceae	Haha	U.S.A. (HI).
E	L	R1	*Cyanea purpurellifolia*	Campanulaceae	Haha	U.S.A. (HI).
E	L	R1	*Cyrtandra gracilis*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
E	L	R1	*Cyrtandra kaulantha*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
E	L	R1	*Cyrtandra sessilis*	Gesneriaceae	Ha'iwale	U.S.A. (HI).

TABLE 2—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING—Continued

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
E	L	R1	*Cyrtandra waiolani*	Gesneriaceae	Ha'iwale	U.S.A. (HI).
Rc	A	R2	*Erigeron lemmonii*	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ).
E	L	R1	*Korthalsella degeneri*	Viscaceae	Hulumoa	U.S.A. (HI).
E	L	R1	*Melicope christophersenii.*	Rutaceae	Alani	U.S.A. (HI).
E	L	R1	*Melicope hiiakae*	Rutaceae	Alani	U.S.A. (HI).
E	L	R1	*Melicope makahae*	Rutaceae	Alani	U.S.A. (HI).
Rc	A	R5	*Narthecium americanum*	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC).
E	L	R1	*Platydesma cornuta* var. *cornuta.*	Rutaceae	No common name	U.S.A. (HI).
E	L	R1	*Platydesma cornuta* var. *decurrens.*	Rutaceae	No common name	U.S.A. (HI).
E	L	R1	*Pleomele forbesii*	Agavaceae	Hala pepe	U.S.A. (HI).
E	L	R1	*Psychotria hexandra oahuensis.*	Rubiaceae	Kopiko	U.S.A. (HI).
E	L	R1	*Pteralyxia macrocarpa*	Apocynaceae	Kaulu	U.S.A. (HI).
E	L	R1	*Tetraplasandra lydgatei*	Araliaceae	No common name	U.S.A. (HI).
E	L	R1	*Zanthoxylum oahuense*	Rutaceae	A'e	U.S.A. (HI).
FERNS AND ALLIES						
E	L	R1	*Doryopteris takeuchii*	Pteridaceae	No common name	U.S.A. (HI).

[FR Doc. 2012–28050 Filed 11–20–12; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 225 November 21, 2012

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Groundfish Fisheries of the Exclusive Economic Zone Off Alaska and Pacific Halibut Fisheries; Observer Program; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 110831549–2587–02]

RIN 0648–BB42

Groundfish Fisheries of the Exclusive Economic Zone Off Alaska and Pacific Halibut Fisheries; Observer Program

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

ACTION: Final rule and notice of approval of an FMP amendment.

SUMMARY: NMFS publishes regulations to implement Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendments 86/76). Amendments 86/76 add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants. The new funding and deployment system allows NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action is necessary to resolve data quality and cost equity concerns with the Observer Program's existing funding and deployment structure. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the fishery management plans, and other applicable law.

DATES: Effective January 1, 2013.

ADDRESSES: Electronic copies of the March 2011 Environmental Assessment/Regulatory Impact Review/Initial Regulatory Impact Review (''the analysis'') and the Finding of No Significant Impact (FONSI) prepared for this action may be obtained from *http://www.regulations.gov.* These documents, the 2013 Observer Program Annual Deployment Plan, and other documents referenced in this final rule also are available from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

Inspections for U.S. Coast Guard Safety Decals may be scheduled through the U.S. Coast Guard Web site at *http://www.fishsafe.info/contactform.htm* or by contacting the Seventeenth Coast Guard District safety coordinator at *http://www.uscg.mil/d17/,* or by phone at 907–463–2810 or 907–463–2823.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), respectively. These fishery management plans are collectively referred to as ''the FMPs.'' The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the Protocol Amending the Convention, signed in Washington, DC, on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

The Notice of Availability for Amendments 86/76 published in the **Federal Register** on March 14, 2012 (77 FR 15019), with a 60-day comment period that ended May 14, 2012. In compliance with section 313 of the MSA, NMFS held a public hearing on the proposed rule in each of the affected states—Alaska, Oregon, and Washington—during the mandatory 60-day comment period for the proposed rule (77 FR 22753, April 17, 2012; 77 FR 29961, May 2, 2012). The Secretary of Commerce approved Amendments 86/76 on June 7, 2012. The proposed rule to implement Amendments 86/76 published in the **Federal Register** on April 18, 2012 (77 FR 23326). The 60-day comment period on the proposed rule ended June 18, 2012.

North Pacific Groundfish Observer Program

The Observer Program has an integral role in the management of North Pacific fisheries. The Observer Program was created with the implementation of the MSA in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets. The Observer Program provides the regulatory framework for NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the groundfish fisheries. The information collected by observers provides the best available scientific information for managing the fisheries and developing measures to minimize bycatch in furtherance of the purposes and national standards of the MSA. Observers collect biological samples and information on total catch and interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

Under the current structure, catcher vessels, catcher processors, and processing plant operators enter into direct contracts with observer providers to meet coverage requirements at § 679.50. Existing coverage requirements, based on vessel length and processing volume, are set at 30 percent or 100 percent, and vessels less than 60 ft. in length overall (LOA) and vessels fishing for halibut (halibut vessels) are exempt from observer coverage. Owners of smaller vessels pay observer costs that are disproportionately high relative to their earnings, and owners of vessels less than 60 ft. LOA and halibut vessels do not contribute to observer coverage costs. Furthermore, vessel and plant operators required to have 30-percent coverage determine when to carry

observers, which statistically biases the data collected.

Need for and Objectives of This Action

This action addresses longstanding concerns about statistical bias of observer-collected data and cost inequality among fishery participants with the Observer Program's current funding and deployment structure. The Council's problem statement, reproduced below, identifies the need for this action:

The Observer Program is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in regulation since 1990 and do not include observer requirements for either the less than 60 ft. groundfish sector or the commercial halibut sector. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

This action will replace the existing service delivery model for the partial coverage category of the Observer Program. Under the previous service delivery model, vessels and processors contracted directly with observer providers to meet coverage levels specified in Federal regulations and paid observer providers for observer services. With the new service delivery model, NMFS contracts with observer providers and determines when and where observers are deployed, based on a scientifically sound sampling design. Vessels and processors included in the restructured program will pay a fee (ex-vessel value based or daily fee) to NMFS to fund the deployment of observers in the sectors covered by the new program. In addition, the restructured program will include vessel sectors (the less than 60 ft. LOA groundfish sector and halibut sector) that are not currently subject to any observer requirements.

Summary of the Final Action

This action will reduce bias in observer data, authorize the collection of observer data in sectors that do not currently have any observer coverage requirements, allow fishery managers to provide observer coverage to respond to the management needs and circumstances of individual fisheries, and assess a broad-based fee which reflects the value a vessel or processor extracts from the fishery.

First, this final action expands the Observer Program to include groundfish vessels less than 60 ft. LOA and halibut vessels that have not been previously required to carry an observer.

Second, this final action restructures the observer deployment system by establishing two observer coverage categories: Partial and full. All groundfish and halibut vessels and processors will be included in one of these two categories.

NMFS requires fishing sectors in the full coverage category to have all operations observed. The full coverage category includes catcher/processors, motherships, and catcher vessels participating in a catch share program with a transferrable prohibited species catch (PSC) limit. Owners of vessels or processors in the full coverage category must arrange and pay for required observer coverage from a permitted observer provider. This final rule does not change the observer deployment or funding system for operations in the full coverage category.

The partial observer coverage category includes fishing sectors (vessels and processors) that will not be required to have an observer at all times. The partial coverage category includes catcher vessels, shoreside processors, and stationary floating processors when not participating in a catch share program with a transferrable PSC limit. Small catcher/processors that meet certain criteria will also be in the partial coverage category. NMFS will assign vessels in the partial coverage category to one of two distinct observer coverage selection pools: The trip selection or vessel selection pool.

Each year, NMFS will develop an annual deployment plan that will describe how NMFS plans to deploy observers to vessels in the partial observer coverage category in the upcoming year. The annual deployment plan will describe the sampling design NMFS uses to generate unbiased estimates of total and retained catch, and catch composition in the groundfish and halibut fisheries. The annual deployment plan also will describe how NMFS will deploy observers to shoreside processing plants or stationary floating processors in the partial coverage category. Adjustments to the annual deployment plan would be made each year after a scientific evaluation of data collected under the restructured Observer Program to evaluate the impact of changes in observer deployment and identify areas where improvements are needed to collect the data necessary to conserve and manage the groundfish and halibut fisheries. Any adverse economic impacts and safety-related issues will also be considered through the annual deployment plan process, particularly with respect to expanding coverage to small vessels (less than 40 ft LOA). NMFS will post the annual deployment plan on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*).

This final rule establishes the Observer Declare and Deploy System (ODDS) as an Internet-based interface that provides information about observer deployment on vessels in the partial coverage category and facilitates communication among the owner or operator of a vessel in the partial observer coverage category, NMFS, and NMFS' contracted observer provider. The ODDS Web site is *https://odds.afsc.noaa.gov.* For those unable to use the Internet, access to ODDS also will be available by calling the NOAA Data Technician Office at 1–800–304–4846 (option # 1) or 907–586–7163.

Owners and operators of vessels in the trip selection pool will enter information about upcoming fishing trips into ODDS and receive information about whether a trip has been selected for observer coverage. Owners and operators of vessels in the vessel selection pool will be notified by letter from NMFS if they have been selected for observer coverage for a particular time period. Only those vessels selected for observer coverage will use ODDS to provide additional information to NMFS about whether they intend to fish in the selected time period and whether they can physically carry an observer on board the vessel.

ODDS was called the ''Deployment System'' in the preamble to the proposed rule. The preamble to the proposed rule also described the duration of coverage for vessels in the vessel selection pool as 3 months. In response to recommendations from the Council, the 2013 Observer Program Annual Deployment Plan has been adjusted and the duration of coverage in the vessel selection pool will be 2 months for the initial year of the program.

Third, this final rule creates a new observer funding system applicable to all vessels and shoreside processors in the partial observer coverage category. By creating two observer coverage categories with separate funding systems, this action addresses cost inequities with the existing Observer Program without imposing higher costs on operations that already pay for full observer coverage. Moreover, the potential implementation of future management programs with increased monitoring needs will not reduce the funds available to provide observer coverage for the fisheries as a whole.

A fee equal to 1.25 percent of the fishery ex-vessel value will be paid by partial coverage category participants to fund observer coverage in the partial coverage category. This fee is authorized by section 313 of the MSA. Vessels and processors in the full coverage category will continue to arrange and pay for observer services from a permitted observer provider.

NMFS will use Federal start-up funds in the first year of implementation (2013) to transition from the existing industry-funded/direct contract model to one where NMFS contracts with observer providers to deploy observers in partial coverage category sectors. In subsequent years, NMFS will use the observer fee proceeds collected from partial coverage category participants to pay for observer coverage in these sectors.

The proposed rule for this action (77 FR 23326; April 18, 2012) contains a thorough discussion of the history of the Observer Program, the restructured Observer Program, and details of requirements and provisions of the full and partial coverage categories. Those details are not repeated in this final rule unless relevant to a specific public comment. Changes from the proposed rule are detailed in the section ''Changes from the Proposed Rule.''

Comments and Responses

Approximately 25 people, representing fishery participants and organizations, attended the public hearings. Eight people provided oral comments on the proposed regulations at the public hearings. These eight people represented the Association for Professional Observers, the Yukon-Delta Fisheries Association, fishing companies, processing companies, and a tour operator. In addition, during the public comment periods on the notice of availability and proposed rule, NMFS received 35 letters. The letters were from a wide range of fishery participants including participants that have carried observers and participants new to the Observer Program. NMFS also received letters from observers, observer organizations, and observer providers. NMFS also received letters from conservation organizations and interested members of the public. Eighty-five unique comments were received in the hearings and letters of comment. These comments, including those from the public hearings, are summarized and responded to below.

General Program Comments

Comment 1: The Observer Program is an indispensable component in the successful management of Federal groundfish fisheries off Alaska, though we recognize that some portions of the existing program need adjustment. Thus, we support the approach in Amendments 86/76. This approach is fair and equitable and should facilitate the level of catch data and other information necessary to ensure responsible management and the long-term sustainability of the groundfish resources. The proposed amendments will improve upon a program that is already recognized as one of the most comprehensive and successful observer programs in the world.

Response: NMFS acknowledges this comment.

Comment 2: We applaud the restructured Observer Program that shares the costs of observer-collected catch and bycatch data, and observer deployment across all fisheries and vessel classes. This action will make the program equitable for all fishery participants and provide more statistically robust data.

Response: NMFS acknowledges this comment.

Comment 3: The restructured Observer Program is overdue and necessary for all sectors. We support the intent of the restructured Observer Program to remove bias and gather data from the currently unobserved fleet. We urge NMFS to implement a program that is not unreasonably burdensome, and does not substantially increase costs or interfere with existing business practices. It is imperative that the program respond quickly to the issues that will arise in covering an additional 1,200 vessels that will be included in the new program.

Response: NMFS acknowledges this comment.

Comment 4: On behalf of 300 individuals participating in fisheries in Prince William Sound and the GOA, most of whom operate vessels less than 60 ft. LOA, we oppose the proposed rule to restructure the Observer Program. We support the intent of the proposed rule. However, the proposed rule does not provide clear information on how the Observer Program will apply to small vessels.

Response: The preamble to the proposed rule contained a detailed explanation of how the Observer Program will apply to small vessels, specifically those vessels under 60 ft. LOA. The proposed rule details the instructions for small vessels to follow in order to find out whether and when they will be required to have an observer on board. Each year, the annual deployment plan will describe how observer coverage requirements will apply to small vessels. Small vessels are specifically addressed in the 2013 Observer Program Annual Deployment Plan. For 2013, small fixed gear vessels less that 40 ft LOA are in the ''no selection'' pool which means that they will not be selected for observer coverage. Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less that 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

Information on the requirements that apply to small vessels is included in the Final Regulatory Flexibility Analysis (FRFA) in this final rule. NMFS has also posted a small entity compliance guide on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*) as a plain language guide to assist small entities, including the small vessels referred to by the commenter, in complying with this rule. In addition, NMFS will conduct outreach via direct mailing and community meetings to continue to communicate as widely as possible how the requirements of the restructured Observer Program apply to small vessels. For more information on NMFS's outreach activities, please see the section below called ''Outreach.''

Comment 5: The restructured Observer Program is a waste of money and should not be implemented since there are other methods to collect information on bycatch. Halibut vessels are required to retain all rockfish, so there is a record of rockfish bycatch in the Individual Fishing Quota (IFQ) fleet. Halibut IFQ skippers should be required to document bycatch in their logbooks.

Response: NMFS disagrees. Observer coverage is necessary in the halibut

fisheries off Alaska to collect unbiased and representative data on catch and bycatch in the halibut fisheries. The current standard used by NMFS to best obtain unbiased fishery dependent information is to deploy human observers to observe fishing operations. Human observers can collect data (*e.g.,* obtain biological samples and reliably identify species of fish) in an independent manner that currently cannot be collected through other means. NMFS agrees that collecting information through logbooks for vessels not currently required to maintain logbooks may be helpful additional information for NMFS, but such a requirement is outside the scope of this action, and does not directly address the purpose and need for this action.

Comment 6: To address all potential sources of bias in observer-collected data, NMFS needs to control the deployment of observers in both the partial and full coverage categories to completely eliminate the potential conflict of interest between vessel owners/operators and observer providers.

Response: NMFS acknowledges that, despite modifications to the Observer Program through this final rule, sources of bias or uncertainty in observer data will still exist as there are potentially many contributing factors. However, a central component to the purpose and need for this action is to correct one source of potential bias by giving NMFS control over the deployment of observers in the partial coverage category.

The deployment of observers in the full coverage category does not have this same potential bias concern because all fishing trips are observed. In the full coverage category, vessels still choose which of the four currently certified and active observer providers to work with and those providers are prohibited from responding to industry requests for specific observers. NMFS believes that the active observer providers in Alaska are in compliance with this requirement based on available information. Thus, NMFS does not agree that further modifications are needed so that NMFS controls the deployment of observers in the full coverage category.

Comment 7: The charter halibut fleet is unobserved and does not contribute to the cost of managing the fishery. The charter fleet should be monitored with electronic monitoring (EM) to understand the level of halibut mortality associated with charter fishing operations and should be required to pay observer fees.

Response: The Council did not identify the extension of observer fees, observer coverage, or EM to the charter halibut fleet in the purpose and need for the observer restructuring action; therefore, it was not included in the alternatives analyzed. The Council and NMFS will continue to review the data needed to conserve and manage the fisheries under its authority and, if appropriate, may consider developing and analyzing alternatives that would include the charter halibut fleet in the Observer Program.

Comment 8: NMFS should disapprove or delay implementation of the provisions authorizing deployment of observers on vessels in the vessel selection pool until a more detailed deployment plan is made available for full public comment and an EM alternative is sufficiently developed to allow implementation of an integrated EM program. However, NMFS should implement the fee collection and trip selection pool provisions of the proposed rule at this time.

Response: NMFS disagrees. Bifurcating implementation of this final rule is not warranted or necessary to achieve the goals of the commenter. First, this final rule does not preclude public comments on the annual deployment plan. The 2013 Observer Program Annual Deployment Plan is being developed concurrently with this final rule and was available for public comment prior to the publication of this final rule. For example, public comments during the development of the 2013 Observer Program Annual Deployment Plan led NMFS to not require observer coverage for vessels less than 40 ft. LOA in 2013, thereby delaying observer coverage on those vessels in the vessel selection pool. However, all vessels in the vessel selection pool, regardless of size, will contribute to the fee assessment upon implementation of this final rule.

Second, NMFS is providing for the limited use of EM equipment during 2013. In the future, NMFS can integrate EM into the Observer Program. NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries. For a more complete discussion of EM, please see the subheading below called ''Electronic Monitoring.''

Comment 9: The analysis fails to address Section 303 of the MSA which requires that each FMP describe the fishery, including ''the cost likely to be incurred in management'' and the ''actual and potential revenues from the fishery.''

Response: This section of the MSA refers to requirement for FMPs, and the FMPs do include sections that describe both the fishery revenues (Section 4.3.2) and the costs of management (Section 6.2.1) for the respective groundfish fisheries, as a whole. These sections are periodically updated, generally in conjunction with the programmatic reconsideration of the FMPs, and are intended to provide a programmatic perspective on the groundfish fisheries. An annual report of fisheries revenues is also prescribed in the FMPs, which is included in the Economic Status of the Groundfish Fisheries Off Alaska. This information is a component of the annual Stock Assessment and Fishery Evaluation report (available on the Alaska Fisheries Science Center's Web site at *http://www.afsc.noaa.gov/REFM/stocks/assessments.htm*).

Comment 10: NMFS needs to consider, as a reasonable alternative, 100 percent observer coverage for trawl fisheries as the best available scientific tool to minimize bycatch and bycatch mortality. If the purpose of restructuring the Observer Program is to address problems in the quality of data collected from trawl vessels in the 30-percent coverage category, NMFS should substantially increase observer coverage for the trawl fleet. The goal should not be even coverage across the whole fishing fleet, but to be able to collect more information from fisheries of concern.

This is necessary to comply with National Standards 2 and 9 of the MSA, as well as requirements of the National Environmental Policy Act (NEPA) to consider significant environmental impacts of a proposed action.

Response: The purpose of restructuring the Observer Program is to reduce bias in observer data, authorize the collection of observer data in sectors that do not currently have any observer coverage requirements, allow fishery managers to provide observer coverage to respond to the management needs and circumstances of individual fisheries, and assess a broad-based fee that reflects the value a vessel or processor extracts from the fishery.

The Council and NMFS did consider applying 100 percent observer coverage to the trawl fisheries, and rejected that alternative for the reasons described here and in Section 3.2 of the analysis. Under the restructured Observer Program, vessels will either be in the partial coverage or full coverage category. The Council and NMFS decide which vessels or sectors belong in the full coverage category based primarily on NMFS' inseason management needs, requirements for monitoring and

enforcing limited access privilege programs (LAPPs), or Congressional mandates (described in Section 3.2.7.2 of the analysis, and page 23329 of the preamble to the proposed rule). Based on this information, the Council and NMFS placed trawl catcher vessels that are not fishing with transferable quotas and PSC limits in the partial coverage category. Note that observer coverage levels for the partial coverage category are flexible and not codified in regulation. NMFS can adjust coverage levels for specific sectors as needed, and within budgetary constraints, to best meet the needs of science and management.

NMFS disagrees that 100 percent observer coverage for trawl fisheries is necessary to comply with National Standard 2. National Standard 2 requires that conservation and management measures be based upon the best available scientific information. The analysis that supports this action used the best scientific information available to design the restructured Observer Program.

NMFS also disagrees that 100 percent observer coverage is necessary to obtain unbiased catch and bycatch estimates, and has designed a sampling plan for the partial coverage category to improve the reliability of data collection from vessels within this category (see Section 3.2 of the analysis for additional detail). Each year, NMFS will use the best available scientific information in the annual deployment plan to determine the amount of observer coverage in the partial coverage category. The annual deployment plan process provides flexibility to adjust scientific sampling methods from one year to the next as new information is acquired and management needs change. This flexibility is crucial for employing the best available science for data collection and greatly improves NMFS's ability to collect unbiased information on bycatch. The 2013 Observer Program Annual Deployment Plan, prepared for the initial year of the restructured Observer Program, describes how NMFS will deploy observers on all types of fishing operations. The deployment plan process is described in detail in the proposed rule (77 FR 23330; April 18, 2012), Section 3.2 of the analysis, and the 2013 Observer Program Annual Deployment Plan. These changes in observer deployment are intended to reduce possible sampling bias and thereby represent an important step to provide the best available scientific information to managers. Additionally, by maintaining sampling probabilities equal within the vessel and trip selection pools, over time, observer coverage levels in a given sector will be proportional to the relative magnitude of the fishing effort in that sector.

National Standard 9 requires that management and conservation measures, to the extent practicable, minimize bycatch or bycatch mortality. NMFS disagrees that increased observer coverage, as suggested by the commenter, will, in and of itself, minimize bycatch. The implementation of the restructured Observer Program should reduce bias and improve the statistical reliability of observer data. Better total catch accounting will improve bycatch data and contribute to conservation efforts, such as limiting bycatch to PSC limits. These environmental benefits are evaluated in the analysis (Sections 3.2.6, 4.3, and 6.1).

Comment 11: The environmental assessment (EA) prepared for the proposed rule fails to comply with the requirements of NEPA because (1) beneficial environmental impacts from increased observer coverage are not evaluated, (2) uncertainty in bycatch estimates is not evaluated, and (3) the public does not have meaningful opportunity to comment on aspects of the program that are delegated to the annual deployment plan review process. NMFS needs to establish a clear process that ensures public comment on the annual deployment plan. The proposed approach to have the plan presented to the Council in October of each year limits opportunity for meaningful public participation and does not provide sufficient time to adequately consider and comment on the deployment plan.

Response: NMFS disagrees that the EA fails to comply with the requirements of NEPA. The EA evaluates the environmental benefits of increased observer coverage and an improved scientific sampling design in Section 4.3.1. The EA evaluates the uncertainty in the bycatch estimates and how the restructured Observer Program reduces this uncertainty in Section 3.2. Uncertainty in the bycatch estimates will also be evaluated in the annual deployment plans, as explained in the 2013 Observer Program Annual Deployment Plan. Additionally, the aspects of the program deferred to the annual deployment plan were analyzed in Section 3.2 of the analysis, and the public had the opportunity to comment on that analysis during its development through the Council and rulemaking processes for this action.

The public does have a meaningful opportunity to comment on the annual deployment plans. NMFS has established a schedule for release, review, and discussion of the annual deployment plan that will provide the public with numerous opportunities to provide input to the Council and NMFS on the deployment plan. NMFS will release the annual deployment plan by September 1 of each year so that it is available for public review prior to the Plan Teams' meetings. Each year, the public will also have the opportunity to comment on the annual deployment plan when the Council reviews the annual report and annual deployment plan at its annual October meeting. The 2013 Observer Program Annual Deployment Plan was released for public comment in September 2012 and reviewed by the Council at its October 2012 meeting. Starting in 2013, the public will also have the opportunity to comment when NMFS presents an analysis of the deployment plan and issues raised at the June Council meeting. In addition, the public may comment directly to NMFS in writing on the deployment plan or any other aspect of NMFS' responsibilities or projects at any time.

Safety

Comment 12: A discretionary provision in section 303(b)(8) of the MSA allows FMPs to require that observers be carried on board fishing vessels, unless the facilities of the vessel are ''so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.'' Most of the small vessels in the fixed gear fleet do not have operable toilets, an extra bunk, or hot water, and may not meet these criteria.

Placing an observer on a small vessel creates safety issues that were not sufficiently addressed in the analysis. Longstanding safety concerns include: (1) Limited deck space on small vessels; (2) hazards created by tight groundline; (3) the observer displacing traditional positions at the rail to assist the roller man; (4) distractions caused by an observer placed in front of the roller man; (5) increased pitch and roll on small vessels leading to seasickness and risk to observers and crew; (6) limited available space in life rafts; and (7) increasing the risk that vessels will fish in marginal conditions in order to avoid losing observer coverage.

Response: NMFS disagrees that the presence of an observer presents an additional risk to the safe operation of small vessels or that the analysis did not adequately address safety concerns associated with this action. This final rule at § 679.51(e)(1) maintains existing regulations that all vessels subject to the requirement to carry an observer maintain safe conditions on the vessel.

This requirement is intended to ensure that safety issues, such as those raised by the commenter, are addressed by the vessel operator. In addition, NMFS trains observers to work safely at sea, and the training addresses the issues noted in this comment.

Section 6.1 of the analysis addressed consistency with National Standard 10 (section 301(a)(10) of the MSA) in general terms. National Standard 10 requires that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. Section 3.2.7.3 of the analysis considered safety issues and specifically addressed the types of factors that would be considered in determining whether to deploy an observer on a vessel in the vessel selection pool (defined in the 2013 Observer Program Annual Deployment Plan as fixed gear vessels greater than or equal to 40 ft. LOA and less than 57.5 ft. LOA). Vessels in the vessel selection pool are the participants in the fixed gear fleet referred to by the commenter. The analysis determined that the more flexible contracting model allows NMFS to adequately consider safety issues when deploying observers on vessels that may be difficult or dangerous to work on, recognizing that there are cases in which a vessel's deck layout or operations may cause safety and logistical concerns due to lack of suitable workspace. The analysis lists the key factors NMFS would consider in determining whether to place an observer on a vessel in the vessel selection pool. Key factors include, but are not limited to, the amount of available deckspace, the size of the crew, the weather at the time of deployment, and the adequacy of berthing space.

There are many ways in which a vessel can adapt to safely accommodate an observer. However, if a vessel operator believes that the vessel is unsafe to carry an observer, he or she may identify their reasons and request that NMFS release them from carrying an observer. Requests for release from observer coverage would prompt a vessel inspection by NMFS to assess the safety and/or logistical concerns. For a more complete discussion of releasing a vessel from observer coverage, please see the subheading below called ''Release from Observer Coverage.''

NMFS acknowledges that there is an increased risk to observers due to increased observer days at sea in Alaska and that sea-going vessels engaged in fishing have inherent known workplace risks. Recognizing that some risks to observers may be exacerbated on smaller vessels, NMFS is requiring the observer provider to place only experienced observers on vessels in the vessel selection pool. Specifically, section C.2.2.2.1 of the ''Solicitation Request for Proposal AB133F–12–RP–0020'' states that ''* * * observers deployed to vessels in the vessel selection pool must have prior experience as an observer in the Groundfish Observer Program and must be in good standing with the Groundfish Observer Program; this requirement doesn't apply to observers going to vessels in the trip selection pool.'' A copy of the entire solicitation is available online at *https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&_cview=1*

Comment 13: Vessels less than 60 ft. LOA were exempted from previous human observer programs, in part because of safety concerns.

Response: NMFS disagrees. The 1990 Observer Plan first established the length-based category of vessels which would not be requested to carry an observer (*i.e.,* vessels less than 60 ft. LOA). Limiting observer coverage to vessels 60 ft. LOA or greater was based on a determination that the information that would be received from observers on these vessels would not justify the costs imposed on vessel operators or the costs that would be imposed on NMFS. This determination was based on an assessment of the costs of deploying an observer using the only available observer procurement method at that time, which required vessels to contract directly with observer providers to meet coverage levels fixed in regulation. The analysis developed for, and the proposed rules to implement, Amendment 18 to the GOA FMP (54 FR 50386; December 6, 1989) and Amendment 13 to the BSAI FMP (55 FR 4839; February 12, 1990) that first established length-based observer requirements specifically assumed that, at a minimum, all vessels greater than 50 ft. LOA would be able to accommodate an observer.

Comment 14: Various sections of the MSA require consideration of safety (*e.g.,* National Standard 10, section 303, section 313). The placement of observers on board vessels causes safety issues by replacing experienced crew members and by interfering with vessel operations and thereby violating National Standard 10. The National Standard 10 guidelines (§ 600.355) identify ways to reduce adverse safety impacts, including ''[a]voiding management measures that require hazardous at-sea inspections or enforcement if other comparable enforcement could be accomplished as effectively'' (50 CFR 600.355(e)(5)).

Response: NMFS disagrees. National Standard 10 states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea (Section 303(a)(10) of the MSA). Neither National Standard 10 nor the guidelines preclude the placement of observers, and NMFS does not agree that the placement of observers on board vessels causes safety issues, as there are many ways in which a vessel can adapt to safely accommodate an observer.

Vessels that carry observers are required to have a valid U.S. Coast Guard (USCG) Commercial Fishing Vessel Safety Decal, which ensures the vessel is current and in compliance with USCG safety equipment requirements. Compliance with the safety requirements is not a new requirement of this rule, as all vessels, with few exceptions, must comply with the USCG requirements, regardless of whether they carry an observer (see Section 3.2.8 of the analysis). Observers inspect the vessel when they board to ensure that the required safety equipment is in place, and they will not remain on board a vessel where the decal is absent or the equipment is no longer present or current.

During and after a trip on a vessel, observers will report safety concerns to NMFS and the USCG and will document any marine casualties that have occurred, following the USCG definition of marine casualty. NMFS' experience through observer programs has been that the presence of an observer has improved safety awareness within the observed fleets, increased the issuance of USCG safety inspections, improved reporting of marine casualties, and rarely, but importantly, brought manifestly unsafe vessel conditions to the attention of USCG personnel who were authorized to take corrective action. Additionally, observers board vessels with their own safety gear, including a currently inspected survival suit and personal locator beacon.

Comment 15: The proposed rule may reduce safety if vessels in the trip selection pool are prompted to fish marginal or un-safe weather to avoid losing their observer for that trip to another vessel. This impact on safety is contrary to previous Council actions and National Standard 10 of the MSA.

Response: The selection for observer coverage does not compel an operator to fish in bad weather. NMFS expects that vessel operators will continue to make prudent decisions regarding fishing in weather regardless of the observer coverage requirement.

NMFS recognizes that weather may delay fishing trips and factored that into the design of the deployment system balanced with the knowledge that some operators will attempt to avoid meeting the required coverage. For vessels in the trip selection pool, if the operator has complied with the notification requirements at § 679.51(a)(1), this final rule at § 679.51(a)(1)(ii)(C)(*4*) provides a 48-hour window for delaying a trip from scheduled departure. If a departure must be delayed beyond 48 hours, that trip could be cancelled in coordination with the observer provider and an observer will be required on that vessel's next trip.

Comment 16: Small boat operations in the GOA and BSAI are constrained by weather. During the spring and fall, halibut vessels often wait in port for 7 to 10 days for good weather and often leave on short notice to take advantage of favorable weather. Failure to take advantage of a weather window can be costly. Additionally, flights to remote ports in Alaska are routinely canceled and delayed due to poor weather conditions. As such, deploying observers on vessels in the vessel selection pool will be extremely problematic and may cause costly interruptions to fishing operations. The proposed rule is silent relative to accommodating the small boat fleet on this issue.

Response: NMFS recognizes that weather delays in fishing do occur, and the Council and NMFS considered this in the design of the program and in the proposed and final rule. NMFS expects that small boat operations will be more susceptible to weather delays, and that there will be a subsequent cost to the overall program as a result. NMFS also agrees that flights to ports in Alaska can be challenging due to weather. This challenge is most acute in remote areas. However, NMFS does need data from remote areas and small vessels and will attempt to observe remote locations when a vessel or trip operating out of a remote area is selected.

The proposed rule and final rule establish a process to address small vessel weather delays. Vessels in the vessel selection pool that are selected for observer coverage will coordinate with the observer provider to ensure that observers are available when and where vessels are departing for fishing. The process of coordinating directly with the observer provider will enable flexibility for vessels and observer providers to work together regarding weather delays. This process is similar to the process that vessels in the full coverage category currently undergo with observer providers. Based on that experience, NMFS does not anticipate costly interruptions to fishing operations or releases from observer requirements due to weather delays. If no observer is available, the observer provider will coordinate with NMFS Fisheries Monitoring and Analysis Division. NMFS Fisheries Monitoring and Analysis Division may release the vessel from the observer coverage requirement for that trip under § 679.51(a)(1)(iii) of this final rule.

Standardized Bycatch Reporting

Comment 17: Amendments 86/76, the proposed rule, and the analysis are not consistent with the requirements of section 303(a)(11) of the MSA that the FMPs establish a standardized bycatch reporting methodology.

Response: NMFS disagrees. The standardized reporting methodology is unaffected by this action and is outside the scope of this rulemaking. MSA section 303(a)(11) requires that an FMP establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Bycatch in the BSAI and GOA groundfish fisheries is estimated through the Catch Accounting System (CAS), which is described in Section 3.2.4.2 of the BSAI FMP and the GOA FMP. The CAS is the NMFS Alaska Region's standardized bycatch reporting methodology. The methods NMFS uses to estimate bycatch through the CAS are further described in ''Cahalan, J., J. Mondragon, and J. Gasper. 2010. Catch Sampling and Estimation in the Federal Groundfish Fisheries Off Alaska. U.S. Dep. Commer., NOAA Tech. Memo. *NMFS–AFSC–205,* 42 p.'' This publication is available on the NMFS Alaska Region's Web site (*http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-205.pdf*).

In addition, NMFS' estimates of bycatch in the groundfish fisheries managed under the FMPs are reported on the NMFS Alaska Region's Web site (*http://www.alaskafisheries.noaa.gov/sustainablefisheries/catchstats.htm*) and in periodic reports such as: ''National Marine Fisheries Service. 2011. U.S. National Bycatch Report. W. A. Karp, L. L. Desfosse, S. G. Brooke, Editors. U.S. Dep. Commer., NOAA Tech. Memo. NMFS–F/SPO–117E, 508 p.'' (This publication is available online: *http://www.nmfs.noaa.gov/by_catch/bycatch_nationalreport.htm*).

As described in the FMPs, the CAS uses observer data and data submitted by the fishing industry to estimate prohibited species catch and at-sea discards, which are two components of bycatch. The use of observer data is further described in Section 3.2.4.1 of the BSAI FMP and the GOA FMP, which were amended by Amendments 86/76 to reflect restructuring of the observer program. The purpose of Amendments 86/76 is to improve the quality of data collected by observers in the groundfish and halibut fisheries off Alaska. Observer data are the primary source of information used by NMFS to estimate bycatch. Therefore, Amendments 86/76 and this final rule improve NMFS' ability to estimate bycatch, strengthen the standardized bycatch reporting methodology, and support the intent of section 303(a)(11) of the MSA.

Comment 18: A poorly designed standardized bycatch reporting methodology could result in significant environmental harm by failing to identify bycatch issues and the implications for at-risk populations such as halibut and Chinook salmon. The proposed rule does not adequately address these concerns, and the potential for significant environmental harm must be considered in an Environmental Impact Statement (EIS) rather than an EA.

Response: NMFS agrees that the standardized bycatch reporting methodology is integral to identifying bycatch issues and implications of groundfish fisheries for at-risk populations and has spent considerable effort in developing the methodology. However, as explained in the response to Comment 17, the standardized bycatch reporting methodology for the groundfish fisheries off Alaska is a separate matter from this observer restructuring action. Amendments 86/76, as implemented by this final rule, reduce bias and improve the quality of data collected by observers in the groundfish and halibut fisheries off Alaska. NMFS will use these data in the standardized bycatch reporting methodology to improve bycatch estimates.

NMFS prepared a FONSI (see **ADDRESSES**) for restructuring the Observer Program that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment. Based on this FONSI, an environmental assessment is the appropriate NEPA analysis for this action and preparation of an EIS is not warranted.

Comment 19: Bycatch reporting methodologies under National Standard 9 of the MSA require a detailed analysis of data collection needs from different fisheries. However, the analysis exhibits a ''one-sized-fits-all approach'' to bycatch reporting and does not demonstrate that NMFS took a hard look at specific fishery sectors. NMFS should

provide further supporting analysis to discuss and compare data gaps and uncertainties from each fishery, define specific research objectives, and then assess what monitoring methods are most appropriate. If NMFS had adequately analyzed and prepared a bycatch assessment methodology, the inescapable conclusion would be that an EM program would best achieve data collection objectives for the small boat fixed gear fleet. The failure to consider fishery-specific needs is a major flaw of the proposed rule and its supporting analysis.

Response: NMFS disagrees. NMFS has conducted a detailed analysis of bycatch reporting methodologies, as described in response to Comment 17. The restructured Observer Program will improve the data collected and the analysis prepared for this action considers the fishery-specific data collection needs. Further consideration of fishery-specific data collection needs will also be addressed each year in the annual deployment plan.

NMFS disagrees that EM in its current form would best achieve data collection objectives for the small boat fixed gear fleet. NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries. For a more complete discussion of EM, please see the subheading below titled ''Electronic Monitoring.''

Comment 20: Develop and implement a method to obtain statistically reliable catch and bycatch estimates, particularly the bias in catch and bycatch estimates that would result from not observing the exempted vessels and gear types (*i.e.,* those using jig gear or those less than 40 ft. LOA using pot or hook-and-line gear).

Response: The scope of this action is limited to the funding and deployment of observers. The methods through which these data are used to make estimates are not part of Amendments 86/76 or this final rule. Therefore, this action does not prescribe how NMFS uses observer information to estimate bycatch, such as the use of specific statistical estimators, as discussed in the response to Comment 17.

However, NMFS agrees that it is important to understand bias associated with not selecting particular types of vessels in the partial coverage stratum. Chapter 3 and Appendix 10 of the analysis, and the 2013 Observer Program Annual Deployment Plan, describe the rationale for designating vessels in the partial coverage category that will not be observed in the initial year(s) of the program (vessels less that 40 ft LOA). The designations would likely change over time and bias would be one of the elements that NMFS will likely evaluate to make these decisions in the future. The analysis also provides a detailed description of bias in Chapter 3 and Appendix 8, and describes how NMFS will deploy observers to improve the data on fishing operation. These changes in observer deployment are intended to reduce possible sampling bias and thereby represent an important step to provide the best available scientific information to managers.

Annual Deployment Plan

Comment 21: The Council should have an opportunity to review and encourage consideration of its priorities for observer coverage through the annual deployment plan. The Council should not be constrained to only influencing the observer coverage through subsequent rulemaking as implied in the proposed rule preamble.

Response: As described in the Council's motion and the preamble to the proposed rule, each year NMFS will prepare a report that reviews the progress of the Observer Program, describes the financial aspects of the program, and includes a plan for observer coverage rates for the partial coverage category for the upcoming year (the annual deployment plan). The Council will review the annual deployment plan, monitor the program's progress, provide input to the annual deployment plan, and recommend appropriate adjustments to the program that would be implemented through rulemaking. The Council may also request that the Observer Advisory Committee (OAC), Groundfish and Crab Plan Teams, and Scientific and Statistical Committee review and comment on the annual deployment plan.

NMFS will release the annual deployment plan by September 1 of each year so that it is available prior to the September meetings of the Groundfish and Crab Plan Teams. NMFS will then present the annual deployment plan to the Council at its October meeting. Starting in 2013, NMFS also will prepare an annual report that analyzes the prior year's annual deployment plan and present that report at the June Council meeting. The time between June and October will allow the Council, public, and NMFS the opportunity to evaluate deployment methods for the upcoming year using information from the prior year's deployment.

Some aspects of observer deployment can be adjusted through the annual deployment plan, including the assignment of vessels to the selection pools or the allocation strategy used to deploy observers in the partial coverage category. To adjust the annual deployment plan, NMFS will analyze the scientific data collected and identify areas where improvements are needed to (1) collect the data necessary to manage the groundfish and halibut fisheries, (2) maintain the scientific goals of unbiased data collection, and (3) accomplish the most effective and efficient use of the funds collected through the observer fee. In addition, the Council may provide NMFS input on the priority of particular data collection goals and NMFS will consider adjustments to observer deployment that achieve those goals.

Some adjustments to observer coverage will require regulatory amendments. For example, moving vessels or processors from the partial coverage category to the full coverage category, or vice versa, will require a regulatory amendment because the assignment of vessels to the full coverage category is specified in regulation based on criteria developed by the Council. The assignment of vessels or processors to a particular coverage category has economic impacts on the vessel owner or processor industry members, on the amount of fees available to fund the partial coverage category, and on the contract NMFS has established for observer deployment. The rulemaking process allows for these impacts to be analyzed and for the public to comment prior to implementation of a change in coverage categories.

Comment 22: We support the approach described in the proposed rule for vetting the annual deployment plan. The Council would have an opportunity to provide input on the annual report and the annual deployment plan, but would not formally approve or disapprove it.

Response: NMFS acknowledges this comment.

Comment 23: NMFS should establish observer coverage performance standards based on (1) precision targets for protected species catch estimates, which are no lower than a coefficient of variation (CV) of 30 percent; and (2) desired strata variances (CVs), rather than uniform coverage prescriptions that are driven by NMFS' budget. Budget constraints may limit NMFS' ability to meet its performance standards, but NMFS should be mindful of those standards and establish a prioritization process to achieve them even when funding is limited.

Response: NMFS agrees that performance standards, such as the

acceptable amount of error (precision), represent an important and necessary step towards a fully optimized deployment of observers and is an appropriate goal. However, performance standards are not part of this final rule and are not required to implement a restructured Observer Program or achieve the purpose and need for this action.

However, NMFS will be able to use the information collected through this restructured Observer Program to develop performance standards after examining the data resulting from observer deployment under this final rule. As specified in Section 3.2.10 of the analysis, there are three obstacles towards implementing a fully optimized Observer Program: A lack of prior data, the definition of adequately ranked (weighted) performance standards, and the prioritization of objectives. The analysis also recognized the fact that the level of sampling necessary to generate a desired level of precision in an estimate varied widely depending on (among other things) the rarity of the item in question. Until NMFS has defined performance standards, NMFS plans to assign observers with equal probability to vessels or trips within a pool. This gives NMFS the ability to estimate the ''observer deployment'' effect, increase the accuracy of catch estimates, and increase the effectiveness of observer deployment and catch estimation processes. Please see the 2013 Observer Program Annual Deployment Plan for more information on this issue (see **ADDRESSES**).

Comment 24: The Council recently passed a motion to require 100 percent observer coverage to improve estimates of Tanner crab (*Chionoecetes bairdi*) bycatch in two areas of the GOA. Although the GOA catcher vessel trawl fleet is in the partial observer coverage category, NMFS must develop a method to have higher observer coverage in these areas.

Response: In October 2010 and April 2012, the Council recommended Amendment 89 to the GOA FMP. NMFS is preparing the notice of availability and proposed rule for that action. If approved, Amendment 89 would close an area northeast of Kodiak Island to nonpelagic trawl gear and require gear modifications for nonpelagic trawl gear to reduce bycatch of Tanner crab in the GOA.

The Council's October 2010 motion on Amendment 89 also included a recommendation to increase observer coverage to 100 percent for vessels using pot and nonpelagic trawl gear in areas of the Central GOA identified as important Tanner crab habitat. The Council did not know at the time it passed its final motions on Amendment 89 and this action which of the Council's recommendations might be approved and implemented first. The Council included the increased observer coverage requirements in Amendment 89 in case a restructured Observer Program was not approved.

The Council did not include 100 percent observer coverage requirements for special management areas in its recommendations for restructuring the Observer Program, recognizing that NMFS would make decisions about the deployment of observers in the partial coverage category through the annual deployment plan.

Therefore, this final rule does not establish observer coverage requirements for special management areas, like the areas identified in Amendment 89, and it does not direct that these areas be established in the annual deployment plan. Rather, this final rule provides NMFS with the ability to use a deployment plan to address deployment bias and therefore improve the underlying data used for estimating bycatch and discards of all species in the groundfish and halibut fisheries. Addressing this source of bias will improve the accuracy of data used to estimate Tanner crab bycatch in the GOA groundfish fisheries as a whole. In the future, the Council can request an analysis of the data used to estimate Tanner crab bycatch in the GOA groundfish fisheries. Based on that analysis, the Council could recommend adjustments to the deployment plan to improve these estimates.

Comment 25: Gathering the best available scientific information to manage all North Pacific fisheries should be the goal of the annual deployment plan based on the available funds. Monitoring objectives should be the nexus for the annual deployment plan and not a means of hassling a particular gear type or particular fishery within a geographic area due to the latest political advocacy or media rhetoric. The ability to change the deployment plan annually allows for adjustments based on observer data needs if warranted.

Response: NMFS acknowledges this comment.

Deploying Observers on Vessels in the Partial Coverage Category

Comment 26: We support the proposed approach that NMFS would auto-enter all partial coverage category vessels that are designated on an Federal Fisheries Permit (FFP) and all catcher vessels that are not designated on an FFP but that land sablefish IFQ or halibut IFQ or halibut Community Development Quota (CDQ) in a fishing year into ODDS. Since the vast majority of fishery participants are the same each year, the auto-selection removes the burden that everyone must register each year and narrows the registration focus to new participants only. The other positive for this approach is that NMFS will notify, in writing, operators of vessels that are auto entered into ODDS for the upcoming fishing year to indicate the applicable selection pool for his or her vessel (trip or vessel) and instructions for communicating with the Observer Program for the upcoming year. Because NMFS is selecting the participants and communicating directly with those selected, this is a great method for outreach to fishing vessels.

Response: NMFS acknowledges this comment. Note that, in the proposed rule, NMFS called this system the ''Observer Declaration and Deployment System (Deployment System).'' In this final rule, NMFS has changed the name of the system to the ''Observer Declare and Deploy System (ODDS).''

Also, note that NMFS is removing the requirement for new participants to register themselves in ODDS in this final rule; see also response to Comment 27.

Comment 27: It is not feasible to require a vessel owner who has not previously fished halibut or sablefish IFQ to enter his or her information into ODDS at least 30 days prior to embarking on a fishing trip. Under the proposed regulations, a vessel operator would be constrained to using a vessel already entered into ODDS if his or her vessel breaks down close to the end of the halibut season and he or she has remaining quota to harvest.

Response: NMFS agrees and removes the proposed requirements at § 679.51(a)(1)(ii)(B) and (C), and § 679.7(g)(7) from this final rule. The proposed regulations at § 679.51(a)(1)(ii)(B) and (C) would have required holders of FFPs issued after December 1 and operators of vessels fishing for IFQ or CDQ on vessels that had not landed groundfish or halibut in the previous year to enter their vessel information into ODDS within 30 days of issuance of a new FFP or within 30 days of embarking on his or her first fishing trip of the year. The proposed regulations at § 679.7(g)(7) would have prohibited a person from embarking on a fishing trip without registering with ODDS.

NMFS expects new entrants each year to be a relatively small group. In addition, the goal of the proposed rule was to have information about new

entrants in the partial observer coverage category entered into ODDS so that these vessels are considered for observer coverage as soon as possible. NMFS can identify these new entrants relatively quickly by monitoring the issuance of new FFPs and landings throughout the year and entering vessel information into ODDS as soon as the new entrants are identified. With these revisions to the final rule, NMFS will be making the initial registration of all vessels into ODDS based on information on FFPs or activity of vessels fishing for IFQ or CDQ, and no vessel owner or operator will be required to complete the initial registration of their vessel in ODDS. In addition, by NMFS undertaking the initial registration task, it may result in faster and more efficient entry of a new entrant's vessel information into ODDS.

Once NMFS enters a new entrant into ODDS, NMFS will send the new entrant a letter with the vessel's assigned selection pool. For a vessel in the trip selection pool, the letter will provide instructions for registering fishing trips in ODDS. For a vessel in the vessel selection pool, the letter will notify the new entrant if the vessel has been selected for observer coverage.

Comment 28: NMFS should monitor how permit holders designate their vessels in ODDS since permit holders will take measures to avoid being in the full coverage category. NMFS should include information on any avoidance measures that are detected in the annual report.

Response: NMFS does not anticipate significant problems with permit holders incorrectly designating catcher/processors as catcher vessels on their FFPs to avoid observer coverage. NMFS can verify vessel operational information through data collected about catch and production and from other permits, such as License Limitation Program (LLP) permits and IFQ permits. NMFS will prepare and present the annual report for the Council on the performance of the restructured Observer Program in June of each year. The report will include any documented incidents of vessel operators taking actions to avoid observer coverage requirements.

Comment 29: Placing observers on vessels in the partial coverage category at the proposed rate will be logistically impossible and more expensive than the funding will cover.

Response: NMFS has not proposed a specific rate in this final rule at which the fishing fleet in the partial coverage category will be covered. As explained in Section 3.2 of the analysis, NMFS will deploy observers in the partial coverage category at a rate that available funding will allow. Each year, NMFS will determine the deployment rate for observers in this category in the annual deployment plan. NMFS expects that the observation of the fleet will be expensive and logistically challenging, but possible. The Observer Program has nearly three decades of experience deploying observers in remote locations throughout Alaska.

This final rule establishes several provisions that allow NMFS to accommodate specific logistical challenges that are likely to occur, as explained in the section below called ''Release From Observer Coverage.'' Costs of deploying observers are discussed in the section below called ''Observer Fees and Costs.''

Comment 30: Observers should be stationed in strategic communities throughout Alaska. This approach would greatly reduce program costs by eliminating unnecessary and expensive travel from deployment centers.

Response: NMFS will make every effort to have observers available for trips selected for observer coverage and to work with vessel operators to minimize the disruption to vessel activities. NMFS agrees that strategic placement of observers in particular ports in advance of known fishing effort will more efficiently deploy observers with available funds.

Comment 31: It is not a good use of limited funds to place an observer in small, remote processing plants that take low volumes of groundfish and infrequent deliveries.

Response: As described in the 2013 Observer Program Annual Deployment Plan and the contract with the observer provider, NMFS determined that the priority for observer coverage in shoreside processing plants in the partial coverage category in 2013 is to collect genetic samples from salmon bycatch in pollock deliveries to plants in Kodiak. NMFS and the contracted observer provider will coordinate with the Kodiak plants about this observer coverage. NMFS does not intend to place observers in any other shoreside processing plant in the partial observer coverage category in 2013. In future years, NMFS, in consultation with the Council, will assess the priorities for observer coverage and available funds to determine if observers should be deployed to other processing plants in the partial coverage category.

Comment 32: To maximize efficiency and reduce costs for deploying observers, NMFS should allow observers to observe vessels in the partial and full coverage categories without having to be debriefed between assignments in the different coverage categories.

Response: NMFS disagrees. Section 3.2 of the analysis identified the potential for conflicts in interactions between the rules implemented to manage observers in the full coverage category and the contracts employed to manage observers in the partial coverage category. NMFS intends to ensure the financial integrity of the partial and full coverage categories by managing them separately so that such that costs are not transferred inappropriately between the two. Therefore, section C.3.3.14 of the ''Solicitation Request for Proposal AB133F–12–RP–0020'' states that ''[t]he Contractor must not: * * *. (d) assign an observer to vessels in the partial-coverage and full-coverage sectors within the same deployment.'' This provision of the contract will avoid a broad suite of potential conflicting overlaps between the two coverage categories as described in Section 3.2 of the analysis, while maintaining flexibility for observers and industry between deployments. A copy of the entire solicitation is available online at *https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&_cview=1*.

Vessel and Trip Selection Pools

Comment 33: NMFS proposes that vessels in the vessel selection pool, which have never carried observers, will initially be required to carry an observer for all trips in a 3-month period. Vessels in the trip selection pool that have a history of successfully accommodating human observers have a less burdensome coverage level. NMFS notes that the vessel selection pool was developed to reduce the volume of trip notifications received by ODDS. No further explanation is given for the more burdensome observer coverage requirements for operations in the vessel selection pool. This is evidence that NMFS has not considered how operators of small vessels will notify NMFS of their trips or the cost effectiveness of deploying human observers on these vessels.

Response: NMFS disagrees that the observer coverage requirements are more burdensome for vessels in the vessel selection pool. Section 3.2.7.2 in the analysis outlines the rationale for distinguishing between trip selection, vessel selection, and no selection. NMFS notes that most small fixed gear vessels are in the ''no selection'' pool in the initial year of the restructured program, as detailed in the 2013 Observer Program Annual Deployment

Plan. Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less that 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

Vessels in the vessel selection pool are selected for observer coverage for all trips that occur during a specific time period. Therefore, these vessels are relieved from the potential of being selected for observer coverage on a trip by trip basis. The preamble to the proposed rule described the duration of coverage for vessels in the vessel selection pool as 3 months. The initial duration of coverage was informed by industry members who commented through the Council's OAC that the duration needed to be long enough to prevent operators from avoiding coverage by simply not fishing for the period selected. However, comments on the proposed rule, the Council's OAC feedback, and Council recommendations on the 2013 Observer Program Annual Deployment Plan indicated that in the initial year of the program this duration of coverage could be burdensome for vessels that have never had observer coverage. In response, NMFS has adjusted the duration of coverage in the vessel selection pool to 2 months. Note that the duration of coverage is set through the annual deployment plan process and is not part of the implementing regulations. Therefore, no changes were necessary in the final rule.

In the vessel selection pool, NMFS will notify by letter owners and operators of vessels that have been selected for observer coverage for all groundfish and halibut trips during a specified period of time. This design allows more time for coordination between the vessel owner or operator and the observer provider to ensure that an observer is available for all trips in the time period selected for observer coverage. NMFS built flexibility into the process for vessels selected for coverage in the vessel selection pool by providing instructions through ODDS for operators to coordinate with observer providers for required observer coverage rather than having the details of this process specified in regulation. This approach is similar to the process currently used for observer deployment in the full coverage category, where vessel operators coordinate directly with observer providers to obtain observers to meet their required coverage requirements without regulatory notification time frames.

Operators in the vessel selection pool that are not selected for observer coverage will not be required to notify NMFS prior to each trip. In other words, for the initial year, the operators not selected will know they can fish for 2 months without an observer or notification requirements. Operators in the trip selection pool, on the other hand, are required to notify NMFS of each trip and they may be selected for observer coverage for any trip.

Comment 34: The proposed rule lacks information about the responsibilities of operators in the vessel selection pool to obtain an observer, which indicates that NMFS has not adequately considered the operational aspects of placing observers on the currently unobserved fleet.

Response: The proposed rule described the responsibilities for operators of the vessel selection pool, specifically that (1) NMFS would notify vessel owners or operators by mail if they were selected for observer coverage, (2) ODDS would provide instructions for operators of vessels selected for observer coverage to contact a NMFS-contracted observer provider to discuss logistics for obtaining observer coverage, and (3) regulations at § 679.51(a)(1)(ii)(B) require the owner or operator of a vessel selected for observer coverage to follow all instructions set forth by ODDS. Owners and operators of vessels in the trip selection pool are responsible for logging each trip individually and are notified through ODDS if a trip is selected for observer coverage. More detail is included in the regulations for specific steps and time limits associated with logging fishing trips.

As described in the response to Comment 33, NMFS will notify by letter owners and operators of vessels in the vessel selection pool that have been selected for observer coverage and provide instructions for contacting the observer provider. This process allows more time for coordination between the vessel owner or operator and the observer provider to ensure that an observer is available for all trips in the time period selected for observer coverage.

Comment 35: The regulations governing observer providers at § 679.52(b)(6) allow the provider to lodge an observer on the vessel prior to the vessel's initial departure from port and for 24 hours after return if at least one member of the vessel's crew is aboard. It is not clear how this regulation applies to vessels in the vessel selection pool or if NMFS' observer provider is authorized to require that the vessel operator remain aboard the vessel with the observer. Council discussion indicated that the observer provider would provide accommodation for observers before and after observed fishing trips.

Response: Regulations at § 679.52 of this final rule apply to observer providers for vessels requiring full coverage. This section includes § 679.52(b)(6)(iv), which requires that ''[d]uring all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.'' NMFS has included a similar provision in its contract with the observer provider providing observers to vessels in the partial observer coverage category. Section C.3.3.4 of the ''Solicitation Request for Proposal AB133F–12–RP–0020'' states that the ''Contractor is responsible for all travel arrangements and expenses, appropriate lodging, and all expenses associated with deploying Observers to assigned vessels.'' Further, the solicitation states that the ''Contractor can house an Observer on a vessel to which he or she is assigned prior to departure or disembarkation for a period not to exceed twenty-four hours. During all periods an observer is housed on a vessel, the Contractor must ensure that the vessel operator or at least one crew member is aboard.'' This contract provision does not give the contractor the authority to require a vessel operator to house an observer on board a vessel. It only provides the conditions that must be met if an observer provider and vessel operator choose to house an observer on board a vessel. A copy of the entire solicitation is available online at *https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&_cview=1*.

Comment 36: Small vessels can reasonably take observers and should be required to do so.

Response: NMFS acknowledges this comment.

Comment 37: The presence of an observer on a small vessel will bring about changes on vessel operations. The small boat fleet has minimal accommodations for skipper and crew. Where vessels are family operations, the presence of an observer will be intrusive. In consequence, vessel operators are likely to take shorter trips, fish closer to town, operate in marginal weather, and make other operational

changes to mitigate the observer's impact. These operational changes have been identified in public testimony provided to the Council during the development of Amendments 86/76. Vessels with observers on board will not operate in ways typical of other, similar, vessels that are not carrying observers, and thus observer reports will provide a biased picture of overall fleet activity, and will affect the statistical reliability of the data. This should be discussed in the analysis.

Response: NMFS acknowledges that the presence of an observer can be intrusive on any vessel and would not place an observer on board without a need for information necessary to support fisheries management. NMFS cannot control a vessel operator's behavior while a vessel is observed, but NMFS can monitor and evaluate the observed vessel and fleet activity to assess whether observations are representative of the fleet.

NMFS considered this potential ''observer effect'' in the analysis (Section 3.2.7.1 and Appendix 8) and in the 2013 Observer Program Annual Deployment Plan. In the 2013 Observer Program Annual Deployment Plan, NMFS selected the initial 3-month coverage period in the vessel selection pool as a way to mitigate the potential for the ''observer effect.'' In essence, the period of observation is long enough such that abnormal fishing when observed would not be practical.

A second solution to the potential ''observer effect'' noted by other commenters is to require 100 percent observer coverage on all vessels. NMFS disagrees. One hundred percent observer coverage on all vessels is not necessary to achieve the fishery management needs and would be costly and highly intrusive for small vessels.

Comment 38: NMFS should consider expanding the vessel selection pool to larger vessels to ease logistical issues with trip selection. This would result in fewer vessels being monitored for longer periods.

Response: NMFS will determine the size categories for the vessel selection and trip selection pools in the annual deployment plan process. For the 2013 Observer Program Annual Deployment Plan, NMFS analyzed landings data and identified groups of vessels with trips with similar total weights that could be identified by characteristics known before a trip begins. In addition, the vessel size categories took into consideration the nature of fishing trips undertaken by smaller vessels, which would place logistical constraints on observer deployment. NMFS plans to evaluate each year's coverage and make changes as necessary to best meet information needs. NMFS will make adjustments to which vessels are in which selection pool each year through the annual deployment plan.

Comment 39: Operators need the ability to register more than one trip at a time, especially as many trips can be less than a day in duration.

Response: NMFS agrees and has designed ODDS to allow up to three trips to be logged in the system, and up to six trips can be logged if they all will occur within a 72 hour period. NMFS demonstrated this system to industry members during the June 2012 Council meeting. Participants acknowledged that the system was able to effectively handle multiple trips. NMFS will monitor ODDS during the first year of implementation and can adjust the system in response to user comments.

Comment 40: This final rule should provide a method for catcher vessels that deliver exclusively to tender vessels to obtain observers for trips selected for observer coverage. Over 70 percent of the Western GOA trawl pollock and fixed gear Pacific cod landings are delivered to tenders. Fishery participants need to be able to obtain an observer for required coverage without having to transit back to Sand Point or King Cove, Alaska, while vessels are in a race for fish; otherwise, NMFS will create a set of winners and losers based on whether a vessel is selected to carry an observer. One solution would be to adopt a common practice used in Kodiak where observers are transported to and from the fishing grounds by tenders to be deployed on fishing vessels.

Response: NMFS agrees that requiring catcher vessels that deliver to tender vessels to return to port to obtain an observer would significantly impact the vessels' operations. Thus, NMFS modified the final rule in response to this comment to permit catcher vessels in the trip selection pool to remain on the fishing grounds while delivering to tender vessels. This modification is not required for vessels in the vessel selection pool because those vessels will be required to carry an observer on all trips for the required duration. Regulations at § 679.51(a)(1)(ii)(C)(*5*) require that vessels selected for observer coverage in the trip selection pool carry an observer for the duration of the fishing trip. NMFS amended the definition of a ''fishing trip'' at § 679.2 to add a definition specific to catcher vessels delivering to tender vessels. NMFS also revised the regulations at § 679.51(a)(1) to include a new paragraph that requires a catcher vessel to make at least one delivery to a tender vessel to be subject to the fishing trip definition for catcher vessels delivering to tender vessels. Under this final rule, a fishing trip period would be defined as the period from the time the vessel departs from port until the vessel returns to port and requires that the catcher vessel make at least one delivery to a tender during the fishing trip.

Comment 41: For the trip selection pool, ODDS needs to allow for changes to registered trip departures and times.

Response: Trip departure information cannot be amended directly in ODDS for trips that have been selected for observer coverage. If the trip departure times need to be changed, the vessel owner or operator must contact the observer provider by email or phone, using the contact information provided in ODDS. This is necessary because the observer provider will start to make arrangements to get an observer to the vessel when they ODDS notifies then that the trip has been selected for observer coverage. Thus, changes or cancellation of a trip that has been selected for coverage must be coordinated directly with the observer provider to avoid unnecessary work and expense for all parties.

Comment 42: Many combination troll and longline vessels harvest halibut near the end of a salmon trip. These trips are efficient and distribute longline effort away from coastal communities. If these vessels are required to carry an observer for the extent of the salmon trip, or to return to port to obtain an observer for the halibut portion of the trip, fleet costs will be increased substantially. Local depletion and conflict with the charter fleet will intensify. These costs are not evaluated in the analysis or mitigated in the proposed rule.

Response: This issue was discussed during the development of the analysis, at the OAC, and at the Council. NMFS notes that many of the vessels at issue are less than 40 ft. LOA; these vessels will not be required to have an observer in the first year of the program under the 2013 Observer Program Annual Deployment Plan. In the 2013 Observer Program Annual Deployment Plan, fixed gear vessels greater than or equal to 40 ft. LOA and less than 57.5 ft. LOA will be in the vessel selection pool, and they may be selected for observer coverage for a 3-month period. If selected for coverage, the vessel owner or operator must notify the observer provider prior to each trip for which the vessel will be used to participate in fisheries in the partial observer coverage category (directed fishing for groundfish in federally managed or parallel fisheries

or fishing for sablefish IFQ or halibut IFQ or CDQ) in that period.

NMFS expects that, as under the status quo, some trips will have low catch and/or bycatch and some will have high catch and/or bycatch. While it may not be the most efficient use of an observer to sample on these trips, it is necessary to include all trips in the pool to provide a representative sample. The sample design can only be based on variables that are known before a trip starts (*i.e.,* whether a person decides to set gear for halibut mid-trip cannot be known before the trip begins).

Release From Observer Coverage

Comment 43: In the proposed rule, NMFS described a customized coordination process for vessels in the vessel selection pool including the ability for operators in the vessel selection pool to indicate whether an observer could be accommodated on his or her vessel. The proposed rule includes an option for the Observer Program to release the vessel from the observer requirement if warranted. A similar option should be extended to all vessels in the trip selection pool that are new to the Observer Program.

Response: The final rule at § 679.51(a)(1)(iii) allows the Observer Program to release a selected trip or a selected vessel from observer coverage on a case by case basis. This provision is unchanged from the proposed rule.

Comment 44: NMFS should have a defined process to release vessels from the requirement to carry an observer when observers are not available. My crew and I once sat out a fishery due to the inability to get an observer. In advance of the fishery we invested a lot of time and money gearing up for the fishery. We contacted three observer companies about our intent to fish prior to publication of the final rule authorizing the fishery. When the rule published, we notified the observer companies and none were able to provide us with a qualified observer. We chose not to violate the law and sat tied up at the dock though we had a license and the season was open.

Response: The NMFS Fisheries Monitoring and Analysis Division has discretion to release a selected trip from observer coverage. If observers are unavailable for any trip where observer coverage is required, the observer provider will coordinate with NMFS to request the release of the trip from the observer coverage requirement.

Comment 45: The proposed rule says that vessel owners may petition NMFS for release from the observer coverage requirement, but it does not explain how the waiver process would accommodate different issues that might arise. The proposed rule does not indicate whether the waiver would be issued at the discretion of NMFS staff or the observer provider. NMFS, rather than the observer provider, should decide whether to release a selected vessel from the obligation to carry an observer. It is unclear what demands the release process will place on the vessel operator, or how much time it would take.

Response: The final rule at § 679.51(a)(1)(iii) authorizes the NMFS Fisheries Monitoring and Analysis Division to release a selected trip or a selected vessel from observer coverage on a case-by-case basis. NMFS would release a vessel from the required coverage only where an issue clearly warrants release. NMFS will document the decision to release vessels from the required coverage to ensure consistency in the exercise of its discretion. NMFS will coordinate with any vessel operator who indicates they are unable to accommodate an observer to schedule a visit to the vessel to evaluate the operators claim. The NMFS Fisheries Monitoring and Analysis Division has expertise in evaluating whether a vessel is safe for an observer and whether an observer could work effectively on the vessel. NMFS expects most vessel operators will be able to comply with the observer requirements. NMFS recognizes that many participants in the currently unobserved fleet may not want to take an observer, but that is not a valid reason for releasing vessels from required coverage. NMFS will report on the conditions the agency found warranted release from observer coverage and the number of releases it issued in its annual report to the Council. This information can help guide the Council and NMFS to modify regulations in a subsequent action, if warranted.

Comment 46: NMFS's proposal to release vessels that are not suited to carrying an observer from monitoring requirements is not a solution to generating the data NMFS needs. NMFS will not be able to meet the monitoring goals of the halibut and sablefish fixed gear sector because the majority of the vessels will need to be released from the requirement to carry an observer. EM is the solution and releasing vessels is not an appropriate alternative.

Response: NMFS agrees that releasing vessels from observer requirements is not a means to generate the data that NMFS needs for fisheries management and that excessive use of the authority to release vessels could compromise data integrity.

NMFS expects that vessels selected for observer coverage will adapt and accommodate an observer when required. Many of the vessels in the halibut and sablefish IFQ sector are of a comparable size and configuration to other fixed gear vessels that currently carry observers. In addition, NMFS has considerable experience in other regions of the United States placing observers on small vessels. The National Observer program Web site at *http://www.st.nmfs.noaa.gov/st4/nop/* provides links to regional observer programs with examples of small boat fleets that have been successfully and routinely observed. NMFS's experience is that most vessels are able to accommodate an observer when required.

For NMFS's response to the EM portion of the comment and a more complete discussion of EM, please see the section below called ''Electronic Monitoring.''

Comment 47: While the proposed trip selection design is statistically robust, we have concerns that individual fishing operations may be affected if observers cannot be acquired in a timely manner for faster paced fisheries such as GOA pollock and GOA and BSAI Pacific cod. Vessels still compete in a ''race for fish'' for a portion of the available quota in these open-access groundfish fisheries. The pollock and Pacific cod fisheries are extremely faced paced and can be completed in a matter of days. Any slow down due to observer deployments will impact a vessel's ability to maximize profits during these short pulse fisheries.

The suggestion in the proposed rule that a vessel can be released from a selected observer trip when an observer provider is unable to deploy an observer to the vessel within a day of the intended fishing trip departure is totally unacceptable. A vessel should be released from observer coverage requirements if an observer is not available by the time the vessel is ready to redeploy to the fishing grounds in fisheries where participants are racing for a portion of the quotas.

We recommend a different deployment system than the proposed trip call-in method for the trawl sector. NMFS should identify the number of participants in these short pulse fisheries and acquire, in advance, the appropriate number of observers for the target observed rate.

Response: It will be incumbent upon the observer provider to anticipate the level of observer effort required to monitor these fast-paced fisheries and to have a sufficient pool of observers available in the key ports for rapid deployment. The ability for vessel

owners or operators to register multiple trips with ODDS will allow the observer provider to know, with ample notification, the trips for which a vessel will be required to carry an observer to ensure that an observer is available when the vessel is ready to embark. NMFS anticipates that the observer provider and vessel operator will be in continuous communication so that observer deployments can be as efficient and seamless as possible.

Comment 48: Lack of a USCG Safety Decal or required safety equipment should not be an excuse to release a selected vessel from observer coverage.

Response: NMFS will not consider the lack of a USCG Safety Decal or the required safety equipment as valid criteria to release a vessel from coverage. Vessels selected for coverage are responsible for obtaining the USCG Safety Decal in advance of the required coverage and for maintaining the safety equipment during the observer deployments (see § 679.51(e)(1) of this final rule). Observers will not be placed on vessels that do not have a valid USCG Safety Decal. The inability of NMFS to place an observer on a vessel selected for observer coverage due to the lack of a valid USCG Safety Decal will not release the vessel owner and operator from the observer coverage requirement.

Comment 49: Vessels that are released from carrying an observer should be required to carry a backup monitoring system such as vessel monitoring systems (VMS) or cameras.

Response: This action restructures the funding and deployment system for the Observer Program. NMFS and the Council would need to pursue a separate rulemaking action to require VMS or cameras on vessels that cannot accommodate an observer. Alternate monitoring technologies may provide useful information for fisheries management and NMFS will work with the industry to further develop the potential for video monitoring to be a required monitoring element at a future time. For a more complete discussion of EM, please see the section below called ''Electronic Monitoring.''

Allowances for Catcher/Processors

Comment 50: NMFS should modify the exceptions for small catcher/processors or vessels that operate as both catcher vessels and catcher/processors to be in the partial observer coverage category because the cost of full coverage for these small catcher/processors is a relatively high proportion of their income. Specific suggestions include (1) eliminate or extend the qualifying period for catcher/processors less than 60 ft. LOA to elect their observer coverage category in § 679.51(a)(2)(v); (2) increase the processing limit in § 679.51(a)(2)(iv)(B) from 1 metric ton (mt) per day to 1,000 mt per year or to 4.5 mt per day (1,600 mt per year); or (3) eliminate the 100 percent observer coverage requirement for catcher/processors carrying a maximum crew of 7.

Response: NMFS acknowledges that the costs of observer coverage will increase for all catcher/processors that currently are required to carry observers less than 100 percent of their fishing days but that will be required to carry an observer 100 percent of their fishing days under the final rule. As described in the proposed rule, full coverage for all catcher/processors was recommended by NMFS and supported by the Council to improve the accuracy of accounting for catch by these vessels. Full coverage will allow NMFS to collect independently verifiable estimates of both retained catch and bycatch from each catcher/processor in the full coverage category instead of using industry reports to estimate retained catch by catcher/processors.

The Council was aware of the increased cost of this provision of the final rule when it recommended the restructured observer program, and information about these costs is discussed in the analysis. Specifically, Appendix 7 provides a summary of the estimated costs of the preferred alternative (Alternative 3) by vessel category. These estimated costs do not necessarily reflect the actual cost increases to individual operations. Actual costs will vary depending on the number of observer days currently required versus those that will be required for these vessels under the full coverage category in the restructured Observer Program.

In recognition of the relatively high cost of full coverage for smaller catcher/processors and the limited amount of catch and bycatch by these vessels, the final rule includes three allowances for catcher/processors to be included in the partial observer coverage category rather than the full coverage category. First, under § 679.51(a)(2)(v), catcher/processors less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year from January 1, 2003, through January 1, 2010, may make a one-time election as to whether the vessel will be in the full coverage or partial coverage category. Second, also under § 679.51(a)(2)(v), any catcher/processor with an average daily groundfish production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, to January 1, 2010, may make a one-time election as to whether the vessel will be in the full coverage or partial coverage category. Third, under § 679.51(a)(2)(iv)(B), a catcher/processor that processes no more than one metric ton round weight of groundfish on any day (up to a maximum of 365 mt per year) may choose to be in the partial coverage category in the upcoming year.

The first two exceptions allow a one-time choice of observer coverage category. The Council developed these two exceptions to provide an allowance to small catcher/processors that had already been operating in the groundfish and halibut fisheries off Alaska to select to be in the partial coverage category. The allowance was recommended in recognition of the relatively high cost of full coverage for the small catcher/processors and the relatively low amounts of catch taken by these operations. This exception is provided to vessel owners with a history of operations in the fishery to limit the number of small catcher/processors that are allowed to select to be in the partial coverage category and to limit this exception to vessels that were purchased or converted before the Council's final action in 2010.

The third exception will be available for any catcher/processor that meets the threshold in any future year. NMFS added this exception to recognize an existing provision of the LLP (§ 679.4(k)(3)(ii)(D)) that allows vessels less than or equal to 60 ft. LOA that process no more than 1 mt of round weight equivalent license limitation groundfish or crab on any day to be defined as a catcher vessel under the LLP. NMFS discussed this proposed provision with the Council and the OAC prior to publication of the proposed rule and there was no objection to the provision.

Consideration of additional exceptions to the requirement for catcher/processors were not presented to the Council when it recommended Amendments 76/86 and were not considered in the analysis supporting this final rule. Proposed modifications to coverage requirements for catcher/processors should be addressed to the Council and, if the Council so recommends, be analyzed and subject to public comment and rulemaking.

Comment 51: The proposed rule at § 679.51(a)(2)(iv)(B) that allows catcher/processors that process no more than one metric ton round weight of groundfish on any day of a calendar year (up to a maximum of 365 mt in a calendar year) to be in the partial observer coverage category in the

following year will result in unnecessary regulatory discards. Vessel owners will discard catch to stay within the limit that allows them to be in the partial observer coverage category.

Response: NMFS acknowledges that there is potential for vessels trying to meet the criteria for this allowance to discard catch. This allowance was created to provide catcher/processors with limited catch to be in the partial observer coverage to help control the costs of observer coverage for these vessels. Unfortunately, whenever a threshold is created that provides economic incentives to stay within the threshold, regulatory discards may occur. Although it is difficult to predict the number of vessels that may operate within the one metric ton processing limit, NMFS expects that only a few vessels will be qualified for this allowance and that the amount of regulatory discards will be limited. However, these vessels will be subject to partial observer coverage. NMFS will monitor the catch from these vessels and assess the impacts of this allowance. This information will be presented in the annual reports to the Council about the performance of the restructured Observer Program. The Council could choose to recommend an amendment to the Observer Program to address this concern.

Comment 52: The regulations should allow American Fisheries Act (AFA) eligible catcher vessels participating in the Bering Sea cod fishery to select annually whether to participate in the full coverage category for all of their groundfish fisheries. The Bering Sea cod fishery for AFA eligible catcher vessels fits within the Council's intent for the fisheries that should be included in the full coverage category because they participate in a voluntary Intercooperative Agreement allocating cod and halibut PSC on an individual catcher vessel basis.

As proposed, these catcher vessels are in the full coverage category while directed fishing for pollock in the Bering Sea, but in the partial observer coverage category for all of their other groundfish fishing. Many vessels that currently are in the 30 percent coverage category have voluntarily taken 100 percent observer coverage during the BSAI cod fishery so that observer data from a vessel can be used to estimate its halibut bycatch. The ability of these vessels to maintain 100 percent observer coverage is necessary to continue to improve on the conservation of halibut bycatch by this fleet through their Intercooperative Agreement.

Response: NMFS acknowledges this comment, but such a revision to the proposed rule is beyond the scope of this action. As noted by the commenters, NMFS recommended and the Council agreed that catcher vessels should be in the full coverage category while they are fishing under a catch share program that has prohibited species catch limits. However, the analysis did not address proposals to include any other requirements for full coverage for catcher vessels or an allowance for voluntary participation in the full coverage category. Such additions to the full coverage category should be made through an amendment to regulations after further consideration of the purpose and need for such an action, consideration of alternatives, and an analysis of the impacts. The assignment of vessels to a particular coverage category has economic impacts on the vessel owner, on the amount of fees available to fund the partial coverage category, and on the contract NMFS has established for observer deployment. The rulemaking process allows for these impacts to be analyzed and for the public to comment prior to implementation of a change in coverage categories.

Exemptions From Observer Coverage

Comment 53: The regulations should set a poundage threshold, such as 3,000 lbs, under which a vessel is exempt from observer coverage.

Response: NMFS interprets this comment to recommend that vessels that land less than a certain amount of fish per year be exempt from the requirement to carry an observer. The Council did not recommend exemptions to observer coverage for specific vessel size classes or annual landings. However, some decisions about which vessels in the partial observer coverage category are excluded from observer deployment can be made through the annual deployment plan. NMFS analyzed landings information to arrive at minimum vessel length for inclusion in the vessel selection pool for the initial year of the program. Through its analysis, NMFS concluded that vessels less than 40 ft. LOA was the break point below which the amount of harvest per trip differed from the amount of harvest per trip for vessels longer than 40 ft. LOA. NMFS concluded that extending observer coverage to vessels less than 40 ft. LOA would not be necessary during the first year(s) of implementation to provide adequate fishery data. NMFS also would not place observers on catcher vessels using jig gear in the first year of the restructured program due to the low weight of fish harvested annually by this gear type relative to other gear types. Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less that 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

NMFS and the Council can consider additional options for exclusions from observer coverage under future annual deployment plans. However, any such exclusions would be made after analysis of the impacts of specific exclusions from observer coverage on the data necessary to conserve and manage the groundfish and halibut fisheries.

Comment 54: NMFS should permanently exempt vessels less than 36 ft. LOA from the requirement to carry an observer. The restructured Observer Program is unacceptably onerous, expensive, and dangerous for the small vessel fleet. There is no space for an additional person, or their survival gear and personal kit, to work or sleep on these vessels. As well, most of these vessels do not have a bathroom.

As the operator of a 33-ft. hook-and-line vessel, we cannot afford another tax to our bottom line. Moreover, the halibut quota has been reduced such that our vessel makes one trip per year. Thus, it would not be economically or statistically valuable to monitor our vessel with an observer or video monitoring. NMFS should use observation skiffs to monitor this fleet if a permanent exemption is not possible.

Response: This final rule does not exempt any groundfish or halibut vessels from observer requirements based on vessel length. NMFS and the Council make observer deployment decisions through the annual deployment plan process. For 2013, NMFS will not require vessels less that 40 ft. LOA to take observers. Therefore, a 33-ft. hook-and-line vessel will not be required to carry an observer in the first year of the program, but could be required to carry one in subsequent years. Note that while vessels less than 40 ft. LOA will not be required to take observers in 2013, all vessels, regardless of size, will be assessed fees.

Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less that 40 ft LOA in the near future. NMFS would only expand coverage to

vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

NMFS agrees that space issues are exacerbated as vessel size decreases. If it is determined through the process that observer coverage should be expanded to small vessels, NMFS expects that vessels required to carry an observer will adapt to this requirement and ensure that the observer is adequately accommodated. NMFS has experience observing small vessels in other regions of the United States. The National Observer Program Web site (*http://www.st.nmfs.noaa.gov/st4/nop/*) provides links to regional observer programs with examples of small boat fleets that have been successfully and routinely observed. NMFS' experience is that vessels have adapted to an observer requirement in a variety of ways. Some have built additional accommodations, some have cleared off equipment from existing accommodations to make them available, and some have elected to leave crew ashore. NMFS also has experience where vessels have removed accommodations in an attempt to gain an exemption from observer coverage. Observers are trained to adapt to the conditions of the vessels which, at times, includes adapting to non-functional restrooms. Placing observers on smaller vessels requires accommodation by both vessel operators and observers.

Observer Fees and Costs

Comment 55: The government is burdening us with the most expensive observer program possible.

Response: NMFS acknowledges that observation is costly, but it is a necessary cost in an effective fisheries management program. Chapter 2 of the analysis (see **ADDRESSES**) provides information on the costs associated with each of the alternatives considered. The restructured Observer Program is a well-reasoned approach providing a full coverage component paid directly by industry combined with a partial coverage component paid by fees assessed on partial coverage participants in an equitable manner. Section 313 of the MSA specifically limits the maximum amount of fees that may be assessed on industry participants at 2 percent of the ex-vessel value of the fish harvested by vessels subject to partial coverage. This final rule establishes a fee of 1.25 percent of the ex-vessel value of the fish harvested by vessels subject to partial coverage, which is below the maximum permissible. As noted in Chapter 2 of the analysis, the fee percentage established by this final rule was developed after weighing the potential costs on industry participants with the need to provide reliable and useful data.

NMFS sought to reduce the costs of providing observers by creating a competitive and open bid process for observer providers to encourage efficient pricing for observer services. This process is described in Section 3.1 of the analysis and in the 2013 Annual Deployment Plan (see **ADDRESSES**). Federal contributions fund agency costs necessary to manage the restructured Observer Program. Therefore, NMFS has reduced costs for participants in the partial coverage category to the extent possible.

Comment 56: The misleading assumptions in the economic analysis cause it to be inadequate. NMFS should update the economic analysis to address uncertainties about relying on halibut fisheries to supply half the funding for observer coverage in the partial coverage category. The value of the halibut IFQ fishery has changed since the analysis was prepared due to large declines in the halibut resource, and this undermines NMFS' ability to adequately fund the program.

Response: The analysis provides historical data as a basis for analyzing and comparing the impacts of the alternatives and does not need to be updated to implement this final rule (see Chapter 2 of the analysis). The assumptions used in the economic analysis were developed through the analytical process, and reviewed and approved by the Council's Scientific and Statistical Committee.

The Council accepted that variability will occur in the fee and cost components of the program and established a process to incorporate the best available scientific information on an annual basis to determine the observer coverage. Each year, the best available scientific information will be used to develop the annual deployment plan. Updates to the projected fee collection, observer costs, and number of observer days that can be obtained with the budget will be presented to the Council in the annual deployment plan or annual report.

This final rule at § 679.55 establishes the fixed fee percentage, the method for annually determining the ex-vessel value of groundfish and halibut landings, and the process for fee collection.

The analysis recognized that ex-vessel values will vary, and the Council considered variability in annual ex-vessel gross revenues when recommending Amendments 86/76. This final rule at § 679.55(d)(3)(A) establishes a three-year rolling average annual ex-vessel price to even out annual price changes in the groundfish and halibut fisheries.

This final rule at § 679.55(e) establishes a methodology to determine the ex-vessel prices for the halibut fishery that is similar to the methodology employed for the Halibut IFQ cost recovery fee at § 679.45. Data gathered through this methodology were determined to be the best available for the fee collection component of this program.

The number of observer days in the budget for an upcoming year is determined not just by the annual ex-vessel prices, but also the cost per observer day. This cost is determined by NMFS' contract with the observer provider and will be included in each year's annual deployment plan. The analysis also notes that the estimated costs per observer day used in the analysis will also vary over time.

If NMFS and the Council determine that the fees collected pursuant to this final rule do not provide sufficient funding for an adequate number of observer days to collect data to monitor and enforce regulations imposed on these fisheries, the Council will review the fee percentage. Consideration of fee adjustment would result from information provided in the annual reports.

Comment 57: The proposed action is not consistent with section 313 of the MSA, which authorizes the Council to prepare a ''fisheries research plan'' that can require observers on board fishing vessels, including vessels participating in the North Pacific halibut fishery. Specifically, the proposed action is not consistent with the requirements that the fisheries research plan must be fair and equitable and take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

Halibut and sablefish IFQ vessels harvest 12 percent of the groundfish in the GOA. The proposed rule would implement a fee collection system levying 67 percent of program costs on halibut and sablefish IFQ fishermen which is not ''fair and equitable'' to this fleet, unless an adequate portion of the funds collected from the fee are dedicated to integrating EM with the Observer Program.

Response: NMFS disagrees. Under the previous pay-as-you-go system or daily

fee system, some smaller vessel operators faced observer costs that were disproportionately high relative to their revenue. Section 5.9 of the analysis explains that the Council was very concerned with minimizing impacts to small entities from including small vessels and halibut vessels in the observer program for the first time. The structure of the new fee system minimizes the impacts to small entities compared to the previous pay-as-you-go or daily fee systems.

The intent of the new fee system is to fund coverage equitably and distribute coverage as needed to meet the information needs of NMFS and the Council for the fishery conservation and management. Section 313 of the MSA requires that the system of fees established to support a fisheries research plan to deploy observers in the North Pacific fisheries must be fair and equitable to all participants in the fisheries and may be expressed as a percentage of the unprocessed ex-vessel value of the fish and shellfish.

The ex-vessel based fee is fair and equitable because it is based on a standard measure of the value of the fishery resource harvested or processed by the participants and it applies regardless of whether a vessel or processor is required to carry an observer. Section 2.9.2.2.5 of the analysis notes that an ex-vessel value fee is the most equitable method of funding observer coverage because it is based on the value of the resource each operation brings to market. An ex-vessel value fee is commensurate both to each operation's ability to pay and the benefits received from the fishery. The ex-vessel value of the catch is expected to fluctuate, as are the catch quotas.

While the MSA authorizes the Council to vary the fee by fishery, management area, or observer coverage level, the Council recommended that a fixed fee percentage of 1.25 percent of ex-vessel value of landings was the most fair and equitable method to distribute the observer fee across the vessels and processors subject to the fee. Section 2.9.2.1 describes how the new fee system accomplishes one primary objective of Observer Program restructuring, that user fees not be directly linked to actual coverage levels when levels are less than 100 percent. Consistent with fee program principles described in Section 2.9.2.2 of the analysis, fees collected from any particular fishery would not be spent monitoring that particular fishery.

NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries. For a more complete discussion of using observer fees to develop EM, please see the section below called ''Electronic Monitoring.''

Comment 58: The observer fee should be based on gross revenues rather than ex-vessel value of landed catch. Specifically, the observer fees should start at 1.25 percent for vessels with low gross revenues and increased to a maximum of 2.5 percent for vessels with high gross revenues.

Response: Section 313(b)(2)(E) of the MSA requires that the observer fee ''be expressed as a fixed amount reflecting actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of the fish and shellfish harvested * * *.'' While the MSA does not require that the observer fee be based on ex-vessel value of the catch, it does require that if it is expressed as a percentage, that it not exceed 2 percent of the ex-vessel value of the catch. The Council had the option to vary the fee by fishery, management area, or observer coverage level. It considered an option for a lower fee percent for smaller vessels. However, it chose to initially apply a single fee percentage of 1.25 percent of ex-vessel value to all landings subject to the observer fee. The rationale for an equivalent fee across all industry sectors was to be equitable to all participants impacted by the fee assessment. The Council will review the observer fee in the future and may decide to recommend modifying the fee percentage through subsequent notice-and-comment rulemaking to adjust the fee percentage or how it is applied.

Comment 59: Halibut and sablefish fisherman already pay the IFQ cost recovery fee. Adding another fee to our fleet for observer coverage is unacceptable.

Response: The MSA authorizes NMFS to collect two distinct fees from participants in the fixed gear halibut and sablefish fisheries. The IFQ cost recovery fee and the observer fee support different management and information needs of NMFS and are not duplicative. For example, NMFS assesses a cost recovery fee for the Central GOA Rockfish Program and requires 100 percent observer coverage for catcher vessels participating in that program, and 200 percent observer coverage for catcher/processors to ensure adequate data collection in that LAPP (see the final rule for the Central GOA Rockfish Program (76 FR 81248; December 27, 2011)).

The management fee referred to by the commenter is the IFQ cost recovery fee required under MSA section 304(d)(2)(A) to recover the actual costs directly related to the management, data collection, and enforcement of the IFQ Program. Furthermore, MSA section 304(d)(2)(C)(i) notes that fees collected under this paragraph shall be in addition to any other fees charged under the MSA.

The new fee implemented with this final rule is authorized by MSA section 313. The fee may be assessed at up to 2 percent of the ex-vessel value of the unprocessed fish harvested under the jurisdiction of the Council, including the North Pacific halibut fishery. This fee is to be used to pay the combined costs of stationing observers, or EM equipment, on board fishing vessels and U.S. fish processors and inputting collected data. Through the fees, owners and operators compensate the Federal Government for the costs associated with managing fishery resources. Section 2.10.3 of the analysis described the potential effects of Observer Program fees on participants in the Halibut and Sablefish IFQ Program.

Comment 60: The owner of a 48 ft. longline/troll combination vessel stated that he supports paying observer fees to improve the Observer Program if EM, the only viable option for his fleet, is included in the final rule.

Response: Consistent with the proposed rule and the Council's recommendations for restructuring the Observer Program, the observer fee will be assessed on all halibut IFQ landings. Vessels in this fleet will be subject to observer coverage as determined by the annual deployment plan. For a complete discussion of EM, please see the section below called ''Electronic Monitoring.''

Comment 61: Use a 3-year average price for groundfish to smooth out short term price fluctuations.

Response: This final rule at § 679.55(d)(3)(A) specifies that the groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear. This provision is unchanged from the proposed rule.

Comment 62: NMFS did not analyze the economic and social costs of deploying human observers in the small boat fleet or of carrying observers for vessel operators in the vessel selection pool (*e.g.,* feeding an observer, insurance, displacing a crew member, or disrupting the character of family operations). These additional costs will lead to operations leaving the fishery, halibut and sablefish IFQ consolidation, and elimination of crew jobs.

NMFS also did not assess the impacts on fishery revenues of deploying human observers in the small boat fleet. The economies of Alaskan fishing

communities will be hurt as the fleet contracts, and revenues to state and Federal governments would be reduced.

Response: The analysis prepared for this action assesses the economic and social cost of deploying human observers in the small boat fleet and its impact on revenues in the fishery. Sections 2.10.6 and 2.10.7 of the analysis evaluate impacts on fishery costs and revenues. NMFS acknowledges in Section 2.10.7 of the analysis that there may be negative impacts to specific fishing operations, crew members, communities, and state and Federal revenues, as described in the comment. In addition, the analysis notes that in some instances, harvesters' trip costs may increase, which may affect the ability of marginally profitable operations to remain in the fishery. Additionally, the number of crew positions could be reduced, and family operations may be disrupted, due to compliance with observer coverage requirements. This may also contribute to the likelihood that some operations will choose to leave the fishery. These changes may affect communities, specifically as some communities are negatively impacted by the potential redistribution of harvesting effort. While these issues are generally discussed, the analysis also notes that these costs or concerns will affect some members of industry and not others, and information is not available to determine the impacts of each situation. As a result, quantitative estimates of the impacts were not generated, and it is unlikely that quantitative data will be available in the future to estimate the value of changes in the character of family fishing operations that may occur as a result of carrying an observer.

These concerns were presented to the Council, in the analysis and in public testimony, and the Council recommended removing vessels less than 40 ft. LOA from the vessel selection pool, at least for the first year of the program, under the 2013 Observer Program Annual Deployment Plan. The preamble to the proposed rule provides the specific rationale for limiting observer deployment to vessels less than 40 ft. LOA (77 FR 23336; April 18, 2012). Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less that 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

Through the annual deployment plan process, industry participants can provide feedback directly to NMFS, the OAC, and the Council concerning the effects of observer coverage on their operations. These comments can be considered, as they were in the 2013 Annual Deployment Plan, when recommending coverage on specific vessel sizes in an annual deployment plan.

Note that observers will be insured by their employer, as required in regulation for full coverage vessels and in the contract between NMFS and the observer provider for the partial coverage category. Observers are also covered by the Federal Employees Compensation Act, as identified in the analysis. This insurance coverage does not prevent any observer or observer provider from filing a suit for injuries that occur on a vessel. Thus, industry members may choose to protect themselves from lawsuits by obtaining additional liability insurance.

Outreach

Comment 63: NMFS should conduct as much outreach as possible to the fishing and processing sectors that will be affected by the restructured Observer Program. As noted in the proposed rule, a total of 1,775 entities (including catcher vessels, catcher/processors, motherships, shorebased processors, stationary floating processors, and CDQ groups) are estimated to be directly regulated by the proposed action. Extensive outreach is needed to build awareness and understanding among the regulated community of the new requirements.

Response: NMFS agrees that outreach to the fishing industry will be helpful in implementing the restructured Observer Program. NMFS has already conducted outreach meetings or public hearings in Kodiak AK, Sitka AK, Petersburg AK, Sand Point AK, Juneau, AK, Homer AK, Seattle WA, and Newport OR, in the process of developing this action with the Council, and to solicit comments on the proposed rule (77 FR 22753, April 17, 2012; 77 FR 29961, May 2, 2012). NMFS continued outreach efforts to industry participants and fishing communities prior to publication of the final rule through direct mailings to vessel owners in the partial observer coverage category. In addition, with the publication of the final rule, NMFS will conduct additional meetings in fishing communities to explain the program requirements, demonstrate ODDS, and answer questions. NMFS outreach is in addition to outreach by the Council and the activities of the OAC.

Comment 64: NMFS should reach out to observers to explain how the restructured Observer Program will impact their work environment. This outreach should occur outside of the four-day briefings to ensure a smooth transition to the new program.

Response: This action does not change the basic duties of observers when they are on board vessels. It does, however, expand the observer program to new, previously unobserved vessels. NMFS plans to address those work related issues either in existing training sessions or in trainings specifically required under the contract with the selected observer provider.

Observer Issues

Comment 65: Adequate pay and professional treatment of observers from observer providers and NMFS is critical to the success of this program. NMFS should find a mechanism to link the agency with the welfare and professional standards of its observers.

Response: Adequacy of observer pay is outside the scope of this action. Observers pay will be established in both the partial and full coverage categories by the observer providers, subject to other Federal and state laws, and in negotiation with their observer employees and unions, if applicable.

Professional treatment of observers and professional behavior by observers is important to maintain high standards in the observer workforce. NMFS has established educational standards for all observers in the workforce and provides initial and recurrent job training to them. NOAA's Office of Law Enforcement provides support for a harassment free workplace for observers when deployed in Alaska. Observer provider companies have policies related to professional behavior and mechanisms for counseling, when appropriate, and/or progressive discipline for infractions of their policies. This action does not change the standards for professional treatment of observers.

Comment 66: NMFS needs to be diligent about addressing observer harassment in previously unobserved fleets.

Response: NMFS agrees that harassment of observers is not acceptable and will not be tolerated. Existing regulations at § 679.7(g) expressly prohibit observer harassment. These regulations are applicable to previously unobserved vessels that will now be required to carry observers. Harassment prevention is a top priority for NOAA's Office of Law Enforcement

as observers are essential to NMFS management efforts, but are in a vulnerable position by being placed as the lone NMFS representative on fishing vessels. NMFS has been placing observers on fishing vessels in Alaskan waters for over 30 years. NMFS' experience is that most observers are treated well by vessel owners and crew. However, exceptions occur and NMFS has law enforcement capacity to respond to reports of harassment and will continue to keep this as a priority. NMFS is also planning outreach efforts to newly observed fleets to ensure the participants are informed of the rules, including prohibitions against observer harassment.

Comment 67: Standards of behavior that apply to observers fulfilling duties for operations in the full coverage category should be mandatory for observers assigned to vessels in the partial coverage category. This is necessary to protect the confidentiality of the data collected.

Response: The regulations outline the standards of behavior that govern observers in the full coverage category. NMFS incorporated these standards into the contract that will govern the observers in the partial coverage category. All observers will continue to be required to protect the confidentiality of the data collected.

Electronic Monitoring

Comment 68: NMFS failed to comply with the requirements of the Regulatory Flexibility Act to analyze an alternative of EM, which would have minimized the impact of the alternatives on small entities.

Response: The Regulatory Flexibility Act (RFA) requires NMFS to prepare an initial regulatory flexibility analysis (IRFA) to describe the economic impact of the proposed rule on small entities, such as fishing vessel operations. The IRFA is required to include, among other things, ''a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' The Council considered and fully analyzed alternatives, including the one that would have had the least cost on currently unobserved vessels, which was to make no changes in the current observer program. This alternative would have continued to require no observer coverage on vessels less than 60 ft. LOA or on the halibut fleet. This alternative does not meet the purpose and need for this action because it would not provide observer information from those vessels. Compliance with the RFA also requires preparation of a Final Regulatory Flexibility Analysis, which is included in the Classification section of this final rule.

NMFS disagrees that EM in its current form is a reasonable alternative to a human observer that would accomplish the objectives for this action. NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries.

NMFS also notes that, under some circumstances, EM may not minimize costs to the industry. Current operational EM systems are in place in Alaska to meet specific objectives. However, the degree of burden existing EM systems can place on vessels can be considerable. For example, NMFS requires EM systems on many trawl catcher/processor vessels in Alaska where the system is designed to support compliance monitoring of crew sorting catch before it is sampled by the observer (see regulations at § 679.28(i) and (j)). These EM systems serve as an aid to the observers on board, and can be used to document problems should follow-up enforcement action be necessary.

In situations where EM is currently required, it places a burden on industry to ensure the EM systems are in place and continuously functional. If an EM system on board a trawl vessel fails, the system must either be repaired on board or the vessel must modify their operations to prohibit specific crew activities that sort catch, or the vessel must return to port to have the system repaired. Trawl vessels that fish without required EM are in violation of regulations and are subject to enforcement action. In these cases, industry carries the full cost of the EM systems and their maintenance.

Comment 69: An electronic monitoring program is not included in the alternatives compared in the analysis, though it is noted that EM may be an option under a separate, future process. The Council approved a motion in June 2010 requesting that EM be developed and implemented as a tool for fulfilling observer coverage requirements in the restructured program. The analysis fails to consider how an at-sea monitoring program integrated with shore side observers, human observers on survey vessels, and EM can resolve the limitations of the existing Observer Program. Because other countries are using EM to collect at-sea monitoring data in fisheries similar to the halibut and groundfish fisheries off Alaska, NMFS' failure to include EM as an alternative for monitoring the vessel selection pool results in an unreasonable range of alternatives under NEPA.

Response: The Council explicitly chose to not include EM as an alternative or option in Section 2.5 of the analysis prepared to support this action. The scope of this analysis, consistent with Council's problem statement, addresses specific problems with the existing Observer Program (1) there are no observer requirements for either the less than 60 ft. LOA groundfish sector or the commercial halibut sector, (2) coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries, (3) fishery managers cannot control when and where observers are deployed, (4) many smaller vessels face observer costs that are disproportionately high relative to their gross earnings, and (5) complicated and rigid rules have led to observer availability and compliance problems. Consequently, the analysis examined alternative fee structures for various regions (BSAI or GOA) and fishing sectors to remedy the problems identified in the problem statement.

The Council did provide guidance on the use of EM in June 2010, based on public testimony concerning the limited ability for some smaller vessels to carry an observer. Recognizing that section 313 of the MSA allows fees to be used for EM systems, the Council decided to actively explore EM as a potential alternative to human observers for specified types of vessels with the intent of having it available in the first year of implementation of the restructured Observer Program. The Council recognized that EM could be an alternative to a human observer only at such time as NMFS has the capability to deploy EM and effectively use the resulting data to meet sampling objectives. Section 2.5 of the analysis stated that implementing an EM system for specific fisheries would likely require new Federal regulations, and would be addressed in a separate, subsequent analysis. Thus, this final rule does not implement an EM program as an alternative to human observers. The final rule includes an option for a vessel to indicate its willingness to carry EM equipment to help NMFS collect data. NMFS will continue to work to develop an EM program that is supported by performance standards and regulations over the longer term.

Comment 70: National Standard 7 requires that conservation and management measures shall, where practicable, minimize costs. If there is

an alternative that accomplishes the same purposes for which an observer would otherwise be placed aboard a vessel and that alternative minimizes costs, then NMFS must either select that alternative or provide a substantive rationale for why that alternative was not selected. In the proposed rule, NMFS identifies that EM could reduce the economic burden of the restructured Observer Program on small entities. By failing to provide EM as an alternative to observers in the proposed rule, NMFS violates National Standard 7.

Response: This action complies with National Standard 7 in that no other viable alternative minimizes costs while accomplishing the action's purpose. Although the Initial Regulatory Flexibility Analysis for Amendments 86/76 stated that EM ''could serve to reduce economic impacts on small entities by providing an alternative to carrying a human observer,'' EM in its current form is not a reasonable alternative to a human observer, for reasons described in more detail in the response to Comment 71. Therefore, EM was not included in the alternatives analyzed by the Council for this action.

Comment 71: NMFS should reinstate the language in the draft proposed regulations, reviewed and approved by the Council in October 2011, which would have required vessels selected for observer coverage in the vessel selection pool to have either an observer or EM system on board, with the final determination to be made by NMFS. In the proposed rule, § 679.51(a)(1)(ii)(F)(*2*) was modified relative to the draft regulations to allow NMFS discretionary authority to provide EM equipment to a vessel owner or operator upon releasing the owner or operator from the requirement to carry an observer. Under the proposed regulations, there is no longer an obligation or an incentive for the vessel owner or operator to accept or use the EM equipment. This is a significant deviation from the Council's intent with respect to the implementation of this provision of the Observer Program. The development of EM has been an important element of this program for several years, both as an immediate priority for vessels greater than or equal to 40 ft. LOA and less than 57.5 ft. LOA that fish halibut and sablefish individual fishing quotas, as well as an independent tool in the long-run in the research plan.

The use of EM is an important alternative to observers on smaller vessels that, because of logistical and economic challenges with accommodating an observer on board, may otherwise be released from observer coverage. NMFS should allow a vessel selected for coverage in the vessel selection pool that would otherwise be required to take an observer, to use an EM system instead (at NMFS' discretion). NMFS should include language in the final rule that would meet the Council's intent and avoid concerns identified by NMFS after the proposed rule was reviewed and approved by the Council.

Response: NMFS agrees that EM is an important alternative for vessels that are physically impractical for human observation. NMFS also agrees that the Council's intent has been to implement an EM system in the first year of implementation of the restructured Observer Program. However, the Council and NMFS have recognized that NMFS must have the capability to deploy EM and effectively use the resulting data to meet sampling objectives before an EM system can be available as an alternative to a human observer. NMFS agrees the initial draft regulations reviewed by the Council in October 2011, would have allowed vessels selected for observer coverage in the vessel selection pool to have either a human observer or EM equipment on board for the duration of the selection. As explained in the preamble to the proposed rule as published in the **Federal Register** on April 18, 2012 (77 FR 23326), NMFS reviewed the initial draft rule and determined the rule should not require EM since NMFS has not yet developed performance standards or technical specifications for EM. Therefore, and as explained in the preamble to the proposed rule, NMFS proposed that the only observer requirement for a vessel selected for coverage would be that an observer be on board for the duration required.

NMFS agrees that there may be scenarios where monitoring via video may provide helpful information to NMFS. However, NMFS has identified limitations with the existing EM technology and, at this point, has determined that the EM technology available is not an equivalent substitute to a human observer. These limitations have been discussed at the OAC over several years and are documented in OAC minutes that have been presented to the Council. For example, EM does not provide the biological information that human observers collect. Species identification can be difficult with EM and there are longer time lags until data are available for management relative to data collected by observers (*e.g.,* observers summarize their results and transmit them to NMFS as needed, often daily). Electronic monitoring system reliability and susceptibility to tampering are other issues that need to be resolved. While pilot work is underway to resolve some of these issues, NMFS expects that the establishment of a comprehensive electronic data generating system supported by enforceable regulations could require several years.

In October 2011, the Council recommended that the initial phase of an EM program focus on halibut and sablefish hook-and-line vessels from 40 ft. LOA to 57.5 ft. LOA. Despite the limitations noted above, NMFS agrees that EM may be a helpful tool for gathering data to generate estimates of at-sea discards on previously unobserved vessels, particularly in the hook-and-line IFQ fisheries. Thus, as described in the response to Comment 71, NMFS is developing the capacity to deploy EM equipment on some vessels at the outset of the restructured Observer Program.

NMFS is working to implement EM for use on hook-and-line vessels less than 57.5 ft. LOA on a voluntary basis, as well as to incorporate EM as an integrated component of the Observer Program over the longer-term where technically and economically feasible. Lessons learned from prior fishery EM projects demonstrate the need to match the sampling objective with the system capabilities. The first-look at discards on small hook-and-line vessels where there is not a need for rapid data transmission is a good starting point. In 2013, NMFS will deploy EM equipment on those small hook-and-line vessels in the vessel selection pool that have indicated a willingness to carry EM equipment. NMFS recognizes the importance of industry support for an EM program. NMFS intends to continue to work collaboratively with industry and the Council to develop an EM program with detailed specifications and apply it where it meets information needs for effective fisheries management.

In response to this comment, NMFS has revised the process for deploying EM equipment on vessels. In the 2013 Observer Program Annual Deployment Plan, NMFS may select small hook-and-line vessels from the pool of vessels fishing out of key ports, such as Kodiak, Homer, Sitka, and Petersburg, if the owner has indicated a willingness to carry EM equipment. Industry members conducting initial EM feasibility work recommended focusing EM efforts out of a few key ports. Any vessel operator who has indicated a willingness to carry EM equipment out of a key port may be selected for EM. However, given the developing state of EM and NMFS' current EM capacity, not all operators who indicate a willingness to carry EM

equipment will be provided EM equipment. NMFS expects that vessels selected for EM will work cooperatively with NMFS, as many members of the fleet view EM as the preferred tool for information gathering. Those vessels that are selected to carry EM equipment and that cooperate with NMFS and assist in meeting data quality standards will be eligible to carry EM equipment. At any time, vessel operators may retract their stated willingness to carry EM equipment. Conversely, NMFS may determine at any time that a vessel is not suited for carrying EM equipment.

Comment 72: We oppose the restructured Observer Program until EM is provided as the preferred option for collecting at-sea catch and bycatch data on fixed gear halibut and sablefish vessels. We support the goals of the restructured Observer Program and are willing to pay a fair share of the future observer coverage costs. We are willing to provide at-sea data, but need a system that works for the fixed gear fleet. EM should be the preferred monitoring option for the fixed gear halibut and sablefish fleet starting in 2013.

Response: The current standard within NMFS for obtaining unbiased fishery dependent information from fisheries is to deploy human observers to observe fishing operations and sample the catches brought on board. Observers provide many types of information to NMFS including catch and effort, catch composition in numbers and weights of species, biological samples, length frequency data, interactions with protected species, and information on compliance with regulations such as streamer line deployment. The observer information allows NMFS to meet multiple agency objectives. At this time, EM may assist NMFS in meeting some but not all of these objectives. See response to Comment 71 for more information about the limitations of EM in its current state. While EM has limitations, NMFS recognizes the potential for EM development. The use of this technology in observation has been addressed by the Council with input from the OAC. The OAC requested that NMFS continue to develop EM with a focus on small boat hook-and-line fisheries where NMFS has no current in-season management responsibility. For 2013, NMFS has dedicated $200,000 for continued development of EM in Alaskan fisheries management and expects to deploy EM systems on cooperating vessels in 2013, the first year of the program.

Comment 73: The pilot project conducted by industry in collaboration with NMFS from 2010 through 2012 demonstrates that there is substantial information available to NMFS to fully evaluate an effective EM alternative, develop necessary performance standards, resolve any outstanding issues with video data extraction, and include EM as an integrated alternative under the restructured Observer Program.

Response: NMFS has worked with the Alaska Longline Fisherman's Association (ALFA) in its National Fish and Wildlife Foundation funded pilot work on EM. ALFA was able to demonstrate and gain experience with the practical aspects of deploying EM camera systems. They have demonstrated the ability to deploy these systems on the small boat Alaskan fleet, and they have resolved some reliability issues experienced by NMFS in past EM studies. However, the existing systems continue to have known limitations relative to NMFS' information needs. For example, none of the EM systems currently deployed in the North Pacific are able to collect biological data at-sea that are essential for assessing the biological condition of fishery resources.

Comment 74: NMFS should resolve issues to fully utilize EM on vessels of any length due to safety, economic, and logistical concerns with deploying observers on fishing vessels. Fishermen work under perilous conditions but they have the choice about which vessels, fisheries, and weather conditions they will work in. Observers do not get that choice. An observer was lost at-sea off the coast of Washington in 2012. Some vessels less than 60 ft. LOA may be able to safely accommodate observers, however the conditions are highly variable among vessels. The Council did not adequately address the safety of human lives in designing this restructured Observer Program. Safety issues associated with the action may be alleviated through EM.

Response: While NMFS disagrees that there are significant safety concerns with the proposed action, the agency acknowledges the inherent risk involved in the at-sea monitoring of fisheries by observers. An observer was lost off the coast of Washington in 2012, and two were lost in the domestic Observer Program in Alaska, one in 1990 in a vessel sinking, and one in 2008 in a fall and drowning while boarding a vessel alone at night. NMFS agrees that EM in lieu of an observer would reduce all risk to observers. However, EM in its current state does not provide the same reliable suite of timely fisheries dependent information which NMFS needs for fisheries management. Therefore, EM is not an acceptable substitute for fisheries observers at this time.

Comment 75: EM must be available as a voluntary choice for any vessel selected for coverage.

Response: NMFS and the Council did not envision that industry members would choose the type of observation on their vessels. NMFS has fishery dependent information needs from the commercial fisheries and this rule establishes the infrastructure to fund, and the requirement to take, an observer. After reviewing draft proposed regulatory language in October 2011, the Council reiterated its intent that NMFS determine which vessels may be afforded the opportunity to take EM. The preamble to the proposed rule makes it clear that EM may not be available to all vessels who request EM. Under this final rule, owners of vessels in the vessel selection pool will be given the opportunity to express their interest in taking EM. However, given the developing state of EM and NMFS' current EM capacity, not all operators who indicate a willingness to carry EM equipment will be provided EM equipment.

Comment 76: The present EM technology is not a perfect fit for monitoring all vessels. However, with effort, cooperation, and funding the technology could be developed within a year to cover hook-and-line vessels. Fisheries with the need for real time management data may not be immediately suitable for EM but it is an obtainable goal for the hook-and-line sector. The proposed rule discussed general implementation of EM in the vessel selection pool, however a definitive timeline for executing EM is the only sufficient approach to ensure that NMFS develops this crucial management technology. In addition, because EM must be part of the Observer Program for the program to be successful, NMFS should build enough flexibility into the final rule so that the EM program can grow and develop through the annual deployment plan.

Response: NMFS is taking a thoughtful and methodical approach to developing EM in Alaska and nationally. EM must provide information that is useful to fishery management in a cost effective manner. In Alaska, NMFS has conducted studies comparing EM and observer information that revealed the limitations of the existing technology. For example, please see ''Cahalan, J. A., B. M. Leaman, G. H. Williams, B. H. Mason, and W. A. Karp. 2010. Bycatch characterization in the Pacific halibut fishery: A field test of electronic monitoring technology. U.S. Dep. Commer., NOAA Tech. Memo.

NMFS–AFSC–213, 66 p.,'' available on the Alaska Fisheries Science Center Web site (*http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-213.pdf*).

NMFS will be conducting additional work in Alaska in 2013 to advance the technology to make it more useful. Some objectives will never be met with EM (*e.g.,* collecting biological samples at-sea, or identifying some species may not be reliable or cost-effective using video technology) so a combined approach of EM and observers may be the result. While NMFS is developing EM capacity in the initial year of the program, the agency will also provide a strategic planning document outlining ways that EM might be fully integrated into the Observer Program in the future and the steps that would be necessary to accomplish that. This document was requested by both the Council's OAC and the Council. Establishing a fully integrated EM system that would replace many tasks of a human observer would require subsequent rule making, the timing of which cannot be determined at this time.

Comment 77: NMFS should develop an implementation plan for EM on groundfish vessels, including (1) a means for assessing both those protected species that are brought on board and those that are not, and (2) a means for analyzing the effectiveness of the EM at identifying the species, estimating the numbers, and characterizing the severity of injuries to protected species, whether they are or are not brought on board.

Response: Protected species offer particular challenges for EM because interactions can be rare, the interaction can occur at or on various parts of the vessel, the interaction may not break the surface of the water, and identifying the species and any injuries to it may be difficult. When events are rare, large samples of EM footage, and possibly all footage, would need to be reviewed to detect rare events. For example, the British Columbia (BC) model of ''EM only'' reviews a small portion of the retrieved video as a validation check on required logbooks. Neither the logbooks nor the video check may be helpful to assess rare protected species interactions in the BC model. Of equal concern is where the interaction occurs. In hook-and-line operations, most video systems are focused on the line retrieval. If the interaction is outside the field of view of the camera, it will go undetected. It is possible to install wide angle cameras to increase the field of view, but it is unknown if wide angle cameras will provide the quality of images necessary to detect the interaction and identify the species encountered. Further work is needed to assess the ability of cameras to detect and identify protected resource interactions with fishing vessels. NMFS will consider protected resource interactions as one of the objectives to consider for EM observation.

Comment 78: If EM is effective for monitoring small vessels, then cameras should be used to monitor all halibut vessels, including catcher/processors with existing 30 percent observer coverage requirements. This would reduce the cost and burden for vessel owners relative to carrying observers.

Response: NMFS disagrees. The rationale for requiring full observer coverage on catcher/processors is outlined in the preamble to the proposed rule (77 FR 23329; April 18, 2012). This final rule includes three allowances for small catcher/processors to elect to be in the partial observer coverage category. Please see the section above called ''Allowances for Catcher/Processors'' for more information. Outside of these allowances, NMFS did not consider establishing a length threshold to distinguish between full and partial coverage categories.

Comment 79: If funding is limited for observers in the partial coverage category, it would be appropriate to maximize observer coverage on vessels using trawl gear and defer implementation of the program for most fixed gear vessels until EM is available to meet additional data collection needs form those fisheries.

Response: NMFS disagrees. Funding will always be limiting in the partial coverage sector for some objectives. Focusing observer coverage on trawl vessels in the partial coverage category would fail to meet the purpose and need of this action to obtain data from fisheries that are not otherwise available. Focusing observer coverage on trawl vessels would directly counter the clear intent of the Council to extend observer coverage to previously unobserved portions of the fleet, and reduce bias in those portions of the fleet that are subject to partial coverage under the previous Observer Program.

It is not clear if EM can meet most NMFS' objectives, or if it can do so in a cost effective manner. Currently, EM does not provide the information required to accurately assess discards at-sea or protected species interactions in a timely fashion, or have the ability to collect biological data. Deferring implementation of this final rule for the fixed gear fishery would not meet the purpose and need established for this action. Specifically, adopting the commenter's recommendation would not allow fishery managers to control when and where observers are deployed and would result in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data.

Comment 80: NMFS should dedicate a portion of the observer fees collected from the halibut and sablefish fleet to fund the development and implementation of EM. Some commenters asserted that 15 percent of the fees should be dedicated to the implementation of EM.

Response: NMFS is authorized to use observer fees collected under the authority of section 313 of the MSA for stationing observers and EM systems on board fishing vessels and U.S. fish processors. Observer fees across all fisheries will be pooled in one account and allocation of the fees between observers and EM will depend on the ability of observers or EM to meet information needs, and the respective cost of each. The amount dedicated may vary by year and could be less than or greater than the 15 percent allocation suggested by some commenters. NMFS may also add Federal appropriations to fund observers or EM and has done so with a fiscal year 2012 contribution of $4,200,000 for observers and $200,000 for EM development in Alaska. Development of EM in other NMFS regions also will help inform efforts in Alaska.

Comment 81: NMFS should use Federal tax dollars instead of observer fees to fund the development and implementation of EM.

Response: See response to Comment 81.

Comment 82: EM is a very promising technology that has obvious applications in the partial coverage category. However, it is appropriate that NMFS is not proposing to replace observers with EM at this time. More information is needed about how EM will collect the data that currently is collected by observers.

Response: NMFS acknowledges this comment.

Comment 83: NMFS should expand the proposed definition of EM to include other technologies that could be used on vessels that are incapable of carrying an observer. Electronic options to observers such as VMS, electronic logbooks, and various electronic data loggers have proven to be effective monitoring tools in other fisheries and are often less expensive, more readily available, and easier to maintain than camera-based systems. Data from such alternative systems could also assist the agency in its efforts to develop or refine observer deployment strategies to ensure that observer sampling in the

partial coverage category is representative of total effort.

Response: While NMFS did not propose a definition for ''electronic monitoring'' in the proposed rule, NMFS specifically referred to ''electronic video monitoring'' in the preamble to the proposed rule, which was intended to imply that ''electronic monitoring'' was synonymous with video monitoring. However, NMFS agrees that EM is a broad topic and a range of electronic tools exist that can be used to meet monitoring objectives. These tools range from simple position recording, to electronic logbooks, to camera systems integrated with other vessel sensors. The right combination of electronic and human observation tools will depend on the information needs of NMFS in any particular application balanced by costs. NMFS is investing in EM systems in 2013 and is considering a range of technologies.

Comment 84: VMS should be required on all vessels so that (a) NMFS knows where the entire fleet is fishing, not just the observed vessels; (b) vessel position is known enabling rescuers to better respond in the event of a vessel emergency; and (c) NOAA Office of Law Enforcement can cross-reference vessel position with observer reports.

Response: NMFS disagrees that VMS requirements should be added to this final rule. VMS requirements were not part of the restructured Observer Program recommended by the Council and are not necessary to meet the purpose of the restructured Observer Program. NMFS requires VMS on a number of vessels, and the Council and NMFS may consider expansion of VMS requirements in a future action.

Comment 85: The proposed rule defines ''observer'' as a human meeting certain qualifications; EM is completely missing from the definition. As a result, effective integration of EM will require additional Council action, analysis, and amendment of the Observer Program.

Response: NMFS acknowledges this comment.

Changes From the Proposed Rule

This final rule includes changes to particular sections of the regulatory text and amendatory instructions published in the proposed rule. These changes fall into four categories: (1) Changes to the proposed regulations in response to public comment, (2) revisions needed to accommodate changes made to 50 CFR part 679 by a rule published after the proposed rule for Amendments 86/76 was published, (3) additions of existing regulatory text inadvertently excluded in the proposed rule, and (4) minor editorial revisions and minor revisions to amendatory instructions.

NMFS reviewed the regulatory changes proposed by public comment and determined that the following 2 changes are a logical outgrowth from the proposed rule and, while relatively minor, these changes improve the functioning of the restructured Observer Program. Additional detail on why NMFS has made each change from proposed to final rule is provided in the response to the applicable comment. This final rule includes the following 2 changes to the proposed regulations in response to public comment:

1. For reasons explained in the response to Comment 40, NMFS amended the final rule to expand the ''fishing trip'' definition at § 679.2 to include a definition specific to catcher vessels delivering to tender vessels. A fishing trip for a catcher vessel delivering to a tender will start when the vessel departs from a port until that vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located. The provision specifying return to a port where a processor with a valid FPP is located is added to ensure that, if the vessel is observed, the vessel operator returns that observer to a port from which transportation is available. NMFS also revised § 679.51(a)(1) to include a new paragraph that requires a catcher vessel to make at least one delivery to a tender vessel to be subject to the fishing trip definition for catcher vessels delivering to tender vessels.

2. For reasons explained in the response to Comment 27, NMFS removed the proposed requirements at § 679.51(a)(1)(ii)(B) and (C) and § 679.7(g)(7) from this final rule. These deletions remove proposed regulations that would have required holders of FFPs issued after December 1 and operators of vessels fishing for IFQ or CDQ on vessels that had not landed groundfish or halibut in the previous year to enter their vessel information into ODDS within 30 days of issuance of a new FFP or within 30 days of embarking on his or her first fishing trip of the year. Removing § 679.51(a)(1)(ii)(B) and (C) required renumbering of § 679.51(a)(1)(ii) and correction of cross references to this paragraph in § 679.7(g)(7) and subpart E.

This final rule includes minor organizational changes that incorporate the Freezer Longline Monitoring and Enforcement (FLL M&E) final rule (77 FR 59053, September 26, 2012). The FLL M&E final rule modified equipment, operational, and observer coverage requirements for vessels named on an LLP license with a Pacific cod catcher/processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both the Bering Sea and Aleutian Islands. The FLL M&E final rule revised §§ 679.5, 679.7, 679.28, 679.32, and 679.50 and added a new § 679.100. The FLL M&E final rule was published after the Observer Program proposed rule. This Observer Program final rule restructures the Observer Program regulations and therefore must re-number applicable paragraphs from the FFL M&E final rule. If these changes were not made in this final rule, then the regulations would be inconsistent with the FFL M&E final rule, which would undermine the intent of that final rule and would be confusing to the regulated public. The revisions made in this Observer Program final rule to incorporate regulations implemented under the FLL M&E final rule are as follows:

1. Paragraph (a)(2)(vi)(E) is added to § 679.51. This paragraph includes the new observer coverage requirements for the longline catcher/processor subsector, which include a vessel option to carry two observers, or add flow scales and carry one observer. Text also is added to § 679.51(a)(2)(vi)(A)(*3*) to reflect the requirement, implemented in the FLL M&E final rule, that these same observer coverage requirements apply while these vessels are groundfish CDQ fishing.

2. In § 679.53(a)(5)(v)(C), the number of sets is changed from 60 to 30 to reflect the reduction in the minimum number of sets required for lead level 2 certification that was implemented by the FLL M&E final rule.

3. The proposed redesignation of § 679.32(c)(3)(ii)(G) is removed because this paragraph was removed by the FLL M&E final rule.

4. Associated cross references are revised.

This final rule adds the following regulatory text that currently exists in part 679 but was inadvertently omitted in the proposed rule. These omissions were not described in the proposed rule preamble because they were inadvertently omitted. NMFS received no comments on the omitted regulations, indicating that the public did not notice that the proposed rule proposed to remove these paragraphs of regulatory text. Therefore, regulated entities should expect that the inadvertently omitted paragraphs remain in Federal regulations. Failure to correct these omissions would remove regulations that NMFS intends, and the public expects, to remain in effect. Failure to correct these omissions would undermine the effectiveness of the Observer Program and create confusion for the regulated entities. In addition, if these omitted regulatory provisions are not included at this time, this final rule will be incorrect and NMFS would have to publish a correction notice. The revisions made in this Observer Program final rule to replace inadvertently omitted regulatory text are as follows:

1. § 679.5 (l)(7)(i)(E) was inadvertently omitted from the proposed revisions to § 679.5(l)(7)(i). This existing regulation defines the reporting period of the IFQ Buyer Report. No changes were proposed to this

paragraph in the proposed rule for Amendments 86/76.

2. Requirements that currently exist at § 679.50(c)(6)(i)(A) and (c)(7)(i)(C) state that at least one of the two observers required on Amendment 80 vessels, non-AFA trawl catcher/processors, and catcher/processors participating in the Rockfish Program be certified as a lead level 2 observer. These requirements for a lead level 2 observer in these fisheries were inadvertently excluded in the proposed rule. The proposed rule for Amendments 86/76 indicated that these requirements were intended to be included in the proposed rule. Specifically, on page 23329 of the proposed rule NMFS stated that ''[t]he proposed rule would not modify observer coverage, experience, or workload requirements at 50 CFR part 679.50 for * * * Amendment 80 vessels and non-AFA trawl catcher/processors, and Rockfish Program vessels.'' This is also consistent with Section 2.10.3 of the analysis that notes that these vessels continue to be subject to existing management requirements, these include the need for at least one lead level 2 observer. Therefore, in this final rule, NMFS adds the lead level 2 requirements in newly renumbered §§ 679.5l(a)(2)(vi)(C) and (D).

3. In § 679.5l, paragraphs (e)(1)(iv) through (e)(2)(iii)(B)(*2*), which are in current regulations as § 679.50(g)(1)(iv) through (g)(2)(iii)(B)(*2*), were inadvertently omitted from the renumbering of § 679.51 in the proposed rule. These paragraphs address responsibilities of vessel operators and shoreside processor or a stationary floating processor operators required to carry observers or maintain observer coverage. The proposed rule for Amendments 86/76 indicated that these requirements were intended to be included in the proposed rule. Specifically, on page 23345 of the proposed rule, NMFS stated that ''Regulations that are substantively unchanged by this proposed rule include responsibilities for vessels and shoreside and stationary floating processors required to carry an observer or maintain observer coverage* * *.'' Page 23345 of the preamble to the proposed rule also stated that ''many of the existing regulations in subpart E to 50 CFR 679 (subpart E) would not be modified by this proposed rule. However, revisions and additions under this proposed rule would result in the renumbering of all sections at Subpart E. As such, subpart E as it would be revised by this proposed rule is presented in its entirety in the regulatory text section. However, NMFS does not propose to amend regulations that are not within the scope of this proposed rule.'' This correction is consistent with the clear intent of the proposed rule, and corrects an error made when renumbering of Subpart E.

4. In § 679.52, paragraph (b)(5), which is in current regulations as § 679.50(i)(2)(v), was inadvertently omitted from the proposed rule. NMFS added paragraph (b)(5) to the final rule, renumbered paragraphs (b)(6) to (b)(13), and corrected associated cross references. This paragraph addresses the requirement for observer providers to respond to industry requests for observers.

5. This final rule corrects the removal of § 679.50(g)(2)(iv) from the Code of Federal Regulations (CFR) sometime between the October 2006 and October 2007 editions. This paragraph requires the manager of a shoreside processor or stationary floating processor to ''[a]llow observers free and unobstructed access to the shoreside processor's or stationary floating processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.'' These requirements were implemented in 1990 (55 FR 4839; February 12, 1990). The paragraph appears in the October 2006 edition of the CFR. However, in the October 2007 edition of the CFR, § 679.50(g)(2)(iv) no longer appears. No final rules implemented between October 2006 and October 2007 removed or revised this paragraph. Therefore, NMFS reinstates this paragraph to the CFR in this final rule as § 679.5l(e)(2)(iv).

This final rule includes the following minor editorial revisions and revisions to amendatory instructions:

1. The proposed rule at § 679.51(a)(1)(ii) defined a system for the registration and notification of observer deployment and called this system the ''Observer Declaration and Deployment System (Deployment System).'' In this final rule, NMFS has changed the name of the system to the ''Observer Declare and Deploy System (ODDS).''

2. The amendatory instructions in the proposed rule would have incorrectly removed paragraph (3) of the definition of mothership. This final rule has the correct amendatory instructions to remove and reserve paragraph (2) of the definition of ''Mothership.''

3. The amendatory instruction in the proposed rule for § 679.32(c)(3)(i)(A) proposed removing only the introductory text, but it should have proposed removing the entire paragraph. This paragraph contained operational requirements for catcher vessels without observers while groundfish CDQ fishing. As reflected in the proposed rule, the observer coverage requirements for these vessels is in new § 679.51, and the retention requirements are in new § 679.32(c)(3)(i)(A) and (D).

4. The correction to NMFS' Web site address in § 679.32(e) in the proposed rule is not included in the final rule because the Web site address has been revised.

Finally, regulations at 15 CFR 902.1(b) are amended to display the control number assigned by the Director of the Office of Management and Budget (OMB) for the collection-of-information imposed by this rule. Section 3507(c)(B)(i) of the Paperwork Reduction Act requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued.

Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the MSA, the Northern Pacific Halibut Act of 1982, and other applicable laws.

Executive Order 12866

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

Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (FRFA) addresses the requirements of section 604(a) of the Regulatory Flexibility Act. An initial regulatory flexibility analysis (IRFA) was prepared and summarized in the Classification section of the preamble to the proposed rule (**ADDRESSES**). Pursuant to Section 604(a), A FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (*e.g.,* user group, gear

type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Action

The need for, and objectives of, this action are described in an earlier section of the preamble titled ''Need for and Objectives of the Action,'' and this description is not repeated here.

Summary of Significant Issues Raised During Public Comment

The proposed rule was published on April 18, 2012 (77 FR 23326), and was accompanied by an IRFA prepared pursuant to Section 603 of the Regulatory Flexibility Act. The comment period on the proposed rule ended on June 18, 2012. In addition, pursuant to section 313 of the MSA, NMFS conducted public hearings on the proposed rule in Oregon, Washington, and Alaska during the public comment period on the proposed rule.

NMFS received 85 unique comments on the proposed rule and the analysis. The comments and NMFS' responses are summarized earlier in this final rule. Comments with reference to the impact of the proposed action on directly regulated small entities, or to the IRFA, cover the following topics: (a) Integrating small entities into the program (Comment 4); (b) safety concerns for small vessels (Comments 12 through 16); (c) using electronic monitoring as an alternative because of cost, safety, or other benefits to small entities, or to comply with the Regulatory Flexibility Act (Comments 19, 68, 70 through 73, 76, and 78); (d) releasing or exempting vessels from observer coverage (Comments 43 through 45, 47, 53, and 54); (e) applying reduced observer coverage requirements to small catcher/processors (Comments 50, and 51); (f) analyzing and modifying the action to reduce costs for small entities (Comments 37, 40, 42, and 62); (g) relating the size of the observer recovery fee to vessel gross revenues (Comment 58); and (h) considering the impact of vessel selection pool observer coverage requirements on small vessels (Comments 33 through 35). None of these comments required NMFS make changes from the proposed to the final rule.

NMFS is addressing the majority of the concerns expressed by small entities through outreach and communication about the restructured Observer Program. Additionally, NMFS addressed many of the concerns expressed in public comments in the 2013 Observer Program Annual Deployment Plan. Specifically, through the annual deployment plan process, NMFS removed small fixed gear vessels from the vessel selection pool and reduced the amount of time a vessel in the vessel selection pool will be required carry an observer from 3 months to 2 months. NMFS made these changes in direct response to concerns by small entites.

This final rule includes changes to the regulatory text and amendatory instructions published in the proposed rule. These changes fall into four categories: (1) Changes to the proposed regulations in response to public comment, (2) revisions needed to accommodate changes made to 50 CFR part 679 by a rule published after the proposed rule for Amendments 86/76 was published, (3) additions of existing regulatory text inadvertently not included in the proposed rule, and (4) minor editorial revisions and minor revisions to amendatory instructions. These changes are described in detail in the section of this preamble titled ''Changes from the Proposed Rule'' which immediately precedes this classifications section; that description is not repeated here.

Number and Description of Directly Regulated Small Entities

For purposes of an FRFA, the U.S. Small Business Administration has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business ''involved in fish harvesting'' is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations, worldwide. A more detailed explanation of the size criteria may be found in the IRFA prepared for this action (**ADDRESSES**).

This final action would directly regulate entities that harvest or process groundfish and halibut in Federal waters of the BSAI and GOA and vessels holding an FFP and harvesting groundfish in State waters that are accounted for under a Federal TAC. This specifically includes landings of (1) groundfish in the parallel fisheries in State waters, as that term is defined at § 679.2, (2) groundfish incidental to harvest in State Guideline Harvest Level fisheries (Pacific cod, pollock, sablefish), and (3) groundfish incidental to harvest of halibut or sablefish IFQ in State waters. The six CDQ groups in the BSAI will also be directly regulated by this action. Refer to the RIR for detailed descriptions of each fishing sector by area, gear type, and program (see **ADDRESSES**).

A total of 1,775 entities (including catcher vessels, catcher/processors, motherships, shoreside processors, stationary floating processors, and CDQ groups) are estimated to be directly regulated by this final action. Of the directly regulated entities, 80 are estimated to be large. The table below (Table 1) summarizes all of the potentially directly regulated small entities, by sector, under this final action. Table 1 uses data from 2008, the same year used to assess the impact on directly regulated entities in the IRFA. Table 1 likely overestimates the number of directly regulated small entities. NMFS does not have access to data on ownership and other forms of affiliation for most segments of the fishing industry operating off Alaska. Absent these data, a more precise characterization of the size composition of the directly regulated entities impacted by this action cannot be offered. A more detailed description on the information and methods used to estimate the number of small entities is also provided in the IRFA prepared for the proposed rule and is not repeated here (see **ADDRESSES**).

Table 1. Estimated number of small entities potentially directly regulated by this final action based on 2008 landings data. The total number of entities is additive such that a vessel or processor cannot appear in more than one category.

Sector	Estimated number of small entities
Halibut & sablefish IFQ [1]	1,411
Groundfish catcher vessels [2]	125
Groundfish catcher/processors [2]	6
Motherships [3]	1
Shoreside processors & stationary floating processors	146
CDQ groups	6

[1] Includes any vessel that fished halibut IFQ, sablefish IFQ, or halibut CDQ. An estimated 761 of these vessels also fished groundfish.

[2] Groundfish catcher vessel and catcher/processor data represent an estimate of the number of vessels that fished groundfish and did not fish halibut or sablefish IFQ.

[3] Catcher/processors that acted as a catcher/processor and a mothership during 2008 are included in the catcher/processor category. The mothership category includes vessels that only operated as a mothership in 2008.

Recordkeeping and Reporting Requirements

This final rule requires operators of vessels subject to the trip selection pool in the partial observer coverage category to register with ODDS at least 72 hours prior to embarking on a fishing trip to fish for halibut or directed fish for groundfish (see regulations at § 679.51(a)). Operators of vessels in the vessel selection pool are required to coordinate with NMFS' observer provider as described in the instructions provided by the ODDS to arrange for observer coverage when the vessel is selected for coverage. No new reporting requirements apply to operators of vessels in the full observer coverage category or operators of shoreside processors and stationary floating processors to obtain required observer coverage.

Landings information submitted by managers of shoreside processors and stationary floating processors under existing recordkeeping and reporting regulations are used to assess the observer fee liability for each landing. Managers of shoreside processors and stationary floating processors can access reports generated by NMFS' web-based application for a statement of the observer fee liability associated with each landing.

This final rule modifies § 679.5 to add a reporting requirement for IFQ Registered Buyers. Registered buyers who purchase CDQ halibut are required to report annually, the monthly total weight of CDQ halibut landed and purchased by the Registered Buyer, the monthly total price paid for CDQ halibut purchased by the Registered Buyer, and the monthly total amount paid for any retro-payments of CDQ halibut. Existing recordkeeping and reporting requirements for IFQ Registered Buyers continue to apply.

This final rule modifies reporting requirements applicable to IFQ Registered Buyers at § 679.5(l)(7)(i). This final rule requires that the IFQ Register Buyer submit the information instructed on the report form, instead of listing all of the data fields at § 679.5(l)(7)(i)(C)(*1*). This final rule revises regulations at § 679.5(l)(7)(i) to instruct a Registered Buyer to submit his or her completed report to the address provided on the report form. This final action removes the mailing address listed in regulation at § 679.5(l)(7)(i)(D) to allow for current address information to be provided on the form, rather than in regulation.

This final rule requires that all vessels selected for observer coverage pass a USCG Commercial Fishing Vessel Safety Examination and document that process with a U.S. Coast Guard Safety Decal prior to an observer boarding the vessel. A partial exemption may be allowed for vessels less than 26 ft. LOA in remote locations. This inspection is a new requirement for vessels less than 60 ft. LOA. These requirements are detailed in U.S. Coast Guard Regulations at 33 CFR Chapter I and 46 CFR Chapter I.

No professional skills are necessary for the vessel or trip selection requirement or for scheduling the safety inspection. Limited professional skills would be necessary for preparation and submittal of the ex-vessel fees to NMFS, as NMFS would invoice the processor with the total amount.

Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

The Council considered five alternatives for this action, one no-action and four action alternatives, and two options that could apply to the action alternatives. A complete description of these alternatives and the impacts of these alternatives is provided in the analysis prepared for this final action and is briefly summarized here (see **ADDRESSES**). Alternative 1 is the status quo; Alternative 2 restructured observer coverage for vessels and processors in the GOA, and for vessels less than 60 ft. LOA and those fishing halibut IFQ in the BSAI; Alternative 3 restructured observer coverage for those vessels and processors that were required to have less than 100 percent observer coverage, and retained the existing management system for those vessels and processors required to have 100 percent or greater coverage; Alternative 4 restructured coverage requirements for all vessel and processor operations, required a daily fee for those operations required to have 100 percent or greater coverage, and an ex-vessel value fee for those operations required to have less than 100 percent coverage; Alternative 5 restructured coverage for all vessels and processors, and established an ex-vessel fee to fund the program.

The Council also considered two options under the four action alternatives to establish fees. The first option considered establishing a 1.25 percent ex-vessel fee on vessel revenues to fund the program, the second option would have established a 1.25 percent ex-vessel fee, but provide that smaller vessels would be subject to a lesser fee.

The preferred alternative, Alternative 3, was determined to best meet the purpose and need for the proposed action, and the objectives of the restructured program outlined in the problem statement. Alternative 3 modifies observer deployment for all operations currently receiving less than 100 percent observer coverage, including vessels participating in the less than 60 ft. LOA groundfish sector and the halibut sector. The analysis clearly identifies those sectors as the sectors with the most acute data quality concerns, lack of adequate data, and disproportionate costs for observer coverage relative to other fishing sectors. By comparison, Alternative 2 only restructures the observer program for the GOA groundfish and halibut fisheries and the vessels in the less than 60 ft. groundfish sector and halibut sector in the BSAI. Under this alternative, the 30 percent coverage requirements would still apply for vessels operating in the BSAI that are currently subject to the 30 percent requirement. Thus, Alternative 2 does not capture all of the sectors that have less than 100 percent observer coverage requirements as is the case under Alternative 3. Alternative 4 is similar to Alternative 3, except that it increases costs to vessel operators, relative to Alternatives 2 and 3 by requiring they pay a daily fee to NMFS, instead of observer providers. The analysis indicates that Alternative 4 does not provide additional observer coverage compared to Alternative 3 for this additional cost. Alternative 5 does not appear to provide sufficient revenue to meet the same level of observer coverage that is estimated to be provided under Alternative 3.

All of the action alternatives included assessing a fee and deploying observers on halibut vessels and vessels less than 60 ft. LOA in the GOA and the BSAI, which are likely to comprise the majority of the small entities affected by this rule. Impacts of this fee and observer coverage on small entities are described in Section 5 of the analysis (see **ADDRESSES**). During deliberations on the preferred alternative implemented by this final rule (Alternative 3), the Council was concerned with minimizing impacts to small entities, providing equity within the program, and increasing data quality, by including small vessels and halibut vessels in the Observer Program for the first time. No significant alternatives to this final action that meet the purpose and need and objectives for the action have been identified. This final rule and the 2013 Observer

Program Annual Deployment plan include several provisions that are intended to reduce economic impacts on small entities.

Observer deployment among vessels in the partial coverage category differs for the smallest vessels. In the initial year(s) of the restructured program, NMFS proposes that catcher vessels using jig gear and catcher vessels less than 40 ft. LOA using pot or hook-and-line gear would not be selected to carry an observer. NMFS estimates that all of these vessels are likely to be small entities. Catcher vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA using pot or hook-and-line gear would be in the vessel selection pool. Vessels in the vessel selection pool could be randomly selected to carry an observer for a specified period of time. Vessels in the ''no selection'' pool would be required to pay the fee for landings subject to the new program, though they would not incur other direct or indirect costs of carrying an observer to the same extent as operators of vessels with higher probability of selection.

This final rule includes a provision that limits observer coverage requirements, and associated costs, for some small catcher/processors. Under the preferred alternative implemented by this rule, all catcher/processors would be placed in the full coverage category and operate under the status quo system funding and deployment system. Thus, groundfish and halibut catcher/processors less than 60 ft. LOA that have not been subject to observer coverage requirements would now be required to have 100 percent coverage under direct contracts with observer providers. An exception to this requirement to allows operators of catcher/processor vessels less than 60 ft. LOA with a history of operations as a catcher/processor and catcher vessel in a single year, or any catcher/processor vessel with an average daily production of less than 5,000 pounds in the most recent full calendar year of operation prior to January 1, 2010, to make a one-time election to be in the partial observer coverage category with the ex-vessel revenue fee structure or the full observer coverage category with the status quo funding system. This limited exemption to the full coverage requirements could reduce costs on these catcher/processors, so long as they elect to be in the partial coverage category.

The Council selected a 1.25 percent ex-vessel fee for all vessels and processors subject to the new funding and deployment system. Under the authority of section 313 of the MSA, the Council could have recommended a maximum of a 2 percent fee on all vessels and processors subject to a fee under the Observer Program. The Council chose a fee of 1.25 percent of ex-vessel value to balance the costs of vessel and processors operations with the amount necessary to collect adequate data in the partial coverage category.

The Council considered, but did not adopt, an option that would establish an ex-vessel value fee equal to half of that selected under the preferred alternative to be assessed on all halibut IFQ landings and on groundfish landings from vessels less than 40 ft., less than 50 ft., or less than 60 ft. LOA. An estimated 61 groundfish catcher vessels less than 60 ft. LOA and almost the entire IFQ fleet (great than 1,400 vessels) would have been assessed a reduced fee under this option, based on 2008 data. However, the Council chose to apply the same fee percentage to all sectors in the partial observer coverage category, to develop a fair and equitable fee program across all sectors subject to the new funding and deployment system. Because the Council selected, and this final rule implements, a 1.25 percent ex-vessel fee for all vessels and processors subject to the new funding and deployment system, all small entities, regardless of the sector in which they participate, will benefit from a reduced fee relative to the maximum 2 percent fee that was under consideration.

With the exception of the provisions discussed above, there do not appear to be significant alternatives to the proposed action that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize the economic impact of the proposed rule on small entities. The Council recognized that costs of observer coverage could be minimized or eliminated for small entities (indeed, entities of all sizes) through a Federal subsidy program for observer coverage in the North Pacific, similar to federally funded observer subsidy programs in other regions of the United States. However, because the Council cannot appropriate Federal funds, an alternative for full Federal funding of observer coverage in the North Pacific was not included by the Council.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*) as a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The collections are listed below by OMB control number.

OMB Control No. 0648–0206

Public reporting burden per response is estimated to average 21 minutes for Federal Processor Permit application; and 21 minutes for Federal Fisheries Permit application.

OMB Control No. 0648–0272

Public reporting burden per response is estimated to average 30 minutes for Registered Buyer Permit application.

OMB Control No. 0648–0318

Public reporting burden per response is estimated to average 30 minutes for Observer Fee and receipt of the observer fee liability generated with each landing; 2 hours for registration with the Observer Declare and Deploy System; 4 hours for appeals; 60 hours for Application for an observer provider permit; 30 minutes for Industry request for assistance in improving observer data quality issues; 60 hours for Application for an observer provider permit;15 minutes for Update to provider information; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer candidate; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer provider; 5 minutes for Notification of observer physical examination, Observer Providers; 7 minutes for Projected observer assignments; 7 minutes for Observer briefing registration; 40 hours for Observer Conduct and Behavior policy; 15 minutes for Copies of contracts; 30 minutes for Copies of invoices; 7 minutes for Observer deployment/logistics reports; 7 minutes for Observer debriefing registration; 12 minutes for Certificate of insurance; 2 hours for

Other reports concerning observer harassment, safety concerns, or other factors that may affect the completion of an observer's duties.

OMB Control No. 0648–0398

Public reporting burden per response is estimated to average 2 hours for Registered Buyer Ex-vessel Value and Volume Report (Buyer Report).

Public reporting burden includes 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 this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 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, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR:''

■ a. Add an entry in alphanumeric order for ''679.7(a)(3)'';

■ b. Add an entry in alphanumeric order for ''679.7(g)'';

■ c. Remove entry for ''679.32(c) and (e)'';

■ d. Add an entry in alphanumeric order for ''679.32(c)(1) and (2)'';

■ e. Add an entry in alphanumeric order for '679.32(c)(3)'';

■ f. Revise entry for ''679.32(d)'';

■ g. Add an entry in alphanumeric order for ''679.32(e)'';

■ h. Remove entry for ''679.50'';

■ i. Add an entry in alphanumeric order for ''679.50(a)''; and

■ j. Add entries for ''679.51''; ''679.52''; ''679.53''; ''679.54''; and ''679.55.''

The additions and revisions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	* * *
50 CFR:	
* * * *	* * *
679.7(a)(3)	–0318
* * * *	* * *
679.7(g)	–0318
* * * *	* * *
679.32(c)(1) and (2)	–0318
679.32(c)(3)	–0269 and –0318
679.32(d)	–0269, –0318, and –0330
679.32(e)	–0269
* * * *	* * *
679.50(a)	–0206, –0269, and –0272
679.51	–0206, –0269, –0272, –0318, –0401, –0513, –0545, –0565
679.52	–0318
679.53	–0318
679.54	–0318
679.55	–0206, –0272, –0318
* * * *	* * *

TITLE 50—WILDLIFE AND FISHERIES

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

■ 4. In § 679.1, revise paragraph (f) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(f) *Groundfish and Halibut Observer Program.* Regulations in this part govern elements of the Groundfish and Halibut Observer Program.

* * * * *

■ 5. In § 679.2,

■ a. Remove the definitions for ''Fishing day'' and ''Legal proceedings'';

■ b. Remove and reserve paragraph (2) of the definition for ''Mothership'';

■ c. Revise the definitions for ''Catcher/processor (C/P),'' ''Decertification,'' paragraph (3) of ''Fishing Trip,'' and ''Observer''; and

■ d. Add a definition for ''Parallel groundfish fishery'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Catcher/processor (C/P) means, with respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and processing that fish.

* * * * *

Decertification, as used in § 679.53(c), means action taken by a decertifying official under § 679.53(c)(3) to revoke certification of an observer or observer provider. An observer or observer provider whose certification is so revoked is decertified.

* * * * *

Fishing Trip means: * * *

* * * * *

(3) *Groundfish and Halibut Observer Program.* With respect to subpart E of this part, one of the following periods:

(i) For a catcher vessel delivering to a shoreside processor or stationary floating processor, the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel.

(ii) For a catcher vessel delivering to a tender vessel, the period of time that begins when a catcher vessel departs from port to harvest fish until the vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located.

* * * * *

Observer means any

(1) Individual employed by a permitted observer provider or a NMFS observer provider for the purpose of serving in the capacity of an observer aboard vessels and at shoreside processors or stationary floating processors under this part; or

(2) NMFS employee deployed at the direction of the Regional Administrator or individual authorized by NMFS, aboard a vessel or at a shoreside processor or stationary floating processor for the purpose of serving in the capacity of an observer as required for vessels, shoreside processors, or stationary floating processors under § 679.51(a) or (b), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

* * * * *

Parallel groundfish fishery. With respect to subpart E of this part, parallel groundfish fishery means a fishery that occurs in waters of the State of Alaska (from 0 to 3 nm) adjacent to the BSAI or GOA management areas and opens concurrently with Federal groundfish fisheries such that groundfish catch is deducted from the Federal Total Allowable Catch.

* * * * *

■ 6. In § 679.4,

■ a. Redesignate paragraphs (d)(3)(iv) and (d)(3)(v) as paragraphs (d)(3)(v) and (d)(3)(vi), respectively;

■ b. Revise paragraph (d)(3)(iii), newly redesignated (d)(3)(v), and paragraphs (f)(1) and (f)(2); and

■ c. Add a new paragraph (d)(3)(iv) to read as follows:

§ 679.4 Permits.

* * * * *

(d) * * *

(3) * * *

(iii) A Registered Buyer permit is issued on an annual cycle defined as March 1 through the end of February of the next calendar year, to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) For the Registered Buyer application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(v) A Registered Buyer permit is in effect from the first day of March in the year for which it is issued or from the date of issuance, whichever is later, through the end of the current annual cycle, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

* * * * *

(f) * * *

(1) *Requirement.* No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at paragraph (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI unless the owner obtains a Federal processor permit (FPP) issued under this part. An FPP is issued without charge.

(2) *FPP application.* To obtain, amend, or renew an FPP, the owner must complete an FPP application per the instructions at *http://alaskafisheries.noaa.gov/ram.*

(i) For the FPP application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(ii) *Signature.* The owner or authorized representative of the owner of the shoreside processor, stationary floating processor, or CQE floating processor must sign and date the application, certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, proof of authorization must accompany the application.

* * * * *

■ 7. In § 679.5, revise paragraph (l)(7)(i) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(*7*) * * *

(i) *IFQ Registered Buyer Ex-vessel Volume and Value Report (IFQ Buyer Report)*—(A) *Applicability.* An IFQ Registered Buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut or CDQ landings of halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this paragraph (1) and as provided by NMFS for each reporting period, as described at paragraph (l)(7)(i)(E) of this section, in which the Registered Buyer receives IFQ fish or CDQ halibut.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish or CDQ halibut.

(C) *Information required.* A complete IFQ Buyer Report must include the following information as instructed on the report form at *http://alaskafisheries.noaa.gov/ram:*

(*1*) *IFQ Registered Buyer identification.*

(*2*) *Pounds purchased and values paid.* (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(*3*) *Value paid for price adjustments*—(*i*) *Retro-payments.* The monthly total U.S. dollar amount of any retro-payments (correlated by IFQ species or CDQ halibut, landing month(s), and month of payment) made in the current year to IFQ, or to CDQ halibut permit holders for landings made during the previous calendar year;

(*ii*) *Electronic submittal.* Certification, including the NMFS ID and password of the IFQ Registered Buyer; or

(*iii*) *Non-electronic submittal.* Certification, including the printed name and signature of the individual

submitting the IFQ Buyer Report on behalf of the Registered Buyer, and date of signature.

(D) *Submittal.* If applicable, the Registered Buyer must complete an IFQ Buyer Report and submit by mail or FAX to NMFS at the address provided on the form, or electronically to NMFS online at *http://alaskafisheries.noaa.gov/ram.*

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

* * * * *

■ 8. In § 679.7,

■ a. Redesignate paragraph (g)(7) as (g)(8);

■ b. Revise paragraph (a)(3) and paragraph (g) heading; and

■ c. Add a new paragraph (g)(7) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(3) *Groundfish and Halibut Observer Program.* (i) Fish or process groundfish except in compliance with the terms of the Groundfish and Halibut Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by a NMFS employee or other individuals authorized by NMFS under § 679.51(c) or § 679.51(d)(1)(ii), deploy observers in the full observer coverage category at § 679.51(a)(2) and (b)(2) without an observer provider permit issued under § 679.52(a).

* * * * *

(g) *Groundfish and Halibut Observer Program.* * * *

* * * * *

(7) Embark on a fishing trip to directed fish for groundfish or to fish for halibut with hook-and-line gear without carrying an observer if the fishing trip is selected for observer coverage per § 679.51(a)(1)(ii)(C)(*2*), or the vessel is selected for observer coverage per § 679.51(a)(1)(ii)(D).

* * * * *

■ 9. In § 679.32,

■ a. Revise the section heading;

■ b. Remove paragraphs (c)(1) introductory text, (c)(3)(i)(A), and (c)(3)(ii)(A);

■ c. Redesignate paragraphs according to the following table;

Redesignate paragraph(s)	As paragraph(s)
(c)(1)(i)	(c)(1)(ii)(A).
(c)(1)(ii)	(c)(1)(ii)(B).
(c)(3)(i)(B) through (c)(3)(i)(F)	(c)(3)(i)(A) through (c)(3)(i)(E), respectively.
(c)(3)(ii)(B) through (c)(3)(ii)(F)	(c)(3)(ii)(A) through (c)(3)(ii)(E), respectively.

■ d. Revise newly redesignated paragraphs (c)(3)(i)(A) heading, (c)(3)(i)(A)(*1*), (c)(3)(i)(B)(*1*), (c)(3)(i)(C)(*1*), (c)(3)(i)(D), and (c)(3)(i)(E)(*1*);

■ e. Revise paragraphs (c)(2)(i)(A) and (d)(2)(i); and

■ f. Add paragraphs (c)(1)(i), (c)(1)(ii) heading and introductory text, and (d)(1)(iii) to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) * * *

(i) *Observer coverage.* Operators and owners of catcher vessels sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(1). Operators and owners of catcher/processors sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(2).

(ii) *Data sources used for CDQ catch accounting.* NMFS will use the following data sources to account for catch made by vessels sablefish CDQ fishing with fixed gear:

(2) * * *

(i) * * *

(A) Comply with observer coverage requirements at § 679.51(a)(2).

* * * * *

(3) * * *

(i) * * *

(A) *Catcher vessels using trawl gear and delivering sorted catch to a processor.* * * *

(*1*) Comply with the observer coverage requirements at § 679.51(a)(2).

* * * * *

(B) * * *

(*1*) Comply with the observer coverage requirements at § 679.51(a)(2).

* * * * *

(C) * * *

(*1*) Comply with the observer coverage requirements at § 679.51(a)(2).

* * * * *

(D) *Observed catcher vessels using nontrawl gear.* Operators of vessels in this category must retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4, discard of the groundfish CDQ or PSQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. All of the halibut PSQ must be counted and sampled for length or weight by the observer.

(E) * * *

(*1*) Operators of catcher/processors using hook-and-line gear must comply with § 679.100. Operators of catcher/processors using pot gear must comply with observer coverage requirements at § 679.51(a)(2)(vi)(A)(*4*); and

* * * * *

(d) * * *

(1) * * *

(iii) Comply with observer coverage requirements at § 679.51(b)(2).

(2) * * *

(i) Comply with observer coverage requirements at § 679.51(b)(1).

* * * * *

■ 10. Under part 679, revise subpart E heading to read as follows:

Subpart E—Groundfish and Halibut Observer Program

■ 11. Revise § 679.50 to read as follows:

§ 679.50 Applicability.

(a) *General.* (1) The operator of a vessel designated or required to be designated on a Federal fisheries permit (FFP) under § 679.4(b); the operator of a processor designated or required to be designated on a Federal processor permit (FPP) under § 679.4(f)(1) or a Registered Buyer permit under § 679.4(d)(3); and the operator of a vessel used to harvest IFQ halibut, CDQ halibut, or IFQ sablefish must comply with this subpart. The owner of a vessel or a shoreside processor must ensure that the operator or manager complies with this subpart.

(2) *Exceptions.* A catcher vessel that delivers only unsorted codends to a mothership is not subject to the requirements of this subpart.

(3) For purposes of this subpart, halibut means CDQ and IFQ halibut.

(b) [Reserved]

■ 12. A new § 679.51 is added to Subpart E to read as follows:

§ 679.51 Observer requirements for vessels and plants.

The table in paragraph (f) of this section provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs. (a) *Observer requirements for vessels*—(1) *Groundfish and halibut fishery partial observer coverage category*—(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels are in the partial observer coverage category when fishing for halibut with hook-and-line gear or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) A catcher vessel designated on an FFP under § 679.4(b)(1); or

(B) A catcher vessel when fishing for halibut with hook-and-line gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i), § 679.4(d)(2)(i), or § 679.4(e)(2), or for sablefish IFQ with hook-and-line or pot gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i) or § 679.4(d)(2)(i).

(ii) *Registration and notification of observer deployment.* The Observer Declare and Deploy System (ODDS) is the communication platform for the partial observer coverage category by which NMFS receives information about fishing plans subject to randomized observer deployment. Vessel operators provide fishing plan and contact information to NMFS and receive instructions through ODDS for coordinating with an observer provider for any required observer coverage. Access to ODDS is available through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

(A) *Registration.* NMFS will enter information into ODDS about all partial coverage category vessels that are designated on an FFP and all catcher vessels that are not designated on an FFP but that landed sablefish IFQ or halibut IFQ or CDQ in the previous or current year. Owners or operators are not responsible for initial registration of their vessel in ODDS.

(B) *Notification.* Upon entry into ODDS, NMFS will notify the owner or operator as to whether his or her vessel is entered in either a ''vessel'' or ''trip'' selection pool. Owners and operators must comply with all further instructions set forth by ODDS.

(C) *Trip selection pool.* (*1*) A minimum of 72 hours prior to embarking on each fishing trip, the operator of a vessel in the trip selection pool must register the anticipated trip with ODDS.

(*2*) When a fishing trip is registered with ODDS per paragraph (a)(1)(ii)(C)(*1*) of this section, the vessel operator will be notified by ODDS whether the trip is selected for observer coverage and a receipt number corresponding to this notification will be provided by ODDS. Trip registration is complete when the vessel operator receives a receipt number.

(*3*) An operator may embark on a fishing trip registered with ODDS:

(*i*) *Not selected trip.* At any time if ODDS indicates that the fishing trip is not selected for observer coverage.

(*ii*) *Selected trip.* When an observer is aboard the vessel if ODDS indicates that the fishing trip is selected for observer coverage.

(*4*) *Delayed trip.* A selected fishing trip not embarked upon within 48 hours of the time specified in the registration with ODDS is invalidated. The operator must register any new trip in accordance with paragraph (a)(1)(ii)(C)(*1*) of this section.

(*5*) *Observer coverage duration.* If selected, a vessel is required to carry an observer for the entire fishing trip.

(*i*) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded and an observer is aboard the vessel.

(*ii*) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.

(*iii*) A vessel must make a minimum of one delivery to a tender vessel to be subject to paragraph (3)(ii) of the fishing trip definition at § 679.2.

(D) *Vessel selection pool.* (*1*) A vessel selected for observer coverage is required to have an observer on board for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) of this section for the time period indicated by ODDS.

(*2*) At its discretion, NMFS may provide electronic monitoring equipment to a vessel owner or operator to use on a vessel. A vessel owner or operator must coordinate with NMFS to make the vessel available for evaluation and installation of electronic monitoring equipment if NMFS determines that electronic monitoring is appropriate.

(iii) *Release from observer coverage.* The Observer Program may release a selected trip per paragraph (a)(1)(ii)(C) of this section or a selected vessel per paragraph (a)(1)(ii)(D) of this section, from observer coverage on a case-by-case basis.

(2) *Groundfish and halibut fishery full observer coverage category*—(i) *Vessel classes in the full coverage category.* The following classes of vessels are in the full observer coverage category when harvesting halibut or when harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) Catcher/processors;

(B) Motherships; and

(C) Catcher vessels while:

(*1*) Directed fishing for pollock in the BS;

(*2*) Using trawl gear or hook-and-line gear while groundfish CDQ fishing (see § 679.2); or

(*3*) Participating in the Rockfish Program.

(ii) *Observer coverage requirements.* Unless subject to the partial observer coverage category per paragraph (a)(1)(i) of this section, a vessel listed in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer aboard the vessel at all times. Some fisheries require additional observer coverage in accordance with paragraph (a)(2)(vi) of this section.

(iii) *Observer workload.* The time required for an observer to complete sampling, data recording, and data communication duties per paragraph (a)(2) of this section may not exceed 12 consecutive hours in each 24-hour period.

(iv) *Catcher/processor classification.* (A) For purposes of this subpart, a vessel is classified as a catcher/processor according to the operation designation on its FFP. A vessel designated as a catcher/processor at any time during the calendar year is classified as a catcher/processor for the remainder of the calendar year.

(B) An owner or operator of a catcher/processor that processes no more than one metric ton round weight of groundfish on any day, may be included in the partial observer coverage category in lieu of the full coverage category for the following calendar year.

(v) *One-time election of observer coverage category.* The owner of a vessel less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year from January 1, 2003, through January 1, 2010; or any catcher/processor with an average daily groundfish production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, to January 1, 2010, may make a one-time election as to whether the vessel will be in the partial observer coverage category at paragraph (a)(1) of this section, or the full observer coverage category at

paragraph (a)(2) of this section. The daily groundfish production average is based on the number of days the vessel operated each year from January 1, 2003, through January 1, 2010.

(A) *Notification of election.* The person named on the FFP for a vessel eligible for the one-time election must notify the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, of their election in writing, at least 30 days prior to embarking on his or her first fishing trip.

(B) *Default coverage category.* If an owner forgoes the opportunity for the one-time election, the vessel will be assigned to the partial or full observer coverage category per paragraphs (a)(1)(i) or (a)(2)(i) of this section.

(C) *Effective duration.* The one-time election is effective for:

(*1*) The duration that both the catcher/processor and catcher vessel designations are listed on the FFP for vessels less than 60 ft. LOA; or

(*2*) The duration the FFP is issued to the person named on the FFP at the time of the election for catcher/processors with an average daily production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, through January 1, 2010.

(vi) *Additional observer requirements*—(A) *CDQ fisheries.* The owner or operator of a vessel must comply with the following requirements each day that the vessel is used to catch, process, deliver, or receive CDQ groundfish.

(*1*) *Catcher/processors using trawl gear and directed fishing for pollock CDQ in the BSAI and motherships taking deliveries from catcher vessels directed fishing for pollock CDQ in the BSAI.* See paragraph (a)(2)(vi)(B)(*2*) of this section.

(*2*) *Catcher/processors using trawl gear and groundfish CDQ fishing.* See paragraph (a)(2)(vi)(C) of this section.

(*3*) *Catcher/processors using hook-and-line gear and groundfish CDQ fishing.* See paragraph (a)(2)(vi)(E) of this section.

(*4*) *Catcher/processors using pot gear for groundfish CDQ fishing.* A catcher/processor using pot gear must have at least one lead level 2 observer aboard the vessel. More than one observer must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(*5*) *Motherships.* A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two level 2 observers aboard the mothership, at least one of whom must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(B) *BSAI pollock fisheries*—(*1*) *Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(*2*) *Pollock CDQ catcher/processors and motherships.* The owner or operator of a catcher/processor or mothership used to catch, process, or receive pollock CDQ must comply with the observer coverage requirements in paragraph (a)(2)(vi)(B)(*1*) of this section for each day that the vessel is used to catch, process, or receive pollock CDQ.

(*3*) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must have aboard at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

(*4*) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(C) *Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI.* All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have aboard at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery. At least one observer must be certified as a lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(D) *Catcher/processors participating in the Rockfish Program*—(*1*) *Rockfish cooperative.* A catcher/processor that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CQ permit must have at least two observers aboard for each day that the vessel is used to catch or process fish in the Central GOA from May 1 through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration. At least one observer must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(*2*) *Rockfish sideboard fishery for catcher/processors in a rockfish cooperative.* A catcher/processor that is subject to a sideboard limit as described under § 679.82(e) must have at least two observers aboard for each day that the vessel is used to harvest or process fish in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31. At least one observer must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(E) *Longline catcher/processor subsector.* The owner and operator of a catcher/processor subject to § 679.100(b) must comply with the following observer coverage requirements:

(*1*) *Increased observer coverage option.* If the vessel owner selects the increased observer coverage option under § 679.100(b)(1), at least two observers must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. At least one of the observers must be certified as a lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(*2*) *Scales option.* If the vessel owner selects the scales option under § 679.100(b)(2), one lead level 2 observer must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

(b) *Observer requirements for shoreside processors and stationary*

floating processors—(1) *Shoreside processor and stationary floating processor partial observer coverage category.* (i) Unless otherwise specified in paragraph (b)(2) of this section, a shoreside processor or a stationary floating processor designated or required to be designated on an FPP under § 679.4(f)(1) is in the partial observer coverage category when receiving or processing groundfish harvested in federally managed or parallel groundfish fisheries, as defined at § 679.2.

(ii) *Coverage.* The manager of a shoreside processor or stationary floating processor must provide observers access to unsorted and sorted catch any time an observer is present at the facility.

(2) *Shoreside processor and stationary floating processor full observer coverage category.* An AFA inshore processor is in the full observer coverage category.

(i) *Coverage level.* An AFA inshore processor must provide an observer for each 12 consecutive-hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BS. An AFA inshore processor that, for more than 12 consecutive hours in a calendar day, takes delivery of or processes pollock harvested in the BS directed pollock fishery must provide two observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BS directed pollock fishery.

(iii) *Observers transferring between vessels and processors.* An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

(c) *NMFS employee observers.* (1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraphs (a) or (b) of this section or under § 679.7(f)(4) must use, upon written notification by the Regional Administrator, a NMFS employee to satisfy observer coverage requirements as specified in paragraphs (a) and (b) of this section or for other conservation and management purposes as specified by the Regional Administrator.

(2) Prior to deployment of a NMFS employee, the agency will provide written notification to the owner or operator of a vessel, shoreside processor, or stationary floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE., Seattle, WA 98115–0070 or transmitted by facsimile to 206–526–4066.

(d) *Procurement of observer services*—(1) *Full coverage category.* (i) The owner of a vessel, shoreside processor, or stationary floating processor required to have full observer coverage under paragraphs (a)(2) and (b)(2) of this section must arrange and pay for observer services from a permitted observer provider.

(ii) The owner of a vessel, shoreside processor, or stationary floating processor is required to arrange and pay for observer services directly from NMFS when the agency has determined and notified them under paragraph (c) of this section that the vessel, shoreside processor, or stationary floating processor shall use a NMFS employee or individual authorized by NMFS in lieu of, or in addition to, an observer provided through a permitted observer provider to satisfy requirements under paragraphs (a)(2) and (b)(2) of this section or for other conservation and management purposes.

(2) *Partial coverage category.* The owner of a vessel in the partial observer coverage category per paragraph (a)(1) of this section must comply with instructions provided by ODDS to procure observer coverage for the required duration.

(e) *Responsibilities*—(1) *Vessel responsibilities.* An operator of a vessel required to carry one or more observers must:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses, or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have on board:

(*1*) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

(*2*) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(*3*) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor, mothership, a catcher vessel 125 ft. LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:

(*1*) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*2*) *NMFS-supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (e)(1) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(*3*) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (e)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(1)(iii)(B)(*2*) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(vii) *Records.* Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Collecting bycatch when requested by the observers.

(D) Collecting and carrying baskets of fish when requested by observers.

(E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (d) of this section must:

(i) *Safe conditions.* Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) *Operations information.* Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the shoreside processor's or stationary floating processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements*—(*1*) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*2*) *NMFS-supplied software.* Ensuring that the shoreside or stationary floating processor specified in paragraph (e)(2) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(*3*) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (e)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(*2*) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's or stationary floating processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's or stationary floating processor's landing report, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(vi) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Providing a secure place to store sampling gear.

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (a) or (b) of this section complies with the requirements given in paragraphs (e)(1) and (e)(2) of this section.

(f) *Reference table for observer coverage requirements.*

Program	Catcher/Processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) Groundfish CDQ—Nontrawl Gear	(a)(2)(vi)(E) hook-and-line; (a)(2)(vi)(A)(*4*) pot.	(a)(2)(i)(C) hook-and-line; (a)(1)(i) pot.	(a)(2)(vi)(A)(*5*)	(b)(1)
(2) Groundfish CDQ—Trawl Gear	(a)(2)(vi)(A)(*1*)	(a)(2)(i)(C)	(a)(2)(vi)(A)(*5*)	(b)(1)
(3) Halibut—CDQ and IFQ	(a)(2)(i)(A) or (a)(2)(iv)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)
(4) Sablefish—CDQ and IFQ	(a)(2)(i)(A) or (a)(2)(iv)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)
(5) BS pollock—AFA and CDQ	(a)(2)(vi)(B)(*1*) and (*2*)	(a)(2)(i)(C)	(a)(2)(vi)(B)(*1*) and (*2*)	(b)(2)
(6) Aleutian Islands pollock	(a)(2)(vi)(B)(*3*) through (*4*)	(a)(1)(i)(A)	(a)(2)(vi)(B)(*4*)	(b)(1)
(7) Rockfish Program	(a)(2)(vi)(D)	(a)(2)(i)(C)	N/A	(b)(1)
(8) Amendment 80 vessels and Non-AFA trawl catcher/processors fishing in the BSAI.	(a)(2)(vi)(C)	N/A	N/A	N/A

Program	Catcher/Processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(a)(2)(i) or (iv)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)

■ 13. A new § 679.52 is added to subpart E to read as follows:

§ 679.52 Observer provider permitting and responsibilities.

(a) *Observer provider permit*—(1) *Permit.* The Regional Administrator may issue a permit authorizing a person's participation as an observer provider for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2). Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(2) *New observer provider.* An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed at § 679.51(c)(3).

(3) *Contents of application.* An application for an observer provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and other employees. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) *Contact information*—(A) *Owner(s) information.* The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(B) *Business information.* Current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(C) *Authorized agent.* For an observer provider with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(iii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in paragraph (c) of this section.

(iv) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (b) of this section, and the arrangements to be used.

(4) *Application evaluation.* (i) The Regional Administrator will establish an observer provider permit application review board, comprised of NMFS employees, to review and evaluate an application submitted under paragraph (a) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors. If the applicant is a corporation, the review board also will evaluate the following criteria for each owner, or owners, board members, and officers:

(A) Absence of conflict of interest as defined under paragraph (c) of this section;

(B) Absence of criminal convictions related to:

(*1*) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(*2*) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(C) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(D) Absence of any history of decertification as either an observer or observer provider;

(ii) [Reserved]

(5) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

(6) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph (a).

(7) *Expiration of observer provider permit.* (i) An observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish or halibut industry.

(ii) The Regional Administrator will provide a written initial administrative determination (IAD) of permit expiration to an observer provider if NMFS' deployment records indicate that the observer provider has not deployed an observer during a period of 12 continuous months. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. An observer provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(8) *Sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(b) *Responsibilities of observer providers.* An observer provider that supplies observers for operations

requiring full observer coverage per § 679.51(a)(2) and (b)(2) must:

(1) *Provide qualified candidates to serve as observers.* (i) To be a qualified candidate an individual must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-prepared pamphlets and other information describing observer duties.

(iii) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that includes the following conditions for continued employment:

(A) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(B) That the observer completes in-person mid-deployment data reviews, unless:

(*1*) The observer is specifically exempted by the Observer Program, or

(*2*) The observer does not at any time during his or her deployment travel through a location where an Observer Program employee is available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(C) The observer informs the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (b)(11)(iii) of this section that would prevent him or her from performing his or her assigned duties;

(2) *Ensure an observer completes duties in a timely manner.* An observer provider must ensure that an observer employed by that observer provider performs the following in a complete and timely manner:

(i) When an observer is scheduled for a final deployment debriefing under paragraph (b)(11)(v) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(ii) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties that are not part of NMFS groundfish observer requirements;

(iii) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(iv) Return all sampling and safety gear to the Observer Program Office.

(3) *Observer conduct.* (i) An observer provider must develop, maintain, and implement a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(ii) An observer provider shall provide a copy of its conduct and behavior policy:

(A) To observers, observer candidates; and

(B) By February 1 of each year to the Observer Program Office.

(4) *Assign observer to vessels and processors.* An observer provider must assign to vessels or shoreside or floating processors only observers:

(i) With valid North Pacific groundfish and halibut observer certifications and endorsements to provide observer services;

(ii) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (b)(11)(iii) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Who have successfully completed all NMFS required training and briefing before deployment.

(5) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested by vessels and processors to fulfill vessel and processor requirements for observer coverage under § 679.51(a) and (b). An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

(6) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees, salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(7) *Provide observer deployment logistics.* (i) An observer provider must provide to each observer it employs:

(A) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel and shoreside or stationary floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other necessary services necessary to observers assigned to fishing vessels or shoreside processing or stationary floating processing facilities.

(ii) Except as provided in paragraph (b)(7)(iii) of this section, an observer provider must provide to each observer deployed to a shoreside processing facility or stationary floating processor, and each observer between vessel, stationary floating processor, or shoreside assignments while still under contract with an observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(iii) An observer under contract may be housed on a vessel to which the observer is assigned:

(A) Prior to the vessel's initial departure from port;

(B) For a period not to exceed 24 hours following completion of an offload for which the observer has duties and is scheduled to disembark; or

(C) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel

operator or at least one crew member is aboard.

(v) Each observer deployed to a shoreside processing facility must be provided with individually assigned communication equipment in working order, such as a cell phone or pager, for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties.

(8) *Limit observer deployment.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(i) Deploy an observer on the same vessel or at the same shoreside or stationary floating processor for more than 90 days in a 12-month period;

(ii) Deploy an observer for more than 90 days in a single deployment;

(iii) Include in a single deployment of an observer, assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(iv) Move an observer from a vessel or stationary floating processor or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(9) *Verify vessel USCG Safety Decal.* An observer provider must verify that a vessel has a valid USCG Safety Decal as required under § 679.51(e)(1)(ii)(B)(*1*) before the vessel with an observer aboard may depart. One of the following acceptable means of verification must be used to verify the decal validity:

(i) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(ii) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(10) *Provide 24 hours a day communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving an observer or problems concerning observer logistics, whenever an observer is at sea, stationed at a shoreside processor or stationary floating processor, in transit, or in port awaiting vessel or processor (re)assignment.

(11) *Provide information to the Observer Program Office.* An observer provider must provide all the following information to the Observer Program Office by electronic transmission (email), fax, or other method specified by NMFS within the specified timeframes.

(i) *Registration materials.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(A) Observer training registration, including:

(*1*) Date of requested training;

(*2*) A list of observer candidates. The list must include each candidate's full name (*i.e.,* first, middle, and last names), date of birth, and gender;

(*3*) A copy of each candidate's academic transcripts and resume; and

(*4*) A statement signed by the candidate under penalty of perjury that discloses any criminal convictions of the candidate.

(B) Observer briefing registration, including:

(*1*) Date and type of requested briefing session and briefing location; and

(*2*) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(ii) *Statement of projected observer assignments.* Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes the observer's name; vessel, shoreside processor, or stationary floating processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(iii) *Physician's statement.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on the physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize their individual safety or the safety of others while the observer or observer candidate is deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician read the NMFS-prepared pamphlet provided to the candidate by the observer provider as specified in paragraph (b)(1)(ii) of this section and was made aware of the duties of the observer as well as the dangerous, remote, and rigorous nature of the work. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(iv) *Observer deployment/logistics report.* A deployment/logistics report must be submitted by Wednesday, 4:30 p.m., Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. The report must include the location of any observer employed by the observer provider who is not assigned to a vessel, shoreside processor, or stationary floating processor.

(v) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time, and location for debriefing. Observer debriefing registration information must be provided at the time the debriefing is scheduled and must include the observer's name, cruise number, vessel, or shoreside or stationary floating processor assignment name(s) and code(s), and requested debriefing date.

(vi) *Certificates of insurance.* Copies of ''certificates of insurance'' that name the NMFS Observer Program leader as the ''certificate holder'' shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled and verify the following coverage provisions:

(A) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum);

(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum);

(C) States Worker's Compensation, as required; and

(D) Commercial General Liability.

(vii) *Observer provider contracts.* Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under § 679.51(a)(2) and (b)(2), by February 1 of each year. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at the address or fax number listed in § 679.51(c)(3). Signed and valid contracts include the contracts an observer provider has with:

(A) Vessels required to have observer coverage as specified at § 679.51(a)(2);

(B) Shoreside processors or stationary floating processors required to have observer coverage as specified at § 679.51(b)(2); and

(C) Observers.

(viii) *Observer provider invoices.* A certified observer provider must submit to the Observer Program Office a copy of all invoices for observer coverage required or provided pursuant to § 679.51(a)(2) and § 679.51(b)(2).

(A) A copy of the invoices must be received by the Observer Program Office within 45 days of the date on the invoice and must include all reconciled and final charges.

(B) Invoices must contain the following information:

(*1*) Name of each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant to which the invoice applies;

(*2*) Dates of service for each observer on each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant. Dates billed that are not observer coverage days must be identified on the invoice;

(*3*) Rate charged in dollars per day (daily rate) for observer services;

(*4*) Total charge for observer services (number of days multiplied by daily rate);

(*5*) Amount charged for air transportation; and

(*6*) Amount charged by the provider for any other observer expenses, including but not limited to: Ground transportation, excess baggage, and lodging. Charges for these expenses must be separated and identified.

(ix) *Change in observer provider management and contact information.* Except for changes in ownership addressed under paragraph (a)(6) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (a)(3)(i) through (iv) of this section. Within 30 days of the effective date of such change, the information must be submitted by fax or mail to the Observer Program Office at the address listed in § 679.51(c)(3). Any information submitted under paragraphs (a)(3)(iii) or (a)(3)(iv) of this section will be subject to NMFS review and determinations under paragraphs (a)(4) through (7) of this section.

(x) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email:

(A) Within 24 hours after the observer provider becomes aware of the following information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t), and (u) of this chapter;

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7), or processor safety;

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or failure to abide by the standards of behavior described in § 679.53(b)(1) through (b)(2), or;

(B) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (b)(3)(i) of this section; these reports shall include the underlying facts and circumstances of the violation.

(12) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(13) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(c) *Limitations on conflict of interest.* Observer providers:

(1) Are authorized to provide observer services under an FMP or the Halibut Act for the waters off Alaska as required in § 679.51(a)(2) or (b)(2), or scientific data collector and observer services to support NMFS-approved scientific research activities, exempted educational activities, or exempted or experimental fishing as defined in § 600.10 of this chapter.

(2) Must not have a direct financial interest, other than the provision of observer or scientific data collector services, in a North Pacific fishery managed under an FMP or the Halibut Act for the waters off Alaska, including, but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor or stationary floating processor facility involved in the catching or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska, or

(iii) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska.

(3) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or stationary floating processors other than when an observer will be deployed.

(4) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of the observer provider.

■ 14. A new § 679.53 is added to subpart E to read as follows:

§ 679.53 Observer certification and responsibilities.

(a) *Observer certification*—(1) *Applicability.* Observer certification authorizes an individual to fulfill duties for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) as specified in writing by the NMFS Observer Program Office while under the employ of an observer provider permitted under § 679.52(a) and according to certification endorsements as designated under paragraph (a)(5) of this section.

(2) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program on whether to issue or deny observer certification.

(3) *Certification requirements.* NMFS may certify an individual who, in addition to any other relevant considerations:

(i) Is employed by a permitted observer provider company at the time of the issuance of the certification;

(ii) Has provided, through their observer provider:

(A) Information identified by NMFS at § 679.52(b)(11)(i)(A)(*3*) and (*4*) and in writing from the Observer Program; and

(B) Information identified by NMFS at § 679.52(b)(11)(iii) regarding the observer candidate's health and physical fitness for the job;

(iii) Meet all education and health standards as specified in § 679.52(b)(1)(i) and § 679.52(b)(11)(iii), respectively;

(iv) Has successfully completed a NMFS-approved training as prescribed by the Observer Program.

(A) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(B) If a candidate fails training, he or she will be orally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the oral notification, the Observer Program will notify the observer candidate in writing. The written notification will specify why the candidate failed the training and whether the candidate may retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of a written determination denying certification, as specified under paragraph (a)(4)(i) of this section.

(v) Have not been decertified under paragraph (c) of this section.

(4) *Agency determinations on observer certification*—(i) *Denial of certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(ii) *Issuance of an observer certification.* An observer certification will be issued upon determination by the NMFS observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (a)(3) of this section.

(5) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(i) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries or Halibut Act fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program for a period of time specified by the Observer Program after his or her most recent debriefing. In order to renew the endorsement, the observer must successfully retake the certification training. Observers will be notified of any changes to the endorsement expiration period prior to the effective date of the change.

(ii) *Annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her initial deployment within any calendar year subsequent to a calendar year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Level 2 endorsements.* A certified observer may obtain a level 2 endorsement to their certification. A level 2 endorsement is required for purposes of performing observer duties aboard vessels or stationary floating processors or at shoreside processors participating in fisheries as prescribed in § 679.51(a)(2)(vi)(A) through (E). A level 2 endorsement to an observer's certification may be obtained if the observer meets the following requirements:

(A) Previously served as an observer in the groundfish or halibut fisheries off Alaska and has completed at least 60 days of observer data collection;

(B) Received an evaluation by NMFS for his or her most recent deployment that indicated the observer's performance met Observer Program expectations standards for that deployment; and

(C) Complies with all the other requirements of this section.

(v) An observer who has obtained a level 2 endorsement to his or her observer certification as specified in paragraph (a)(5)(iv) of this section may additionally receive a ''lead'' level 2 observer endorsement if the observer meets the following requirements:

(A) A ''lead'' level 2 observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(B) A ''lead'' level 2 observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(C) A ''lead'' level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear.

(b) *Standards of observer conduct*—(1) *Limitations on conflict of interest.* (i) An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2):

(A) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor, or stationary floating processor facility involved in the catching or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery, or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery.

(B) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observer's official duties.

(C) May not serve as an observer on any vessel or at any shoreside or stationary floating processing facility owned or operated by a person who previously employed the observer.

(D) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(ii) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(2) *Standards of behavior.* An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2) must:

(i) Perform assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office;

(ii) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment; and

(iii) Not disclose collected data and observations made aboard the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(c) *Suspension and decertification*—(1) *Suspension and decertification review official.* The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications issued under paragraph (a) of this section and issue initial administrative determinations of observer certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of an observer as specified in writing by the Observer Program; or

(B) Failed to abide by the standards of conduct for an observer as prescribed under paragraph (b) of this section;

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (c)(2) of this section, the suspension/decertification official will issue a written initial administrative determination (IAD) to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or in cases in which public health, interest, or safety require such action. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to § 679.43.

■ 15. A new § 679.54 is added to subpart E to read as follows:

§ 679.54 Release of observer data to the public.

(a) *Summary of weekly data.* The following information collected by observers for each catcher/processor and catcher vessel during any weekly reporting period may be made available to the public:

(1) Vessel name and Federal permit number.

(2) Number of Chinook salmon and ''other salmon'' observed.

(3) The ratio of total round weight of incidentally caught halibut or Pacific herring to the total round weight of groundfish in sampled catch.

(4) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.

(5) The number of observed trawl hauls or fixed gear sets.

(6) The number of trawl hauls that were basket sampled.

(7) The total weight of basket samples taken from sampled trawl hauls.

(b) *Haul-specific data.* (1) The information listed in paragraphs (b)(1)(i) through (xiii) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(i) Date.

(ii) Time of day gear is deployed.

(iii) Latitude and longitude at beginning of haul.

(iv) Bottom depth.

(v) Fishing depth of trawl.

(vi) The ratio of the number of Chinook salmon to the total round weight of groundfish.

(vii) The ratio of the number of other salmon to the total round weight of groundfish.

(viii) The ratio of total round weight of incidentally caught halibut to the total round weight of groundfish.

(ix) The ratio of total round weight of herring to the total round weight of groundfish.

(x) The ratio of the number of king crab to the total round weight of groundfish.

(xi) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(xii) Sea surface temperature (where available).

(xiii) Sea temperature at fishing depth of trawl (where available).

(2) The identity of the vessels from which the data in paragraph (b)(1) of this section are collected will not be released.

(c) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (a) and

(b) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

■ 16. A new § 679.55 is added to subpart E to read as follows:

§ 679.55 Observer fees.

(a) *Responsibility.* The owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FPP) or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at paragraph (c) of this section must comply with the requirements of this section. Subsequent non-renewal of an FPP or a Registered Buyer permit does not affect the permit holder's liability for noncompliance with this section.

(b) *Observer fee liability determination.* After each fishing year, the Regional Administrator will mail an observer fee liability invoice to each permit holder specified in paragraph (a) of this section for landings of groundfish and halibut subject to the observer fee. The observer fee liability invoice will provide a summary of the round pounds of groundfish and headed-and-gutted weight for halibut landed during the previous fishing year for each permit by species, landing port or port-group, and gear category. The total fee liability for each permit holder will be determined by applying the observer fee percentage in paragraph (f) of this section to the ex-vessel value of the groundfish and halibut landings subject to the observer fee. The method for determining the ex-vessel value of the groundfish and halibut landings subject to the observer fee is provided in paragraph (e) of this section. The fee liability will be assessed on the groundfish round weight and the headed-and-gutted weight for halibut.

(c) *Landings subject to the observer fee.* The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

If fish in the landing is from the following fishery or species:	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP:	If the vessel is designated on an FFP or required to be designated on an FFP:
(1) Groundfish listed in Table 2a to this part that is harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a).	Not applicable, an FFP is required to harvest these groundfish in the EEZ.	Yes.
(2) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, including in a parallel groundfish fishery, and subtracted from a total allowable catch limit specified under § 679.20(a).	No	Yes.
(3) Sablefish IFQ, regardless of where harvested	Yes	Yes.
(4) Halibut IFQ or halibut CDQ, regardless of where harvested	Yes	Yes.
(5) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, but is not subtracted from a total allowable catch limit under § 679.20(a).	No	No.
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested.	No	No.

(d) *Standard ex-vessel prices*—(1) *General.* NMFS will publish the standard ex-vessel prices used to determine the observer fee in the upcoming year in the **Federal Register** during the last quarter of each calendar year. The standard ex-vessel prices will be described in U.S. dollars per equivalent round pound for groundfish and per equivalent headed-and-gutted weight for halibut.

(2) *Effective duration.* The standard ex-vessel prices will remain in effect until revised by subsequent publication in the **Federal Register**.

(3) *Standard ex-vessel price determination and use*—(i) *Groundfish standard ex-vessel prices.* Except as described in paragraph (d)(3)(ii) of this section, NMFS will calculate groundfish standard ex-vessel prices based on standardized ex-vessel nominal prices calculated using information submitted in the Commercial Operator's Annual Report described at § 679.5(p) and the shoreside processor or stationary floating processor landing report described at § 679.5(e)(5), as well as methods established by the State of Alaska's Commercial Fisheries Entry Commission.

(A) Groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear.

(B) Gear categories for groundfish standard ex-vessel prices are: Pelagic trawl gear, non-pelagic trawl gear, and non-trawl gear.

(ii) *Halibut and fixed gear sablefish standard ex-vessel prices.* NMFS will use data submitted to NMFS on the IFQ Registered Buyer report under § 679.5(l)(7) to calculate the standard ex-vessel prices for each year for halibut and fixed gear sablefish, by port or port group. These standard ex-vessel prices will be applied to landings of:

(A) Halibut;

(B) IFQ sablefish; and

(C) Sablefish accruing against the fixed-gear sablefish CDQ allocation.

(iii) *Confidentiality.* Standard ex-vessel prices will be aggregated among ports if fewer than four processors participate in a price category for any species and gear combination.

(e) *Determining the ex-vessel value of groundfish and halibut.* The ex-vessel value of groundfish and halibut subject to the observer fee will be determined by applying the standard ex-vessel price published in the **Federal Register** in the year prior to the year in which the landing was made to the round weight of groundfish and the headed-and-gutted weight of halibut landings subject to the observer fee.

(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent.

(g) *Fee collection.* A permit holder specified in paragraph (a) of this section, receiving a groundfish or halibut landing subject to the observer fee under paragraph (c) of this section, is responsible for collecting fees during the calendar year in which the groundfish or halibut is received.

(h) *Payment*—(1) *Payment due date.* A permit holder specified in paragraph (a) of this section must submit his or her observer fee liability payment(s) to NMFS no later than February 15 of the

year following the calendar year in which the groundfish or halibut landings subject to the observer fee were made.

(2) *Payment recipient.* Make electronic payment payable to NMFS.

(3) *Payment address.* Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be provided on the payment Web site and on the observer fee liability invoice to be mailed to each permit holder.

(4) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearinghouse, credit card, or electronic check drawn on a U.S. bank account.

(5) *Underpayment of fee liability.* (i) Under § 679.4, an applicant will not receive a new or amended FPP or Registered Buyer permit until he or she submits a complete permit application. For the application to be considered complete, all fees required by NMFS must be paid.

(ii) If a permit holder fails to submit full payment for the observer fee liability by the date described in paragraph (h)(1) of this section, the Regional Administrator may:

(A) At any time thereafter send an initial administrative determination to the liable permit holder stating that the permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the permit holder pursuant to paragraph (b) of this section, is the amount of observer fee due from the permit holder.

(B) Disapprove any issuance of an FPP or Registered Buyer permit to the applicant in accordance with § 679.4.

(iii) If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(i) *Overpayment of fee.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the observer fee liability determined to be due by the final agency action will be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

(j) *Appeals.* A permit holder who receives an IAD may either pay the fee liability or appeal the IAD pursuant to § 679.43. In any appeal of an IAD made under this section, a permit holder specified in paragraph (a) of this section has the burden of proving his or her claim.

■ 17. In § 679.100, revise paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i)(A) to read as follows:

§ 679.100 Applicability.

* * * * *

(b) * * *

(1) * * *

(i) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(*1*).

(ii) The vessel is in compliance with observer workload requirements described at § 679.51(a)(2)(iii).

* * * * *

(2) * * *

(i) * * *

(A) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(*2*).

* * * * *

[FR Doc. 2012–28255 Filed 11–20–12; 8:45 am]

BILLING CODE 3510–22–P

Reader Aids

Federal Register

Vol. 77, No. 225

Wednesday, November 21, 2012

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids **202–741–6000**
Laws **741–6000**

Presidential Documents
Executive orders and proclamations **741–6000**
The United States Government Manual **741–6000**

Other Services
Electronic and on-line services (voice) **741–6020**
Privacy Act Compilation **741–6064**
Public Laws Update Service (numbers, dates, etc.) **741–6043**
TTY for the deaf-and-hard-of-hearing **741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

66067–66148 1
66149–66360 2
66361–66514 5
66515–66702 6
66703–66914 7
66915–67238 8
67239–67532 9
67533–67742 13
67743–68042 14
68043–68678 15
68679–69380 16
69381–69552 19
69553–69732 20
69733–70104 21

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8894 66507
8895 66515
8896 66517
8897 66519
8898 66521
8899 66523
8900 66525
8901 66527
8902 67533
8903 68043
8904 68045
8905 69731
8906 69733

Executive Orders:
13629 66353

Administrative Orders:
Notices:
Notice of November 1, 2012 66359
Notice of November 9, 2012 67741

5 CFR

890 67743

Proposed Rules
532 68073

7 CFR

205 67239
3201 69381
3434 68679

Proposed Rules
1739 68705

12 CFR

19 66529
46 68047
109 66529
204 66361
213 69735
226 69736
263 68680
325 69553
615 66362
652 66375
1013 69735
1022 67744
1026 ..... 69736, 69738
1282 67535

Proposed Rules
1026 66748
1238 66566

14 CFR

25 ..... 67251, 67557
39 ..... 66534, 67254, 67256, 67261, 67263, 67267, 67559, 67561, 67763, 67764, 68050, 68052, 68055, 68057, 68058, 68061, 68063, 69556, 69558, 69739, 69742, 69744, 69747
71 ..... 66067, 66068, 66069, 68065, 68067, 68068, 68681, 68682, 68683
97 ..... 66535, 66536
400 67269

Proposed Rules
25 ..... 67308, 67309, 69568, 69569, 69571, 69572, 69573
33 66936
39 ..... 66409, 66411, 66413, 66415, 66417, 66566, 66757, 66760, 66762, 66764, 66767, 66769, 66771, 66772, 67582, 68711, 68714, 69391
71 ..... 67782, 68716
121 67584
135 67584

15 CFR

902 70062

Proposed Rules
764 66777
766 66777

16 CFR

1223 66703

17 CFR

1 66288
4 66288
5 66288
7 66288
8 66288
15 66288
16 66288
18 66288
21 66288
22 66288
36 66288
38 66288
41 66288
140 66288
145 66288
155 66288
166 66288
240 66220

Proposed Rules
1 67866
3 67866
22 67866
30 67866
140 67866

18 CFR

2 69754
4 67562
5 67562
16 67562
33 67562
34 67562
35 ..... 67562, 69754
157 67562

348.....67562
375.....67562
385.....67562
388.....67562
Proposed Rules
152.....69781
284.....66568

19 CFR

Proposed Rules
360.....67593

21 CFR

Proposed Rules
801.....69393

26 CFR

1.....66915
Proposed Rules
1.....66938

29 CFR

1401.....66539
1910.....68684
1915.....68684
1917.....68684
1918.....68684
1926.....67270, 68684
4022.....68685
Proposed Rules
1910.....68717
1915.....68717
1917.....68717
1918.....68717
1926.....67313, 68717

30 CFR

Proposed Rules
943.....66574

31 CFR

552.....67276
561.....66918

33 CFR

100.....66713, 67563
117 .....66714, 69562, 69564, 69759, 69761
165 .....66541, 67563, 67566, 67568, 69388, 69761
Proposed Rules
100.....66938
110.....66942
117.....67319, 69576
165.....68718

34 CFR

280.....67572
674.....66088
682.....66088
685.....66088
Proposed Rules
Ch. IV.....69579

36 CFR

Proposed Rules
1002.....69785
1195.....67595

37 CFR

202.....66920
Proposed Rules
201.....68075
210.....68075

38 CFR

9.....66069
Proposed Rules
3.....66419

39 CFR

20.....68069
111.....66149

40 CFR

9.....66149
52 .....66388, 66398, 66405, 66543, 66545, 66547, 66548, 66715, 66921, 66927, 66929, 67767
85.....68070
86.....68070
180 .....66715, 66721, 66723, 67282, 67771, 68686, 68692
271.....69765
300.....66729, 67777
600.....68070
721.....66149
Proposed Rules
52 .....66421, 66422, 66429, 66780, 66945, 67322, 67596, 67600, 68076, 68087, 68721, 69399, 69409
81 .....67600, 68076, 68087, 69409
98.....69585
174.....66781
180.....66781
271.....69788
300.....66783, 67783

41 CFR

303.....66554

42 CFR

409.....67068
410.....68892
413.....67450
414.....68892
415.....68892
416.....68210
417.....67450
419.....68210
421.....68892
423.....68892
424.....67068
425.....68892
438.....66670
441.....66670
447.....66670
476.....68210
478.....68210
480.....68210
484.....67068
486.....68892
488.....67068
489.....67068
495.....68210, 68892
498.....67068

44 CFR

64 .....66733, 68697, 69564
67.....66555, 66737
206.....67285
Proposed Rules
67 .....66165, 66785, 66788, 66790, 66791, 67324, 67325

47 CFR

64.....66935
73.....66743
76.....67290
90.....68070
Proposed Rules
1.....69934
2.....68721
15.....68722
25.....67172
27.....69934
73.....69934
95.....68721
101.....69581

48 CFR

Ch. 1.....69714, 69726
1.....69715
4.....69715, 69720
13.....69715
17.....69720
19.....69715
25.....69723
32.....69715
52.....69715, 69723
252.....68699
504.....69768
Proposed Rules
9903.....69422

49 CFR

33.....69769
523.....68070
531.....68070
533.....68070
536.....68070
537.....68070
1155.....69769
Proposed Rules
234.....68722
385.....67613
386.....67613
571.....69586
1121.....66165
1150.....66165
1180.....66165

50 CFR

17.....67302
21.....66406
622 .....66744, 67303, 67574, 68071
648 .....66746, 67305, 69567
679 .....66564, 67579, 67580, 70062
Proposed Rules
17.....67784, 69994
424.....66946
648 .....66169, 66947, 67624, 68723, 69428
660 .....66577, 67327, 67974

LIST OF PUBLIC LAWS

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 ''P L U S'' (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.

S. 3624/P.L. 112–196

Military Commercial Driver's License Act of 2012 (Oct. 19, 2012; 126 Stat. 1459)

Last List October 11, 2012

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.