AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 243 December 18, 2012

Pages 74775–75006

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, February 12, 2013
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. 243

Tuesday, December 18, 2012

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74824

Animal and Plant Health Inspection Service
PROPOSED RULES
Evaluation of Swine Vesicular Disease Status of Certain Regions in Italy, 74787–74788

Antitrust Division
NOTICES
Membership Changes Pursuant to the National Cooperative Research and Production Act:
Cable Television Laboratories, Inc., 74877

Antitrust
See Antitrust Division

Architectural and Transportation Barriers Compliance Board

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
On-Line Architectural Barriers Act Complaint Form, 74826–74827
Meetings, 74827
Meetings:
Working Group on Access to Information on Prescription Drug Container Labels, 74827–74828

Bureau of Consumer Financial Protection
NOTICES
Fair Credit Reporting Act Disclosures, 74831–74832

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74851–74852

Coast Guard
RULES
Drawbridge Operations:
Sacramento River, CA, 74775–74777
Safety Zones:
Columbia Grain and United Grain Corporation Facilities; Columbia and Willamette Rivers, 74781–74783
Grain-Shipment Assistance Vessels; Columbia and Willamette Rivers, 74777–74780
Recovery Operations for East Jefferson Street Train Derailment, Mantua Creek; Paulsboro, NJ, 74784–74786
PROPOSED RULES
Regulated Navigation Areas:
Youngs Bay PacifiCorp Sediment Cap; Youngs Bay, Columbia River, Astoria, OR, 74814–74817

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See Patent and Trademark Office

Commodity Credit Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74824–74825

Defense Department
NOTICES
Arms Sales, 74832–74834
Meetings:
Defense Audit Advisory Committee, 74834–74835
Renewal of Department of Defense Federal Advisory Committees, 74835–74836

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Northern New Mexico, 74838
Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation, 74836–74837
President's Council of Advisors on Science and Technology, 74837–74838

Environmental Protection Agency
PROPOSED RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Wisconsin; Disapproval of PM2.5 Permitting Requirements, 74817–74820
Approvals and Promulgations of Implementation Plans:
Tennessee; Knox County Supplemental Motor Vehicle Emissions Budget Update, 74820–74822
Water Quality Standards:
Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters, 74924–74985
Florida's Streams and Downstream Protection Values for Lakes, 74985–75005
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74845–74846

Export–Import Bank
NOTICES
Applications for Final Commitments a Long-Term Loans or Financial Guarantees in Excess of $100 million, 74846

Federal Aviation Administration
NOTICES
Petitions for Exemptions; Summaries of Petitions Received, 74914

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Law Enforcement Officers Killed and Assaulted Program, Analysis of Officers Feloniously Killed and Assaulted, etc., 74877

Federal Communications Commission
PROPOSED RULES
Petitions for Reconsiderations of Actions in Rulemaking Proceedings, 74822–74823

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Purchaser Eligibility Certification, 74847
Modifications to Statement of Policy for Section 19 of the Federal Deposit Insurance Act, 74847–74851
Privacy Act; Systems of Records, 74851

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 74851

Federal Emergency Management Agency
NOTICES
Changes in Flood Hazard Determinations, 74856–74859
Proposed Flood Hazard Determinations, 74859–74861

Federal Energy Regulatory Commission
NOTICES
Amendments:
Perryville Gas Storage LLC, 74838–74839
Combined Filings, 74839–74841
License Amenment Applications:
Alabama Power Co., 74841–74842
Meetings; Sunshine Act, 74842–74843
Petitions for Declaratory Orders:
Seaway Crude Pipeline Company LLC, 74843–74844
Sunoco Pipeline L.P., 74844
Staff Attendances, 74844–74845
Surrender of Preliminary Permit:
AJT Mining Properties, Inc., 74845

Fish and Wildlife Service
NOTICES
Meetings:
Wildlife and Hunting Heritage Conservation Council, 74864–74865

Food and Drug Administration
NOTICES
Draft Guidance for Industry on Certification of Designated Medical Gases; Availability, 74852–74854

Foreign Assets Control Office
NOTICES
Additional Designations, Foreign Narcotics Kingpin Designation Act, 74915–74916
Blocking or Unblocking of Persons or Property:
Designation of Six Individuals, One Property under the Foreign Narcotics Kingpin Designation Act, 74916–74918
Designation of Two Persons Who Commit, Threaten to Commit, or Support Terrorism, 74916
Significant Narcotics Traffickers, 74918–74920

Foreign Claims Settlement Commission
NOTICES
Privacy Act; Systems of Records, 74878–74879

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal and Non-Federal Financial Assistant Instruments, 74825–74826

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
OneCPD Technical Assistance and Capacity Building Needs Assessment, 74862–74863
Public Housing Operating Budget, Supporting and Related Forms, 74863–74864

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Awards for Information Relating to Detecting Underpayments of Tax or Violations of Internal Revenue Laws, 74798–74814
NOTICES
Meetings:
Taxpayer Advocacy Panel Joint Committee, 74921
Taxpayer Advocacy Panel Notices and Correspondence Project Committee, 74921
Taxpayer Advocacy Panel Tax Forms and Publications Project Committee, 74920
Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee, 74921
Taxpayer Advocacy Panel Taxpayer Communications Project Committee, 74920
Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee, 74920–74921

International Trade Administration
NOTICES
Requests for Applications:
International Buyer Program Calendar Years 2014 and 2015, 74828

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
See Foreign Claims Settlement Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Firearms Licensee Enrollment/National Instant Criminal Background Check System E-Check Enrollment Form, 74876

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Claim for Medical Reimbursement, 74881–74882
Explosive Materials and Blasting Units in Metal and Nonmetal Underground Gassy Mines, 74879–74880
Reemployment Demonstration Grants and Projects, 74880–74881

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Searchlight Wind Energy Project, Clark County, NV, 74865–74866

National Institute of Standards and Technology
NOTICES
Meetings:
Cloud Computing and Big Data Forum and Workshop, 74829–74830
National Construction Safety Team Advisory Committee, 74828–74829

National Park Service
NOTICES
Intent to Repatriate Cultural Items:
New York State Museum, Albany, NY, 74866–74867
Inventory Completions:
Beneski Museum of Natural History, Amherst College, Amherst, MA, 74872–74873
Department of Anthropology, University of Massachusetts, Amherst, MA, 74868–74869
Southern Oregon Historical Society, Medford, OR; Correction, 74869
The Museum of Anthropology at Washington State University, Pullman, WA, 74871
U.S. Army, Fort Sill Museum, Fort Sill, OK, and Museum of the Great Plains, Lawton, OK, 74870–74871
University of Montana, Missoula, MT; Museum of the Rockies at Montana State University, Bozeman, MT; and University of Wyoming, Department of Anthropology, Laramie, WY, 74873–74874
Meetings:
Acadia National Park Advisory Commission, 74874
Native American Graves Protection and Repatriation Review Committee, 74874
Native American Graves Protection and Repatriation Review Committee Findings, 74875–74876

Nuclear Regulatory Commission
PROPOSED RULES
Long-Term Cooling and Unattended Water Makeup of Spent Fuel Pools, 74788–74798
NOTICES
Environmental Impact Statements; Availability, etc.:
License Renewal of Nuclear Plants and Public Meetings for the License Renewal of South Texas Project, 74882–74883
Interim Staff Guidances:
Aging Management of Stainless Steel Structures and Components in Treated Borated Water; Revision 1, 74883
Meetings; Sunshine Act, 74883–74884

Patent and Trademark Office
NOTICES
Patent Small Claims Proceedings in United States:
Request for Comments, 74830–74831

Securities and Exchange Commission
RULES
Extension of Dates for Certain Requirements and Amendment of Form 19b–4:
Correction, 74775
NOTICES
Applications:
Cambria Investment Management, L.P. and Cambria ETF Trust, 74884–74891
Exemptions from Certain Rules of Regulation SHO Related to Hurricane Sandy, 74891–74894
Meetings; Sunshine Act, 74894
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Options Exchange LLC, 74902–74904
Chicago Board Options Exchange, Inc., 74894–74895
Financial Industry Regulatory Authority, Inc., 74896–74898
International Securities Exchange, LLC, 74895–74896, 74898–74902
Miami International Securities Exchange, 74905–74907

Small Business Administration
NOTICES
Disaster Declarations:
District of Columbia, 74907–74908
Maryland; Amendment 1, 74908
New York; Amendment 4, 74907
Virginia, 74908
Requests for Early Stage Fund Managers:
Small Business Investment Companies, Early Stage SBICs, 74908–74913

Social Security Administration
NOTICES
Privacy Act; Systems of Records, 74913–74914

Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74854–74856

Surface Transportation Board
NOTICES
Acquisition and Operation Exemptions:
Decatur Junction Railway Co.; Line of Illinois Central Railroad Co., 74914–74915

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Advance Permission to Enter as Nonimmigrant, 74861
Interagency Record of Request A, G, or NATO Dependent Employment Authorization, etc., 74861–74862

Separate Parts In This Issue

Part II
Environmental Protection Agency, 74924–75005

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.

9 CFR

Proposed Rules:

94 74787

10 CFR

Proposed Rules:

50 74788

17 CFR

240 74775

26 CFR

Proposed Rules:

301 74798

33 CFR

117 74775

165 (3 documents) 74777, 74781, 74784

Proposed Rules:

165 74814

40 CFR

Proposed Rules:

52 (2 documents) 74817, 74820

131 (2 documents) 74924, 74985

47 CFR

Proposed Rules:

90 74822

Rules and Regulations

Federal Register

Vol. 77, No. 243

Tuesday, December 18, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–68357A; File No. S7–44–10]

RIN 3235–AK87

Extension of Dates for Certain Requirements and Amendment of Form 19b–4

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of dates for certain requirements; correction.

SUMMARY: On December 10, 2012, the Securities and Exchange Commission (''Commission'') published a document in the **Federal Register** to amend its regulations under the Securities Exchange Act of 1934 (''Exchange Act'') to extend the dates with respect to the requirements that designated clearing agencies for which the Commission is the supervisory agency file advance notices and clearing agencies file security-based swap submissions with the Commission in an electronic format to dedicated email addresses to December 10, 2013, and amend the General Instructions to Form 19b-4 to clarify the process for submitting advance notices and security-based swap submissions to the Commission. The document contained an error with respect to the placement and numbering of a footnote.

DATES: Effective December 18, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth Riitho, Special Counsel, at 551–5592; and Wyatt A. Robinson, Attorney-Adviser, at 551–5649, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 10, 2012 (77 FR 73302), in FR Doc. 2012–29712, the following corrections are made to page 73305:

1. In the second column, remove footnote 22.

2. In the second column, under General Instructions for Form 19b-4, the first sentence is corrected to read as follows:

''This form shall be used for all self-regulatory organization filings of proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') (except filings with respect to the proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) [1] of the Act), security-based swap submissions, and advance notices.''

* * * * *

December 12, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30389 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

[1] Because Section 19(b)(7)(C) of the Act states that filings abrogated pursuant to this Section should be re-filed pursuant to paragraph (b)(1) of Section 19 of the Act, SROs are required to file electronically such proposed rule changes in accordance with this form.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1138]

RIN 1625–AA09

Drawbridge Operation Regulation; Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule governing the Freeport Drawbridge, mile 46.0, over the Sacramento River. The bridge owner proposed to change the ''on demand'' bridge opening hours and dates, due to a documented decrease in drawbridge openings compared to other nearby bridges. The change is to address the issue of misalignment between drawbridge staffing and actual drawbridge operation, resulting in unnecessary staffing of the drawbridge during periods of navigational inactivity.

DATES: This rule is effective January 17, 2013.

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 No. USCG–2011–1138 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1138 in the ''Search'' 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@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

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
ANPRM Advanced Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

A. Regulatory History and Information

On January 25, 2012, we published an Advance Notice of Proposed Rulemaking (ANPRM), entitled Drawbridge Operation Regulation; Sacramento River, CA in the **Federal Register** (77 FR 3664). On August 10, 2012, we published a Notice of Proposed Rulemaking (NPRM), entitled Drawbridge Operation Regulation, Sacramento River, CA, in the **Federal Register** (77 FR 47789). No public meeting was requested, and none was held.

B. Basis and Purpose

The Freeport Drawbridge is a swing span style drawbridge at mile 46.0, over

the Sacramento River, owned by the County of Sacramento and maintained by Sacramento and Yolo counties. The drawbridge provides 190 feet horizontal clearance, 29 feet of vertical clearance for vessels above Mean High Water in the closed-to-navigation position and unlimited vertical clearance when open. The Sacramento River is legally navigable for bridge permitting purposes from its confluence with Suisun Bay to mile 245.0 at Red Bluff, CA.

Sacramento and Yolo counties submitted a joint request for a permanent change to the Freeport Drawbridge operating requirements, with support from Congressman Mike Thompson. The change is to address the misalignment between drawbridge staffing and openings for vessels.

The bridge owner has provided bridge operating statistics showing significantly less drawspan operations during certain months and evening hours in 2009–2010, than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove. The statistical information and a detailed explanation by the bridge owner have been included in the docket (USCG–2011–1138–0003 & 0004) and are available for public review. The bridge owner performed significant outreach to various waterway user organizations including the Pacific Inter-Club Yacht Association, the Recreational Boaters of California, the Capital City Yacht Club, the Sacramento Yacht Club, River View Yacht Club and Hornblower Cruises.

C. Discussion of Comments, Changes and the Final Rule

Sacramento and Yolo counties submitted a joint request for a change to the Freeport Drawbridge operating requirements. Under the existing operating regulations, Freeport Drawbridge opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. The Counties proposed to change the ''on demand'' bridge opening hours to May 1 through September 30, from 9 a.m. to 5 p.m. At all other times (including November 1 through April 30), the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. This will allow the bridge owner to remove the bridge operator from the drawbridge until needed for scheduled bridge openings, providing a possible monetary savings to the Counties due to reduced bridge operating personnel costs. There is no alternative route for vessels navigating on this reach of the waterway. Vessels that can be safely navigated through the drawbridge while it is in the closed to navigation position may continue to do so at any time.

Submissions 0001–0009 in the electronic docket were posted by the Coast Guard. The single public comment (USCG–2011–1138–0010) referred to the advance notice period as ''closure'', recommended an October 15 start date due to Fleet Week, observed the statistical period was during the economic downturn and associated decline in vessel transits, and recommended a wider dissemination to all California boat owners. The ''advance notice'' period is not a closure but a period when vessel operators call the bridge owner in advance to schedule a bridge opening upon their arrival at the bridge. The statistics provided included the October Fleet Week transits and support the proposed change to the regulation. The economy may influence the number of vessel transits and upon economic recovery and associated increase in navigation, proposals to readjust the operating regulation may be submitted by anyone in compliance with 33 CFR 117.8. The ANPRM and NPRM were disseminated via publication in the **Federal Register** and also the Coast Guard Local Notice to Mariners between January 4, 2012, and September 24, 2012. The bridge owner held numerous meetings with leading vessel owner organizations prior to submitting their proposal to the Coast Guard. The required methods and extent of outreach to the public was met or exceeded. We encourage the public to read the **Federal Register** and Coast Guard Local Notice to Mariners to be informed of proposed actions.

D. Regulatory Analyses

We developed this final 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 those Orders.

Bridge operating statistics provided by the bridge owner during 2009–2010, show significantly fewer drawspan operations than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove due to greater vertical clearance provided by the Freeport drawbridge.

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 will not have a significant economic impact on a substantial number of small entities.

This rule will adjust an existing advance notice requirement for bridge openings to more closely conform to the existing needs of navigation, while allowing the bridge owner to reduce bridge operation costs, as documented by the statistics provided by the bridge owner. Vessels that can safely transit under the bridge while in the closed to navigation position, may continue to do so at any time.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

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.

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 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 § 117.189 to read as follows:

§ 117.189 Sacramento River.

(a) The draws of each bridge from Isleton to the American River junction except for the Sacramento County highway bridge across the Sacramento River, mile 46.0 at Freeport, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(b) The draw of the Sacramento County highway bridge, mile 46.0 at Freeport, shall open on signal from May 1 through September 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is give to the drawtender at the Rio Vista Bridge across the Sacramento River, mile 12.8.

(c) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, and mile 135.5 at Meridian, shall open on signal if at least 12 hours notice is given to the California Department of Transportation at Marysville.

(d) The draws of the bridges above Meridian need not be opened for the passage of vessels.

Dated: November 20, 2012.

Karl L. Schultz,

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

[FR Doc. 2012–30402 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1029]

RIN 1625–AA00

Safety Zones; Grain-Shipment Assistance Vessels; Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones around the following four vessels: the motor vessel Daniel Foss, IMO# 7638454, the motor vessel Washington, IMO# 8207733, the motor vessel George W, IMO# 9153329, and the motor vessel Connor Foss, Official# 1238813. These safety zones apply while these vessels are located on the waters of the Columbia and Willamette Rivers, and only while they are engaged in transferring persons to or from grain-shipment vessels, and/or assisting grain-shipment vessel movements. These safety zones extend to waters 50 yards ahead of these vessels and 50 yards abeam and astern of these vessels. These safety zones are being established to ensure that protest activities relating to a labor dispute do not create hazardous navigation conditions for any vessel or other river user in the vicinity of the safety zones.

DATES: This rule is effective from December 18, 2012 until January 17, 2013. This rule is effective with actual notice beginning November 16, 2012 until December 18, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1029. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *MSUPDXWWM@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

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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable due to the lack of advance notice of the underlying dispute. Delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, the facilities, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

For these reasons, 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**. To do otherwise would be impracticable since the arrival of grain-shipment vessels cannot be delayed by the Coast Guard and protest activities are unpredictable and potentially volatile and may result in injury to persons, property, or the environment. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Willamette Rivers before the end of the 30 day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic before 30 days have elapsed.

B. Basis and Purpose

Due to a labor dispute regarding grain-shipment vessels involved in commerce with the Columbia Grain facility, a safety zone is needed to help ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers while grain-shipment vessels transit to and from grain export facilities in the Sector Columbia River Captain of the Port Zone. There is the potential for injury and damage to both protestors and shipping due to the labor dispute. The Coast Guard believes that a safety zone is needed to allow maximal use of the waterway consistent with safe navigation and to ensure that protestors and other river users are not injured by deep-draft vessels with maneuvering characteristics with which they may be unfamiliar.

C. Discussion of the Final Rule

This rule establishes temporary safety zones around the following four vessels: The motor vessel Daniel Foss, IMO# 7638454, the motor vessel Washington, IMO# 8207733, the motor vessel George W, IMO# 9153329, and the motor vessel Connor Foss, Official# 1238813. These safety zones apply while these vessels are located on the waters of the Columbia and Willamette Rivers, and only while they are engaged in transferring persons to or from grain-shipment vessels, and/or assisting grain-shipment vessel movements. These safety zones extend to waters 50 yards ahead of these vessels and 50 yards abeam and astern of these vessels. No person or vessel may enter or remain in the safety zones without authorization from the Sector Columbia River Captain of the Port or his designated representatives.

This rule has been enforced with actual notice since November 16, 2012 and it will be enforced until 30 days from date of publication in the **Federal Register**. If unsafe conditions continue beyond that date, the Coast Guard will consider extending the duration of the safety zone.

D. Regulatory Analyses

We developed this 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. Although this rule will restrict access to the regulated areas, the effect of this rule will not be significant because: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zones created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding 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 INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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 rule involves the establishment of four temporary safety zones around four grain-shipment assistance vessels. This 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 are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–236 to read as follows:

§ 165.T13–236 Safety Zones; Grain-shipment Assistance Vessels; Columbia and Willamette Rivers.

(a) *Definitions.* As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(7) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) *Locations.* The following areas are a safety zone:

(1) All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are not more than 50 yards ahead of the motor vessel Daniel Foss, IMO# 7638454, and 50 yards abeam and astern of this vessel while it is engaged in assisting grain-shipment vessel movements.

(2) All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are not more than 50 yards ahead of the motor vessel George W, IMO# 9153329, and 50 yards abeam and astern of this vessel while it is engaged in assisting grain-shipment vessel movements.

(3) All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are not more than 50 yards ahead of the motor vessel Washington, IMO# 8207733, and 50 yards abeam and astern of this vessel while it is engaged in assisting grain-shipment vessel movements.

(4) All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are not more than 50 yards ahead of the motor vessel Connor Foss, Official# 1238813, and 50 yards abeam and astern of this vessel while it is engaged in assisting grain-shipment vessel movements.

(c) *Effective Period.* The safety zones created in this section will be in effect from November 16, 2012 and will be enforced until January 17, 2013. They will be activated for enforcement as described in paragraph (d) of this section.

(d) *Enforcement Periods.* (1) The Sector Columbia River Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the safety zones is suspended.

(2) Upon notice of enforcement by the Sector Columbia River Captain of the Port, the Coast Guard will enforce these safety zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zones, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within these safety zones contact the on-scene official patrol on VHF–FM channel 16 or 13, or the Sector Columbia River Command Center at phone number (503) 861–6211. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within these safety zones shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zones.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol, or a designated representative of the Captain of the Port at the Sector Columbia River Command Center, should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within the safety zones in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within the safety zones; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within the safety zones in order to do so.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) *Waiver.* The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: November 30, 2012.

B.C. Jones,

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

[FR Doc. 2012–30404 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1027]

RIN 1625–AA00

Safety Zones; Columbia Grain and United Grain Corporation Facilities; Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones around the Columbia Grain facility on the Willamette River in Portland, OR, and the United Grain Corporation facility on the Columbia River in Vancouver, WA. These safety zones extend to the waters of the Columbia and Willamette Rivers, respectively, approximately between the navigable channel and the facility described. These safety zones are being established to ensure that protest activities relating to a labor dispute involving these facilities do not create hazardous navigation conditions for vessels in the navigable channel or vessels attempting to moor at the facilities.

DATES: This rule is effective in the **Federal Register** from December 18, 2012 until January 17, 2013. This rule is effective with actual notice beginning November 16, 2012 until December 18, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–1027]. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *MSUPDXWWM@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

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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable due to the lack of advance notice of the underlying dispute. Delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, the facilities, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

For similar reasons, 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**. To do otherwise would be impracticable since the arrival of grain-shipment vessels cannot be delayed by the Coast Guard and protest activities are unpredictable and potentially volatile and may result in injury to persons, property, or the environment. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Willamette Rivers before the end of the 30 day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic before 30 days have elapsed.

B. Basis and Purpose

Due to a labor dispute regarding grain-shipment vessels involved in commerce with the Columbia Grain facility, a safety zone is needed to help ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers while grain-shipment vessels transit to and from grain export facilities in the Sector Columbia River Captain of the Port Zone. There is the potential for injury and damage to both protestors and shipping due to the labor dispute. The Coast Guard believes that a safety zone is needed to allow maximal use of the waterway consistent with safe navigation and to ensure that protestors and other river users are not injured by deep-draft vessels with maneuvering characteristics with which they may be unfamiliar.

C. Discussion of the Final Rule

This rule establishes temporary safety zones around the Columbia Grain facility located on the Willamette River in Portland, OR and the United Grain Corporation facility located on the Columbia River in Vancouver, WA.

The safety zone around Columbia Grain is enclosed by three lines and the shoreline: Line one starting on the shoreline at 45–38′35″ N/122–46′2″ W then heading 150 yards offshore to 45–38′38″ N/122–46′15″ W then heading up river 380 yards to 45–38′32″ N/122–46′28″ then heading 150 yards to the shoreline ending at 45–38′30″ N/122–46′25″ W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

The safety zone around United Grain Corporation is also enclosed by three lines and the shoreline: line one starting on the shoreline at 45–37′46″ N/122–41′34″ W then heading 150 yards offshore to 45–37′48″ N/122–41′50″ W then heading up river 470 yards to 45–37′42″ N/122–41′37″ then heading 150 yards to the shoreline ending at 45–37′44″ N/122–41′31″ W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

This rule has been enforced with actual notice since November 16, 2012 and it will be enforced until 30 days from date of publication in the **Federal Register**. If unsafe conditions continue beyond that date, the Coast Guard will consider extending the duration of the safety zone.

D. Regulatory Analyses

We developed this 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. Although this rule will restrict access to the regulated areas, the effect of this rule will not be significant because: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding 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 INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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 rule involves the establishment of temporary safety zones around the Columbia Grain facility on the Willamette River in Portland, OR and the United Grain Corporation facility on the Columbia River in Vancouver, WA. This 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 are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–235 to read as follows:

§ 165.T13–235 Safety Zones; Columbia Grain and United Grain Corporation Facilities; Columbia and Willamette Rivers.

(a) *Definitions.* As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(7) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) *Locations.* The following areas are safety zones:

(1) Columbia Grain: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: line one starting on the shoreline at 45–38′35″ N/122–46′2″ W then heading 150 yards offshore to 45–38′38″ N/122–46′15″ W then heading up river 380 yards to 45–38′32″ N/122–46′28″ then heading 150 yards to the shoreline ending at 45–38′30″ N/122–46′25″ W. Geographically this rule will cover all waters of the Willamette River between the navigable channel and the Columbia Grain facility in Portland, OR.

(2) United Grain Corporation: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: line one starting on the shoreline at 45–37′46″ N/122–41′34″ W then heading 150 yards offshore to 45–37′48″ N/122–41′50″ W then heading up river 470 yards to 45–37′42″ N/122–41′37″ then heading 150 yards to the shoreline ending at 45–37′44″ N/122–41′31″ W. Geographically this rule will cover all waters of the Columbia River between the navigable channel and the United Grain Corporation facility at the Port of Vancouver, WA.

(c) *Effective period.* The safety zones created in this section will be in effect from November 16, 2012 and will be enforced until January 17, 2013. They will be activated for enforcement as described in paragraph (d) of this section.

(d) *Enforcement periods.* (1) The Sector Columbia River Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these safety zones is suspended.

(2) Upon notice of enforcement by the Sector Columbia River Captain of the Port the Coast Guard will enforce these safety zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zones, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within these safety zones contact the on-scene official patrol on VHF–FM channel 16 or 13. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within these safety zones shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zones.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) *Waiver.* The Sector Columbia River Captain of the Port may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: November 30, 2012.

B.C. Jones,

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

[FR Doc. 2012–30405 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1060]

RIN 1625–AA00

Safety Zone for Recovery Operations for East Jefferson Street Train Derailment, Mantua Creek; Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone one mile north and one mile south of the East Jefferson Street Railroad Bridge, Mantua Creek, Paulsboro, New Jersey, due to a train derailment resulting in the release of hazardous materials into Mantua Creek and the surrounding air. This regulation is necessary to provide for the safety of life on the navigable waters of the Mantua Creek. This safety zone is intended to restrict vessel traffic movement to protect mariners from the hazards associated with an ongoing recovery operation to remove the derailed train cars and address hazardous material release.

DATES: This rule is effective in the CFR from December 18, 2012 January 15, 2013. This rule is effective with actual notice from December 5, 2012 until December 18, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1060. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email If you have questions on this temporary rule, call or email Lieutenant Corrina Ott, U.S. Coast Guard, Sector Delaware Bay, Chief of Waterways Management Division, Coast Guard; telephone 215–271–4902, email *Corrina.ott@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

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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. Immediate action is necessary to protect the maritime public. The East Jefferson Street Rail Bridge train derailment occurred November 30, 2012 and hazardous material response and railcar recovery began immediately, thereby making it impractical to provide for a notice and comment period. Vessels transiting or attempting to transit Mantua Creek near the response operations may be at risk from possible hazardous material exposure.

For the reasons stated above, 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**. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with the recovery operation and hazardous material release.

B. Basis and Purpose

On the morning of November 30, 2012 a train derailed and a portion of the East Jefferson Street Rail Bridge located in Paulsboro, New Jersey collapsed. Additionally a release of hazardous material from the derailed train cars occurred. Train cars currently lie partially submerged in Mantua Creek in the immediate vicinity of the rail bridge. A safety zone is necessary because there will be an ongoing operation to remove the submerged train cars and hazardous materials from November 30, 2012 until completed.

C. Discussion of the Final Rule

The Coast Guard Captain of the Port Delaware Bay is establishing a temporary safety zone from on December 5, 2012 until all recovery operations are completed unless cancelled earlier by the Captain of the Port. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

The boundary line for the temporary safety zone includes all waters of Mantua Creek one mile north of and one mile south of the East Jefferson Street Rail Bridge in Paulsboro, New Jersey.

Vessels will not be permitted to transit through the safety zone unless they receive authorization from the Captain of the Port Delaware Bay or her representative. Such requests must be made one hour prior to the intended transit of the Safety Zone. Vessels may contact the Captain of the Port Delaware Bay or her representative in order to obtain authorization by contacting Coast Guard Sector Delaware Bay at: (215) 271–4940. After evaluating the current conditions and status of recovery operation of the derailed and damaged train cars, the Captain of the Port Delaware Bay or her representative will notify the requesting vessel whether they are authorized to transit through the Safety Zone and will provide any other directions for their intended transit.

The Captain of the Port will cancel this safety zone once all recovery operations are completed and hazards are removed from the area. At such time, notice that the safety zone is no longer established will be broadcast to mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will

restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of recovery operations.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of the vessels intending to transit Mantua Creek one mile north and one mile south of the East Jefferson Street Rail Bridge in Paulsboro, New Jersey from December 5, 2012 until all recovery operations are completed, unless cancelled earlier by the Captain of the Port.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding 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 INTFORMATION CONTACT**'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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 rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist 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, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary 165.T05–1060, to read as follows:

§ 165.T05–1060 Safety Zone for Recovery Operations for East Jefferson Street Train Derailment, Mantua Creek; Paulsboro, NJ.

(a) *Location.* All waters of Mantua Creek one mile north and one mile south of the East Jefferson Street Rail Bridge in Paulsboro, New Jersey.

(b) *Enforcement period.* This rule is effective on December 5, 2012, until January 15, 2013, unless cancelled earlier by the Captain of the Port.

(c) *Regulations:* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.33 of this part.

(1) All persons and vessels transiting through the Safety Zone must be authorized by the Captain of the Port or her representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the Port or her representative to the vessel.

(4) To seek permission to transit the Safety Zone, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations: (i) Enforcing laws; (ii) servicing aids to navigation, and (iii) emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) The Captain of the Port may take possession and control of any vessel in the safety zone;

(9) The Captain of the Port may remove any person, vessel, article, or thing from a safety zone;

(10) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(11) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) *Definitions. The Captain of the Port means* the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the Safety Zone by Federal, State, and local agencies.

Dated: December 5, 2012.

K. Moore,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2012–30400 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 77, No. 243
Tuesday, December 18, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2012–0094]

Notice of Availability of an Evaluation of the Swine Vesicular Disease Status of Certain Regions in Italy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Availability.

SUMMARY: We are advising the public that we have determined that the Italian Regions of Lombardia, Emilio-Romagna, Veneto, and Piemonte and the autonomous provinces of Trento and Bolzano are free of swine vesicular disease. This determination is based on our review of the documentation submitted by the Government of Italy in support of its request and the findings of our own animal health risk evaluation. We are making our determination, as well as the evaluation we have prepared in connection with this action, available for review and comment.

DATES: We will consider all comments that we receive on or before February 19, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0094-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0094, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0094* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3089.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various communicable diseases, including swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Sections 94.12 and 94.14 of the regulations contain requirements governing the importation of pork and pork products and swine, respectively, from regions where SVD exists in order to prevent the introduction of the disease into the United States. We consider SVD to exist in all regions except those listed in accordance with § 94.12(a)(2) as being free of SVD.

Section 94.13 of the regulations contains requirements governing the importation of pork or pork products from regions that have been determined to be free of SVD, but that are subject to certain restrictions because of their proximity to or trading relationships with SVD-affected regions. Such regions are listed in accordance with paragraph (a)(2) of that section.

The regulations in 9 CFR 92.2 contain requirements for requesting the recognition of the animal health status of a region or for the approval of the export of a particular type of animal or animal product to the United States from a foreign region. If, after review and evaluation of the information submitted in support of the request, the Animal and Plant Health Inspection Service (APHIS) believes the request can be safely granted, APHIS will make its evaluation available for public comment through a notice published in the **Federal Register.** Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the request that will be detailed in another notice published in the **Federal Register.**

In July 1997, the European Commission and the Government of Italy submitted a request to APHIS seeking the recognition of certain Regions in northern Italy (in Italy, a ''Region'' is a type of political jurisdiction) as being free of SVD. We conducted a qualitative risk assessment, and on June 25, 1999, we published in the **Federal Register** (64 FR 34155–34168, Docket No. 98–090–1) a proposal to amend the regulations in order to recognize eight regions in northern Italy as free of SVD. However, before that rule was made final, SVD outbreaks occurred in four of the eight Regions. Therefore, in the final rule published April 7, 2003, in the **Federal Register** (68 FR 16922–16941, Docket No. 98–090–5), APHIS recognized only those four Regions that remained free of SVD (Friuli, Liguria, Marche, and Valle d'Aosta). In the intervening years, we have continued our evaluation of the SVD status of Italy, as is our standard procedure in cases where the requesting country does not withdraw its request for recognition of disease freedom. Based on information provided by the Italian government as well as multiple site visits, we have now found four Regions within north-central Italy (Lombardia, Emilio-Romagna, Veneto, and Piemonte) and two autonomous provinces (Trento and Bolzano) to be free of SVD.

APHIS has evaluated the risk of introducing SVD into the United States via the importation of SVD-susceptible species or products from these areas of Italy in accordance with 9 CFR part 92. Based on this evaluation, APHIS has found that that the surveillance, prevention, and control measures implemented by Italy in the four Regions and two autonomous provinces under consideration as being free of SVD are sufficient to minimize the likelihood of introducing SVD into the United States via imports of SVD-susceptible species or products. However, because of its proximity to or trading relationships with SVD-affected regions, we have found that it is necessary to impose additional restrictions in accordance with § 94.13

on the importation of pork or pork products from the areas of Italy under consideration for being declared free of SVD.

Therefore, in accordance with § 92.2(e), we are announcing the availability, for public review and comment, of our evaluation of the SVD status of the Regions and autonomous provinces under consideration. The evaluation may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this document.) The evaluation, as well as the information evaluated, may also be viewed at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml* by following the link for ''Previous regionalization requests and supporting documentation.''

After reviewing any comments we receive, we will announce our decision regarding the disease status of the Italian Regions of Lombardia, Emilio-Romagna, Veneto, and Piemonte and the autonomous provinces of Trento and Bolzano with respect to SVD and the import status of susceptible animals and products of such animals in a subsequent notice.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 11th day of December 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–30257 Filed 12–17–12; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–96; NRC–2011–0069]

Long-Term Cooling and Unattended Water Makeup of Spent Fuel Pools

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in the NRC rulemaking process the issues raised in a petition for rulemaking (PRM) submitted by Thomas Popik (the petitioner) on behalf of the Foundation for Resilient Societies. The petition was dated March 14, 2011, and was docketed as PRM–50–96. The petitioner requests that the NRC amend its regulations to require facilities licensed by the NRC to assure long-term cooling and unattended water makeup of spent fuel pools (SFP).

DATES: The docket for the petition for rulemaking, PRM–50–96, is closed on December 18, 2012.

ADDRESSES: Further NRC action on the issues raised by this petition can be found on the Federal Rulemaking Web site at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0069.

You can access publicly available documents related to the petition, which the NRC possesses and are publicly available, using any one of the following methods:

- *Federal Rulemaking Web site:* Public comments and supporting materials related to this petition can be found at *http://www.regulations.gov* by searching on the petition Docket ID NRC–2011–0069. Address questions about NRC dockets to Carol Gallagher; telephone 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Manash Bagchi or Richard Dudley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2905 or 301–415–1116, email: *Manash.Bagchi@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. The Petition
II. Regulatory Oversight of Electric Power Systems
III. Analysis of Public Comments
IV. NRC Evaluation
A. NRC Requirements for Governing Spent Fuel Pool Cooling and Provision of Electric Power for Accidents
B. Geomagnetic Storms and Effects on the Earth
C. Frequency of Geomagnetic Storms With Potential Adverse Effects on the Electrical Grid
D. Experience With Geomagnetic Storms' Effects on the Electrical Grid
E. Federal Government Coordination and Emergency Response
V. Conclusion
VI. Resolution of the Petition

I. The Petition

The petitioner submitted a PRM (ADAMS Accession No. ML110750145), dated March 14, 2011, to the NRC. The petitioner requests that the NRC amend its regulations to require facilities licensed by the NRC under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) to assure long-term cooling and unattended water makeup of SFPs. The petitioner asserts that the North American commercial electric power grids are vulnerable to prolonged outage caused by extreme space weather, such as coronal mass ejections and associated geomagnetic disturbances and therefore cannot be relied on to provide continual power for active cooling and/or water makeup of SFPs. Moreover, existing means for providing onsite backup power are designed to operate for only a few days, while spent fuel requires active cooling for several years after removal of the fuel rods from the reactor core. The petitioner suggested rule language with the following requirements:

> Licensees shall provide reliable emergency systems to provide long-term cooling and water makeup for spent fuel pools using only on-site power sources. These emergency systems shall be able to operate for a period of two years without human operator intervention and without offsite fuel resupply. Backup power systems for spent fuel pools shall be electrically isolated from other plant electrical systems during normal and emergency operation. If weather-dependent power sources are to be used, sufficient water or power storage must be provided to maintain continual cooling during weather conditions which may temporarily constrict power generation.

On May 6, 2011 (76 FR 26223), the NRC published a notice of receipt and request for public comment for this petition in the **Federal Register** (FR). The public comment period closed on July 20, 2011, and the NRC received 97 public comments. After reviewing public comments and evaluating other ongoing activities, the NRC performed a preliminary review and analysis to ascertain the validity, accuracy, and efficacy of the petitioner's technical

assertions and proposed amendment of 10 CFR part 50.

II. Regulatory Oversight of Electric Power Systems

The issues raised in this petition span the regulatory domains and oversight of several government agencies and an industry organization. A discussion of the regulatory domains and oversight of the NRC, the Federal Energy Regulatory Commission (FERC), and the North American Electric Reliability Corporation (NERC) is provided to illustrate the complexity and depth of the issues raised in this PRM.

The mission of the NRC is to license and regulate civilian nuclear power facilities and civilian use of nuclear materials in order to protect public health and safety, promote the common defense and security, and protect the environment. An important part of that mission is to ensure public health and safety with respect to the design, construction, and operation of nuclear power plants (NPP).

Commercial NPPs rely on electric power transmission networks to export power and normally use electrical power from the transmission network to safely shut down the plant when required. The NRC's existing regulations consider the historically high reliability of an electric power transmission system in the vicinity of the plants in maintaining the safety of the reactor and fuel stored in SFPs. However, if power from the electrical transmission system is not available, then safety-related backup power systems, typically powered by emergency diesel generators (EDG), are relied on for essential power to safely shutdown the reactor, mitigate accidents, and provide long-term cooling for the reactor core and fuel in the SFPs. These safety-related onsite EDGs are typically maintained with at least a 3 to 7-day supply of fuel and lubricating oil. In addition, NRC regulations require capabilities to withstand a station blackout (10 CFR 50.63, ''Loss of all alternating current power'') and development and implementation of strategies to maintain or restore core-cooling, containment, and SFP cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire (10 CFR 50.54(hh)(2)). These requirements are satisfied by equipment typically independent of the electric power transmission network.

The FERC is an independent agency that regulates the interstate transmission of electricity, natural gas, and oil. The FERC's main authority in electric power transmission includes the following:

- Regulation of wholesale sales of electricity and transmission of electricity in interstate commerce;
- Oversight of mandatory reliability standards for the bulk-power system;
- Promotion of a strong national energy infrastructure, including adequate transmission facilities; and
- Regulation of jurisdictional issuances of stock and debt securities, assumptions of obligations and liabilities, and mergers.

The NERC's mission is to ensure the reliability of the North American bulk-power system. The NERC is the electric reliability organization certified by the FERC to establish and enforce reliability standards for the bulk-power system. The NERC develops and enforces reliability standards; assesses adequacy of capacity annually via a 10-year forecast, summer forecasts, and winter forecasts; monitors the bulk-power system; and educates, trains, and certifies industry personnel.

The NRC does not have direct regulatory authority over electric transmission systems, but the NRC collaborates closely with FERC and NERC on electric grid reliability, cyber security issues, electromagnetic pulse issues, geomagnetically-induced current (GIC) research, and related activities to the extent that these issues may have impacts on NPPs.

III. Analysis of Public Comments

The NRC received 97 comment submissions on PRM–50–96. Comments both favoring and opposing this PRM were received, and all comments were considered during the NRC staff's evaluation of the PRM. Comments recommending denial of this petition were submitted by the Nuclear Energy Institute (NEI) and are evaluated in the following paragraphs. The majority of comments supporting the petition were in form letter format and did not provided additional technical information. However, one commenter in favor of the PRM did provide technical arguments to support the petition. All of the comments supporting the petition are not discussed here, because it would be premature to discuss these comments in advance of the NRC's decision whether to actually adopt a final rule addressing the issues raised in the PRM. Therefore, comments supporting the petition will be discussed in any proposed rule that addresses one or more of the issues raised in this PRM. If the NRC ultimately determines not to address, by rulemaking, one or more issues raised in this PRM, then the NRC will explain, in a **Federal Register** notice (FRN), why the petitioner's requested rulemaking changes were not adopted by the NRC and addresses comments received in favor of the PRM.

Comment NEI–1

The NRC is separately addressing the long-term spent fuel pool cooling issue raised by this Petition through its near-term task force review of insights from the March 11, 2011 Fukushima Dai-ichi accident. On July 12, 2011, the task force issued recommendations that are currently being considered by the Commission. Several of these recommendations address the topic of long-term spent fuel pool cooling. The Petition raises no unique issues in this area requiring action separate from, or in addition to, those already being taken in response to the task force recommendations. The Commission's ongoing consideration of these recommendations provides ample opportunity to examine the NRC's regulations with respect to long-term spent fuel pool cooling and bolster assurances that the pools remain safe if an extreme event were to challenge cooling capabilities.

The Commission is already conducting a thorough evaluation of the adequacy of these measures in response to the July 12, 2011 recommendations of its near-term Task Force review of insights from the March 11, 2011 Fukushima Dai-ichi accident. This evaluation will further assure that adequate measures are in place to mitigate any potential severe event, not just space weather.

NRC Response

The NRC agrees with the comment that the ongoing review of the Fukushima accident will separately address some safety issues related to the adequacy of long-term SFP cooling at NPPs. These actions are now being evaluated under five different Fukushima Near-Term Task Force (NTTF) report activities like EA Order-12–049, NTTF Recommendations 4.1, 7.2, 8, and 9. They are discussed in further detail in Section V, ''Conclusion,'' of this document.

However, no new mitigating measures have been developed or defined; accordingly, the NRC does not have a sufficient basis at this time to conclude what future actions would be required for resolving issues raised in PRM–50–96.

The NRC has decided to consider and resolve the issues raised in this PRM in a phased manner, given the NRC activities already underway that may have a bearing on those issues. The phased approach would consist of the following activities: to begin with, the

NRC will access the ongoing Fukushima-related activities to assess the degree of additional protection that will be provided by those efforts and if these measures will resolve the petitioner's issues. Specifically, the NRC staff will assess the implementation of Order EA–12–049 (ADAMS Accession No. ML12054A736)—which requires that licensees develop, implement, and maintain guidance and strategies to maintain or restore core cooling, containment, and SFP cooling capabilities following a beyond-design-basis external event—and the ongoing enhancements to the station blackout rule being developed under Fukushima NTTF Recommendation 4.1. The NRC staff will also assess possible rulemakings in response to Fukushima NTTF Recommendation 7.2, which could potentially require all licensees to provide Class 1E (safety-grade) electric power to spent fuel makeup systems, and the emergency preparedness activities being developed for prolonged station blackout scenarios under Fukushima NTTF Recommendations 8 and 9.

However, if additional capabilities are judged to be necessary, the NRC will then consider appropriate mechanisms for requiring NPP licensees to consider long-term grid collapse scenarios in their site procedures.

Comment NEI–2

The scenario postulated by the Petitioner, where no offsite response to a nuclear emergency would be available for two years, posits a cataclysmic loss of the nation's infrastructure. In that situation, significant preparedness demands would be placed on all public and private institutions. Prior to assessing any regulatory needs, the credibility of this scenario should first be established in the broader context before more narrow regulatory needs are contemplated. A national assessment of this scenario and the need to prepare for it must first be made before any single regulatory agency begins requiring specific preparedness measures. Indeed the efforts of many different government agencies would need to be carefully coordinated and response priorities set. Otherwise, no action taken by any NRC licensee in response to this petition could be assessed for its adequacy because the availability of any response resources could not be assured absent such coordination. This coordination task would be an extremely significant task to which resources would only be committed once the credibility of the scenario was established. However, there is no such coordination underway because none of the agencies that would be involved have determined that the scenario is credible. In absence of the establishment of the basis for the credibility of this scenario, the petition lacks the basis to determine that there is a valid safety concern.

NRC Response

The NRC agrees with the comment that the long-term grid collapse scenario postulated by the petitioner would necessitate a coordinated response by various government agencies. However, the NRC disagrees with the commenter's assertion that no such coordination is underway or that such coordination does not exist, because the regulatory agencies referred to by the commenter have not determined that the scenario is credible. The NRC is currently coordinating with the National Aeronautics and Space Administration to ensure a common understanding of the technical phenomena associated with solar storms. In addition, the NRC is coordinating with the U.S. Department of Energy (DOE), the FERC, and the Federal Emergency Management Agency (FEMA) to develop both preventative and mitigating strategies to address the potential for a widespread and long-term grid collapse caused by a geomagnetic storm. Consideration of the issues raised by the petitioner necessitates further in-depth analyses. The NRC rulemaking process is a mechanism to look at these events, establish roles and responsibilities, and participate in defining the process for enhanced coordination between government agencies, should the NRC decide to develop and publish a proposed rule for public comment.

Comment NEI–3

The central argument of the petition is the claim that a spent fuel pool accident, namely zirconium ignition, poses a significant safety concern. This claim is based upon the credibility of a Long-Term loss of off-site power event based upon a new initiating event (severe space weather), and the assumption that mitigative actions (specifically diesel fuel resupply from offsite and human intervention) would not be successful in preventing spent fuel pool drain-down and subsequent zirconium ignition resulting from a long term loss of off-site power event. Despite the new information referenced by the Petitioner, the Petitioner offers no data to support the conclusion that a long term loss of off-site power event due to severe space weather is credible. Petitioner has also not established any basis to support the conclusion that actions to mitigate a long term loss of off-site power event could or would not be taken in time to prevent zirconium ignition. In both cases, the Petition is entirely speculative. Thus, the Petitioner has not demonstrated that a new and significant basis exists to challenge the NRC's prior determinations of the safety of spent fuel pools.

NRC Response

The NRC agrees with the comment that the credibility of the event postulated by the petitioner (i.e., a widespread, prolonged grid failure of sufficient magnitude that normal commercial infrastructure would not be available to resupply diesel fuel) must be established before regulatory action is taken. However, the NRC disagrees with the comment's unsupported assertion that the petition is entirely speculative. The NRC's initial evaluation of available information indicates that the likelihood of an extreme solar storm (similar to the 1859 Carrington event [1]) is plausible with a frequency in the range of once in 153 to once in 500 years (2E–3 to 6.5E–3 per year). The probability of the petitioner's postulated catastrophic grid failure, given a Carrington-like event, is not known with certainty. However, based on the NRC's review of the existing data, the NRC believes that there is insufficient information for the NRC to conclude that the overall frequency of a series of events potentially leading to core damage at multiple nuclear sites is acceptably low such that no regulatory action is needed. Thus, the NRC concludes that the petitioner's scenario is sufficiently credible to require consideration of emergency planning and response capabilities under such circumstances. Accordingly, the NRC intends to further evaluate the petitioner's concerns in the NRC rulemaking process.

Comment NEI–4

The Petition does not recognize that the issue of grid reliability and its effects on nuclear safety is already fully and adequately addressed through existing regulation. The NRC has previously made decisions regarding how the issue of grid reliability is addressed within the context of NRC regulatory authority in 10 CFR Part 50, and within the context of protecting public health and safety. The NRC regulatory structure to address grid reliability is best described in Regulatory Information Summary (RIS) 2004–5 ''Grid Operability and the Impact on Plant Risk and the

[1] The Carrington event in 1859 is the largest solar storm ever recorded.

Operability of Offsite Power.'' In summary, issues involving grid reliability are addressed through 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants;'' 10 CFR 50.63, ''Loss of all alternating current power;'' 10 CFR Part 50 Appendix A, General Design Criteria (GDC) 17, ''Electric power systems;'' and through nuclear power plant Technical Specifications (TS) on operability of offsite power.''

NRC Response

The NRC agrees that the NRC regulations and the NRC regulatory documents cited in the comment address the NRC's current approach to consideration of grid stability with respect to the safety of NPPs. However, the comment does not address the PRM's apparent underlying premise that the regulations and guidance are not adequate, or that the licensing bases for NPPs may be inadequate because they do not address a reasonably foreseeable condition attributable to natural hazards. The comment does not explain how the NRC's regulations, or the regulatory documents referenced, address the matters raised in the PRM in sufficient manner as to prevent the need for further NRC regulatory consideration.

Comment NEI–5

The Petition presents a Probabilistic Risk Assessment to conclude a long term loss of off-site power at a nuclear power facility resulting from severe space weather is a credible event. The Petitioner's assessment is based upon key inputs from the ORNL report regarding the frequency and severity of severe space weather and assumed effects on the commercial power grid. Specifically, the Petition assumes that a once in 100 year severe space weather event results in a probability of 1% per year that a 1–2 year loss of off-site power event would occur. Unfortunately, the Petition has misinterpreted the data presented in the ORNL report. In fact, the ORNL report qualifies its discussion of any potential permanent damage to the power grid, stating that such discussion is only to ''provide perspectives * * * of potential level of damage that may be possible to the infrastructure.'', and indicating that there is a low level of certainty in the ability to assess what the potential damage could be. Specifically, the report acknowledges the difficulty in determining what would be damaged, the extent of damage, and the complexity and duration for repairing the damage. The myriad of probabilities regarding damage to the grid and length of time a nuclear power plant might be without off-site power quite frankly are not known and likely are extremely small. Therefore, absent further scientific and technical investigation, Petitioners claims amount to nothing more than speculation and the discussion in the ORNL report should not be used to conclude that a once in 100 year severe space weather event would result in a 1–2 year loss of off-site power event. Further, it is important to note that there has never been a long term loss of electric power due to severe space weather. For the worst event of this type in modern history, the commercial power grid was restored to 83% within 11 hours, and permanent damage to transformers and other grid components was extremely small. Effects were extrapolated from this event to the postulated once in 100 year storm, however, it is not possible to determine whether a 1–2 year loss of off-site power event is a realistic consequence. Thus, the ORNL report does not demonstrate that a long term loss of off-site power due to severe space weather is a credible event.

NRC Response

The NRC agrees with the commenter's assertion that the petitioner has not conclusively demonstrated that a long-term catastrophic grid collapse is certain to result from a once-in-100-year storm, but the NRC disagrees with the comment's inference that a long-term loss-of-offsite power due to severe space weather is not a credible event. Although there is a great deal of uncertainty associated with the frequency and magnitude of solar storms, as discussed in Section IV.C, ''Frequency of Geomagnetic Storms with Potential Adverse Effects on the Electrical Grid,'' of this document, the NRC has concluded that the expected frequency of such storms is not remote compared to other hazards that the NRC requires NPPs licensees to consider. The comment addresses the credibility of once-in-100-year storms, whereas the NRC considers initiating events with frequencies of 1E–3 years or less in the licensing of NPPs. The comment also implies that grid restoration time after a severe solar storm would typically be hours or days instead of 1 to 2 years, but the comment provides no supporting analyses of the age and vulnerability of existing transformers installed in the electrical grid to support this implied inference. Accordingly, the NRC believes that it is possible that a geomagnetic storm-induced outage could be long-lasting and could last long enough that the onsite supply of fuel for the emergency generators would be exhausted. It is also possible that a widespread, prolonged grid outage could cause some disruption to society and to the Nation's infrastructure such that normal commercial deliveries of diesel fuel could be disrupted. In such a situation, it would be prudent for licensees to have procedures in place to address long-term grid collapse scenarios. In extreme situations, it is possible that government assets could be called on to facilitate emergency deliveries of fuel to NPP sites before the fuel stored onsite is exhausted. All these issues need further research, review, and analysis before formulating mitigating actions. The NRC rulemaking process is an appropriate mechanism for consideration of the petitioner's issues.

IV. NRC Evaluation

The NRC conducted a preliminary review and analysis of the issues raised in the petition and public comments to reach a conclusion regarding the resolution of this petition. The analysis is described in the following five sections.

A. NRC Requirements for Governing Spent Fuel Pool Cooling and Provision of Electric Power for Accidents

Commercial NPPs are required to have multiple sources of offsite power and safety-related onsite sources of power, typically provided by emergency diesel generators arranged in redundant electrical trains. As specified by GDC 17, ''Electric Power Systems,'' of appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' each operating reactor shall have an onsite electric power system and an offsite electric power system that supports the functioning of structures, systems, and components important to safety. The safety function for each system is to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences, and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

Commercial NPPs rely on the electric power transmission networks to export power, and NPPs normally use electric power from the transmission network for normal operation of plant equipment, to safely shut down the plant when required, and for accident mitigation. The existing NRC regulations consider the historically

high reliability of an electric power transmission system in maintaining the safety of the reactor and fuel stored in SFPs. However, if offsite power from the transmission network is unavailable, safety-related onsite back up power systems (typically powered by EDGs) are relied on for essential power to safely shutdown the reactor, mitigate any accidents, and provide long-term cooling for the reactor core and fuel in the SFP. These safety-related onsite power sources are typically maintained with at least a 3- to 7-day supply of fuel and lubricating oil. In addition, the NRC regulations require capabilities to withstand a station blackout and the development and implementation of strategies to maintain or restore core cooling, containment, and SFP cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire. These requirements are satisfied by equipment independent of the electric power transmission network.

The spent fuel pool structure typically consists of a stainless-steel liner covering a steel-reinforced concrete structure several feet thick. The SFP structure is designed to withstand the effects of natural phenomena, including earthquakes, floods, and tornados, without loss of its leak-tight integrity. Consistent with the requirements of GDC 61, ''Fuel Storage and Handling and Radioactivity Control,'' of appendix A to 10 CFR part 50 or similar plant-specific design criteria, SFPs are designed to prevent a significant loss of water inventory under normal and accident conditions. An inadvertent loss of coolant inventory is prevented by design, typically through the absence of drains in the SFP, the location of piping penetrations though the SFP structure well above the top of stored fuel, and the use of design features to prevent siphoning of water. A reliable forced cooling system minimizes coolant evaporation during normal operation and postulated accident conditions. When necessary, operators can provide makeup water to maintain SFP coolant inventory using any one of many makeup water systems, including safety-related systems at most operating reactors. The maintenance of an adequate coolant inventory alone is sufficient to protect the integrity of the fuel, provide shielding, and contain any minor releases of radioactivity that may result from cladding damage.

As the March 2011 events at the Fukushima Dai-ichi site demonstrated, the robust structure of the SFP and the provisions to prevent loss of coolant inventory provide substantial time to implement appropriate methods to makeup coolant inventory lost to evaporation. In most common operating configurations, the existing pool inventory is typically adequate to maintain the fuel covered with water for 1 week or more following a loss of forced cooling. Each facility safety analysis report describes the capability to provide forced cooling and makeup water using installed systems, and these systems may be operated using onsite sources of power. Diesel-driven fire pumps are available at all operating reactors and are among the design capabilities to provide makeup water to the SFP. Beyond these design capabilities, 10 CFR 50.54(hh)(2) requires licensees to develop and implement guidance and strategies intended to maintain or restore SFP cooling capabilities under the circumstances associated with loss of large areas of the plant as a result of explosions or fire. These capabilities required by 10 CFR 50.54(hh)(2) may further extend the time spent fuel can be adequately cooled using on site resources. Thus, assuming an adequate supply of fuel for permanently installed and portable emergency equipment, currently required onsite capabilities would support adequate cooling of spent fuel for weeks following loss of the offsite electric power transmission network.

As directed by the Commission in Staff Requirements Memorandum SECY–12–0025, dated March 9, 2012, (ADAMS Accession No. ML120690347), the NRC staff has undertaken regulatory actions to further enhance reactor and SFP safety as a result of recommendations developed through evaluation of early information from the March 2011 events at the Fukushima Dai-ichi site. On March 12, 2012, the NRC staff issued Order EA–12–051 (ADAMS Accession No. ML12054A679), which requires that licensees install reliable means of remotely monitoring wide-range SFP levels to support effective prioritization of event mitigation and recovery actions in the event of a challenging external event. In addition, the NRC staff issued Order EA–12–049 (ADAMS Accession No. ML12054A736), which requires that licensees develop, implement, and maintain guidance and strategies to maintain or restore core cooling, containment, and SFP cooling capabilities following a beyond-design-basis external event. Upon full implementation of these Orders at NPPs, the NRC staff believes that overall protection of public health and safety will be further increased.

B. Geomagnetic Storms and Effects on the Earth

Periodically, the earth's magnetic field is bombarded by charged particles emitted from the sun due to violent eruptions of plasma and magnetic fields from the sun's corona, known as coronal mass ejections (CME).

Solar storms generally follow the sunspot cycle and vary in intensity over the 11-year cycle. The most severe geomagnetic disturbances (GMD) during a cycle have been observed to follow the peak in sunspot activity by 2 to 3 years. Thus, electrical power system disturbances resulting from current cycle 24 are expected to peak in 2013.

Geomagnetic storms are created when the earth's magnetic field captures these ionized particles causing very slow magnetic field variations, with rise times as fast as a few seconds and pulse widths of up to an hour. The rate of change of the magnetic field creates electric fields in the earth that induce current flow in long man-made conducting paths such as power transmission networks, railway lines, and pipelines. These geomagnetically-induced currents (GIC) exit bulk-power systems through neutrals of grounded power transformers and can disrupt the normal operation of the system and even damage the transformers if the transformer core becomes saturated.

Operating experience indicates that there are two risks that result from the introduction of GICs in the bulk-power system:

(1) Damage to bulk-power system assets, typically associated with transformers; and

(2) Loss of reactive power support, which could lead to voltage instability and power system collapse.

The GICs (quasi-direct currents) that flow through the grounded neutral of a transformer during a geomagnetic disturbance cause the core of the transformer to magnetically saturate on alternate half-cycles. Saturated transformers result in harmonic distortions and additional reactive power or volt-ampere reactive (VAR) demands on electric power systems. The increased VAR demands can cause both a reduction in system voltage and overloading of long transmission tie-lines. In addition, harmonics can cause protective relays to operate improperly and shunt capacitor banks to overload. These conditions can lead to major power failures, moving the system closer to voltage collapse.

The immediate and direct impact of geomagnetic storms may be an electrical power outage. The amount of time required to restore the electrical grid

will depend upon the extent of damage to bulk-power system assets. There is a concern about the effects of a long-term power outage over extended portions of the U.S. transmission systems, during which critical services that rely on electrical power may be disrupted. For instance, the petitioner noted that the onsite fuel for backup electric power sources at NPPs would run out in several days to weeks. Furthermore, the petitioner asserted that, since the capability to resupply fuel through gasoline and diesel fuel pumps also generally relies on electrical power systems, a power blackout lasting longer than 2 to 3 days could create long-term implications for interdependent public and private infrastructures. Such a long-term power outage could interrupt communication systems, stop freight transportation, and affect the operations of major industries including fuel (oil and gas) suppliers.

In addition, potential disruptions due to societal stress could significantly hamper the ability to provide fuel resupply deliveries to nuclear power plants.

C. Frequency of Geomagnetic Storms With Potential Adverse Effects on the Electrical Grid

The petitioner references a report prepared for the Oak Ridge National Laboratory (''Metatech report'') [2] that uses a frequency estimate of 1 in 100 years (1E–2/yr) for extreme space weather/geomagnetic disturbance to perform calculations that predict the likely collapse of two large portions of the North American power grid. The intensity of the storm postulated in the Metatech report, in terms of magnetic flux density per time, was 4,800 nano-Teslas/minute (nT/min). The Metatech report predicted that over 300 Extra High Voltage (EHV) transformers would be at-risk for failure or permanent damage from the event. The Metatech report concludes that, with a loss of this many transformers, the power system would not remain intact, leading to probable power system collapse in the Northeast, Mid-Atlantic, and Pacific Northwest, affecting a population in excess of 130 million.

The NRC staff investigated the assertion of 1E–2/yr frequency of occurrence of a serious geomagnetic disturbance by conducting a literature review (via Internet) to find relevant information. However, it is difficult to obtain an objective estimate for the frequency of occurrence of a ''serious'' disturbance, which the Metatech report says can produce magnetic flux density changes on the order of 4,800 nT/min. As noted in a report prepared for the United States Department of Homeland Security (DHS),[3] there is currently no framework for developing a hazard curve (e.g., annual probability of exceeding a given magnetic flux density rate-of-change) for geomagnetic storms.

There are several factors making it difficult to objectively predict the frequency of occurrence of a given level of a geomagnetic event in terms of magnetic flux density change over time (i.e., to produce an appropriate hazard curve), including:

- Paucity of recorded data;
- Relative recentness of monitoring the appropriate parameter (nT/min);
- Lack of correlation between the magnetic flux disturbance intensity (in nT) and its time rate of change (nT/min); and
- Geographical variations that affect how much a given geomagnetic storm impacts a selected location.

The Metatech report provides estimates of the frequency of severe geomagnetic storms. Speculating from observed data, and taking into account that about one-third of the storms would be positioned to adversely impact the United States, Metatech concluded that a storm producing ~2400 nT/min could impact the U.S. grid about every 30 years and that a ~5,000 nT/min storm could be experienced every 100 years.

An article in *Spectrum* magazine [4] provided annual probabilities of magnetic storms producing more than 300 nT/min in North America. This intensity (rate-of-change of magnetic flux density) is closer to the ~480 nT/min experienced by Quebec Hydro in 1989. The annual probabilities set forth in *Spectrum* ranged from 2E–3 at the most vulnerable geographic locations to 2E–5 in the least vulnerable. Most of the northern United States would fall into the 1E–3 annual probability range.

The largest recorded geomagnetic storm, the Carrington event of 1859, may have exceeded 5,000 nT/min. However, this event marked the beginning of scientific observation and data recording of these magnetic storms. In the 153 years since that event, many magnetic storms have been experienced, but none at that level. In order to calculate a meaningful estimate of the return period for such an event, an appropriate time period would have to be assumed. However, there may be a way to estimate the intensity of geomagnetic storms that occurred before the Carrington event. As stated in a *Scientific American* article,[5] ice-core data from Greenland and Antarctica demonstrate sudden jumps in the concentration of trapped nitrate gases, which in recent decades appear to correlate with known blasts of solar particles. The researchers stated that the nitrate anomaly found for 1859 stands out as the biggest of the past 500 years, with the severity roughly equivalent to the sum of all the major events of the past 40 years. Using 153 years as a lower-bound return period and 500 years as an alternative view yields a frequency for experiencing a Carrington-sized event ranging from 2E–3 to 6.5E–3 per year.

Additionally, the NRC establishes its expectation, in GDC 2, ''Design bases for protection against natural phenomena,'' that structures, systems, and components important to safety at nuclear power plants are designed to withstand the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated. Solar storms are not specifically identified as natural hazards in GDC 2, but the information currently available to the NRC indicates that the frequency of these storms may be consistent with other natural hazards within the intended scope of the GDC.

Based on this limited analysis, the NRC concludes that the frequency of occurrence of an extreme magnetic storm that could result in unprecedented adverse impacts on the U.S. electrical grid is not remote compared to other hazards that the NRC requires NPP licensees to consider. Accordingly, it is appropriate for the NRC to consider regulatory actions that could be needed to ensure adequate protection of public health and safety during and after a severe geomagnetic storm.

D. Experience With the Effects of Geomagnetic Storms on the Electrical Grid

The Oak Ridge National Laboratory (ORNL) Report ORNL–6665, ''Electric Utility Experience with Geomagnetic Disturbances,'' published in September

[2] Metatech Report Meta-R–319, ''Geomagnetic Storms and Their Impacts on the U.S. Power Grid,'' John Kappenman (January 2010).

[3] ''Geomagnetic Storms,'' prepared by CENTRA Technology, Inc., on behalf of the Office of Risk Management and Analysis, United States Department of Homeland Security (January 14, 2011).

[4] Molinski, Tom S., *et al.,* ''Shielding Grids from Solar Storms,'' IEEE Spectrum, November 2000.

[5] Odenwald, Sten F. and James L. Green, ''Bracing the Satellite Infrastructure for a Solar Superstorm,'' Scientific American (July 28, 2008).

1991,[6] discusses electric utility experience with geomagnetic storms to determine the probable impact of severe geomagnetic storms. The report states, as follows:

The first reports of geomagnetic storm effects on electric power systems in the United States resulted from the solar storm on March 24, 1940 during solar cycle 17. Disturbances were reported in the northern United States and Canada. The Philadelphia Electric Company system experienced reactive power swings of 20% and voltage surges. In the same period, two transformers in this system and several power transformers on the Central Maine Power Co. and Ontario Hydro system tripped out. The Consolidated Edison Company in New York City also experienced voltage disturbances and dips up to 10% due to the large increase in reactive power on that system. Since that time, power system disturbances have been recorded for geomagnetic storms that occurred during solar cycles that followed. Some of the more severe disturbances occurred on August 17, 1959 (solar cycle 19); August 4, 1972 (solar cycle 20); and March 13, 1989 (solar cycle 22).

Grid Issues: The ORNL Report details circuit breaker failures or inadvertent circuit breaker operations resulting in degradation of transmission systems. Specifically, the report states:

Past mishaps attributed to GIC include the tripping of circuit breakers from protection system malfunctions. On September 22, 1957, a 230-kV circuit breaker at Jamestown, North Dakota, tripped because of excessive third harmonic currents in the ground relays produced by saturated transformer cores. On November 13, 1960, a severe geomagnetic disturbance caused 30 circuit breakers to trip simultaneously on the 400–220–130-kV Swedish power system. In October 1980 and again in April 1986, a new 749-km 500-kV transmission line linking Winnipeg, Manitoba, with Minneapolis-St. Paul, Minnesota was tripped by protection system malfunctions due to GICs.

The report further discusses malfunctions in capacitor banks and static VAR (reactive power) compensators, which provide rapid voltage regulation and reactive power compensation via thyristor-controlled capacitor banks. Cascading failures of voltage control devices can result in grid instability and eventual blackout. The extent of blackout depends on the magnitude of the GICs and the compensatory actions taken by grid operators. The grid becomes unstable due to false relay operations resulting in unnecessary breaker trips, which cause isolation of transmission lines or voltage support equipment. Transformers may also be damaged when GIC passes through some transformers damaging the insulation and resulting in isolation of associated transmission lines. Isolation of transmission lines can result in grid collapse.

Transformers: The ORNL Report further looks at the impact on large transformers and states, as follows:

A few transformer failures and problems over the decades have been attributed to geomagnetic storms. In December 1980, a 735-kV transformer failed eight days after a geomagnetic storm at James Bay, Canada. A replacement 735-kV transformer at the same location failed on April 13, 1981, again during a geomagnetic storm. However, analysis and tests by Hydro-Quebec determined that GIC could not explain the failures but abnormal operating conditions may have caused the damage. The failures of the generator step-up transformers at the Salem Unit 1 nuclear generating station of Public Service Electric & Gas Co. during the March 13, 1989, storm probably have attracted the most attention. The 288.8/24-kV single-phase shell-form transformers, which are rated at 406 MVA, are connected grounded-wye. The damage to the transformers included damage to the low-voltage windings, thermal degradation of the insulation of all three phases, and conductor melting. The Salem plant occupies a vulnerable position in the power system network with respect to GICs since it is located at the eastern end of a long EHV transmission system traversing a region of igneous rock (on the Delaware river near the Atlantic Ocean) and is therefore very well grounded. (This position thus acts as a collection point for ground currents since the eastern end of the power network is close to the Atlantic Ocean and that station has a very low grounding resistance.) During the March 13th disturbance, Salem Unit 1 experienced VAR excursions of 150 to 200 MVAR. Additional VARs were consumed by the saturated step-up transformers.

Transformer failures in South Africa are documented in several reports associated with geomagnetic storms. A technical paper[7] entitled ''Transformer failures in regions incorrectly considered to have low GIC-risk,'' by C. T Gaunt and G. Coetzee, cites failures or degradation of large transformers. Specifically, the paper notes:

After the severe geomagnetic storm at the beginning of November 2003, often referred to as the 'Halloween storm,' the levels of some dissolved gasses in the transformers increased rapidly. A transformer at Lethabo power station tripped on protection on 17 November. There was a further severe storm on 20 November. On 23 November the Matimba #3 transformer tripped on protection and on 19 January 2004 one of the transformers at Tutuka was taken out of service. Two more transformers at Matimba power station (#5 and #6) had to be removed from service.

Recent analysis by Metatech estimates that in a once-in-100-year geomagnetic storm, more than 300 large EHV transformers would be exposed to levels of GIC sufficiently high to place these units at risk of failure or permanent damage requiring replacement.[8] The GICs contribute to the heat-related degradation that may affect transformer insulation. An older transformer design, known as ''Shell'' type (as discussed in the Salem failure), was susceptible to overheating due to circulating currents. Recent studies indicate that a few isolated cases of premature transformer failures that were attributed to accelerated GIC-related degradation have been limited to this special design. Transformer manufacturers consider modern ''core'' type transformer designs to not be prone to GIC-related premature or catastrophic failures.[9]

Large transformers are very expensive to replace and few spares are available. Manufacturing lead times for new equipment range from 12 months to more than 2 years. Such large-scale damage to these EHV transformers would likely lead to prolonged restoration and long-term shortages of supply to the affected regions. Prototype rapid replacement transformer concepts are being evaluated but have only had minimal field testing. While promising, there are currently no plans in place to develop the stockpile of such spare transformers that would have to be available, and transformer replacement would still take 6 weeks or longer. Utilities are working to build up quantities of internally managed spares (e.g., by keeping the highest quality replaced units during regularly scheduled replacements), but this will not provide sufficient quantities to alleviate the concern.

Current Industry and Agency Efforts: The electric utilities and Federal agencies (FERC, DOE, NERC, NASA) have expended considerable resources in an attempt to quantify the impacts of the severe geomagnetic storm threats to the U.S. power grid. The efforts are focused on developing models that translate the geomagnetic field environment into specific impacts on the operation of the electric power grid.

[6] Available at *http://www.ornl.gov/~webworks/cpr/v823/rpt/51089.pdf.*

[7] Available at *http://www.labplan.ufsc.br/congressos/powertech07/papers/445.pdf.*

[8] It should be noted that the NERC's Interim 2012 Reliability Assessment report, based on discussions with transformer manufacturers and some technical papers published by industry experts, implicitly concludes that the worst case scenario of long-term grid collapse would not be a likely result of a severe geomagnetic event.

[9] IEEE paper ''Effects of GIC on Power Transformers and Power Systems'' R.Girgis, Fellow IEEE, K. Vedante, Senior Member IEEE ABB Power Transformers St. Louis, MO, USA; available at *http://ieeexplore.ieee.org/stamp/stamp.jsp?arnumber=06281595.*

The NERC released an Interim 2012 Special Reliability Assessment report entitled ''Effects of Geomagnetic Disturbances on the Bulk Power System'' NERC Report.'' [10] Based on an assumed frequency of a once-in-100-year geomagnetic event, the NERC report indicates that potential damage to EHV transformers of recent design is of a low probability, and thus challenges the assertions of the Metatech report that 300 large EHV transformers would be at risk of failure. The report also indicates that GIC-related insulation damage is most likely to result in failure of transformers near the end of their life, or in transformers of earlier designs such as shell-type pre-1972 with brazed windings that may have high circulating currents. The loss of one or two EHV transformers (greater than 345-kV on the high side) would rarely challenge bulk system reliability. Also, the failure or loss of a number of large High Voltage transformers, electrically remote from the EHV system, would not have a significant impact on the bulk-power system capability for an extended duration. The report states: ''The most likely consequence of a strong GMD and the accompanying GIC is the increase of reactive power consumption and the loss of voltage stability. The stability of the bulk-power system can be affected by changes in reactive power profiles.''

The NERC report implicitly concludes that the worst case scenario of long-term grid collapse would not be a likely result of a severe geomagnetic event. However, the NRC notes that the NERC's concept of a ''rare'' event for purposes of electrical grid reliability is different from the NRC's when considering the safe design of nuclear power reactors. For example, the NERC report refers to a ''severe storm'' as once-in-100 years and a ''serious storm'' as once in 10 years. By contrast, the NRC's requirements regarding consideration of natural hazards for the design of NPPs, as set forth in GDC 2, establish a much more stringent consideration of natural hazards:

Criterion 2—*Design bases for protection against natural phenomena.* Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components shall reflect: (1) Appropriate consideration of the *most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated,* (2) appropriate combinations of the effects of normal and accident conditions with the effects of the natural phenomena and (3) the importance of the safety functions to be performed.

The NERC's implicit conclusion—that grid collapse caused by simultaneous catastrophic failure of multiple EHV transformers is not likely during a large GIC event—must be interpreted with these frequencies in mind. Therefore, the NRC staff does not find that conclusion compelling, absent data or more information on how this assumption has been validated.

The literature on mitigating risk of geomagnetic storm effects on electric power systems is very consistent, focusing on two basic methods of reducing either the vulnerability or the consequences. The first risk mitigation method is to harden equipment to reduce its vulnerability to GIC; the second is to establish operational procedures to reduce the impact of GIC. Electric power utilities can harden their systems against GICs through passive devices or circuit modifications that can reduce or prevent the flow of GICs. Hardening is most effective for critical transformers that play a major role in power transmission, which are very expensive and time-consuming to replace. In response to the March 13, 1989, blackout event when a geomagnetic storm affected Canadian and U.S. power systems, Hydro Quebec, a Canadian utility, implemented hardening measures such as transmission line series capacitors and transformer protection that cost more than $1.2 billion in Canadian dollars. The cost benefits of these measures are indeterminate, because there has not been a storm of similar magnitude to challenge the system, and the uncertainties or variable factors associated with analyzing GICs raise questions about the effectiveness of the measures.

In the U.S., a number of utilities have GMD response operating procedures that are triggered by forecast information and/or field GIC sensors. Existing response procedures generally focus on adding more reactive power capability and unloading key equipment at the onset of a GMD event. The NERC report concludes that more tools are needed for planners and operators to determine the best operating procedures to address specific system configurations. Currently, the FERC has directed the NERC to develop reliability standards that addresses the impact of geomagnetic disturbances on the reliable operation of the bulk power system (77 FR 64935).

Nuclear Power Plant Operation and Shutdown: In the United States, the minimum requirements for electrical power for plant operation and safe shutdown are delineated in 10 CFR part 50, appendix A, GDC 17. The grid provides the offsite or the preferred power source and redundant divisions of onsite power distribution system support plant operation and safe shutdown capability. In the event that offsite power is lost, redundant onsite electrical power sources (e.g., EDGs) are available to support plant shutdown. Geomagnetic storms have the potential to degrade both offsite and onsite power systems. The offsite power system may be lost due to loss of reactive power support or bulk-power system asset damage (e.g., transformer damage). The onsite power system is vulnerable to shortage of fuel oil for EDGs after onsite stored capacity has been depleted.

Nuclear Plant Assets Susceptible to GIC Damage: A typical NPP single unit configuration consists of one fully rated or two 50 percent rated main step up transformers (MT), two unit auxiliary transformers (UAT), and two start up or standby transformers (SAT). During normal plant operation, the MTs are fully loaded and connected to the high voltage transmission network. These MTs are vulnerable to GIC and subharmonics generated in the transmission network. The MTs are fully loaded when the NPP is at-power and they have a grounded neutral that provides a path for GIC, and are therefore susceptible to core saturation and thermal damage. The Salem Nuclear Generating Station transformers, identified in the ORNL report as examples of damage due to GICs, were main step up transformers. From a nuclear safety perspective, the MTs can be used to supply offsite power to plant auxiliaries (via a backfeed scheme) but are generally not the preferred source of power for plant shutdown. The nuclear plant operators (NPO) in areas most vulnerable to GIC-related transformer damage have procedures to reduce plant power output (hence the load on MTs) when solar storm warnings are issued by the National Oceanographic and Atmospheric Administration Space Weather Prediction Center.

During normal plant operation, the UATs supply power to the plant auxiliary system and are connected to the output of the main generator. These transformers, though fully loaded, are not directly connected to the grid, operate at lower voltages, and are ''shielded'' from GICs by the MTs, which are the interface point between the NPP and the grid. Therefore, these transformers are not expected to be

[10] Available at *http://www.nerc.com/page.php?cid=4%7C61.*

vulnerable to GICs and will be available for plant shutdown as long as the transmission network in the vicinity of the plant is stable.

The source of offsite power required by GDC 17 for plant shutdown is normally through the SATs. During normal operation, these transformers are energized and lightly loaded. The minimum rating of SATs exceeds the total power requirements of safety significant loads. There are a few plants that use the SATs for supplying all station auxiliary loads during normal operation. In these cases, there should be a margin between the normal loading and maximum rating of the transformers to accommodate additional safety-related loads that would be sequenced by an accident signal. Therefore, the transformers should be able to handle some overloading or heating effects related to GICs during normal operation. Though these transformers have grounded neutrals and are connected to the EHV transmission network, they are not expected to be vulnerable to GIC damage, as the heating effects would be minimal due to the light load on the transformers during normal operation. To date, no SAT failures have been attributed to GIC-related damage. Since the SATs are the normal source of offsite power to the NPPs for safe shutdown during postulated accidents and design basis events and since they would not experience significant GIC-related overheating or damage, the offsite power capabilities of NPPs are not expected to be degraded by solar storms.

This generalized evaluation of transformers and offsite power system designs is provided to illustrate the potential system vulnerability to geomagnetic storms. For long-term impact on transformers, the NRC staff is following industry developments for transformers in the bulk-power transmission systems. If the NERC and the FERC mandate that certain types of transformers or certain critical transformers are susceptible to GIC-related failures and that load reduction will reduce the potential for catastrophic failures, then the NRC will take appropriate actions for nuclear plants that operate with startup transformers fully loaded. The NRC staff will review plant-specific designs to establish if any start-up transformers are operating close to their nominal rating during normal plant operation and are susceptible to GIC damage.

The onsite power system EDGs are normally in a standby state and are not expected to be affected by solar storms. In the unlikely event that EDGs are operating in test mode during a solar event, the grounded neutrals of station transformers (UATs or SATs) are expected to drain GICs into the ground, thus shielding the EDGs. The NPOs test EDGs at nominal rating for a few hours during normal plant operation. The EDGs have a nominal rating and a short-term overload capacity. Thus, any GICs that enter the plant's electrical system during EDG operation should not result in excessive overheating of the generator windings. The EDGs are designed for extended operation and have the capability of mitigating the consequences of an accident and supporting spent fuel pool loads. In the event of loss of offsite power, the EDGs automatically start and energize safe shutdown buses of the plant. The design basis of most U.S. plants requires onsite storage of EDG fuel oil capability for 7 days of operation without replenishment. Many plants also have additional fuel oil stored for non-safety significant equipment such as auxiliary boilers that might be available for EDG operation. The NPOs typically have agreements with fuel oil suppliers (in some cases refineries) to support fuel oil deliveries on short notice. If an offsite power blackout lasts longer than 7 days and creates long-term implications for freight transportation and emergency resources of the NPOs, then Federal emergency resources would have to coordinate relief supplies to critical facilities. The relief supplies would include fuel oil for nuclear plants.

Offsite Power Source Vulnerability: The NPP offsite power systems are vulnerable to grid perturbations resulting from GMDs. The scope of protecting transmission networks is beyond the jurisdiction of the NRC. The NRC can recommend protective/precautionary measures that NPPs and grid operators can implement when the magnitude of predicted solar storms is estimated to be potentially damaging to systems in the vicinity of NPPs.

The correlation between the magnitude and duration of geomagnetic storms and the potential degradation of the transmission system is the subject of several ongoing studies between the NERC, FERC, Electric Power Research Institute, and national research institutes such as ORNL. The Metatech report, entitled ''Geomagnetic Storms and Their Impacts on the U.S. Power Grid,'' discusses methods that can be used to comprehensively assess the vulnerability of the U.S. power grid to the geomagnetic storm environment produced by solar activity. These modeling techniques have been used to replicate geomagnetic storm events and perform detailed forensic analysis of geomagnetic storm impacts to electric power systems. It should be noted that these modeling techniques are in a developmental stage. There is no industry standard or model that has been endorsed by a nationally recognized body. The capability may also be applied towards providing predictive geomagnetic storm forecasting services to the electric power industry and specifically to NPOs. The NPOs can then take appropriate actions, based on solar storm warnings, to minimize the risk of damage to nuclear plant assets.

The NERC report considers the most likely outcome of a major solar storm to be grid instability caused by excessive reactive power demand. This scenario results in protective relays separating critical sections of the power grid and potential large scale blackout but limited equipment (transformer) damage within localized areas with highest GIC. Recovery from such an event is expected to be relatively quick (within a day or two) and as such should not be a major concern for nuclear plant safe shutdown capability. In the event that the reactive power demands do not result in separation of the grid system, the cascading effects of the GIC through critical transformers may result in large scale equipment damage and subsequent long-term shutdown of the extra high voltage transmission network due to the long replacement time necessitated by the long lead time for manufacture and installation of large transformers. Nuclear power plants in the blacked out area would require external resources to support shutdown capability and fuel pool cooling for an extended duration.

E. Federal Government Coordination and Emergency Response

A number of different Federal government agencies are involved in assessing the risk to the U.S. power grid from geomagnetic storms. While it is recognized that CME events can pose a serious threat, a sufficient technical basis for the frequency and impact of significant CME events has not been developed to the level typically expected by the NRC for other natural hazards (floods, earthquakes, hurricanes, tornadoes, etc.). The FEMA has promulgated a basis for the development of contingency plans for a significant CME.

The FEMA's planning efforts are captured in the National Response Framework (NRF),[11] which is a guide to how the Nation conducts all-hazards response. It is built upon scalable,

[11] Available at *http://www.fema.gov/national-response-framework.*

flexible, and adaptable coordinating structures to align key roles and responsibilities across the Nation. It describes specific authorities and best practices for managing incidents that range from the serious (but purely local) to large-scale terrorist attacks or catastrophic natural disasters. Within the NRF are annexes that plan the emergency response for various infrastructure sectors. ''Emergency Support Function #12-Energy Annex'' is the annex relevant to a CME and its effects upon the electrical power grid, and the DOE is the lead agency for coordinating the required Federal response with the NRC as a support agency.

The NRC has an extensive and well-practiced emergency response capability. The NRC response is practiced several times a year in conjunction with inspected licensee exercises. The NRC response organization focuses on protection of the public and the support of NPP needs to mitigate accidents. In the event of a damaged electrical grid, the NRC Operations Center could be engaged in responding to one or more NPPs (and perhaps other licensees) located in the area. Initially, the NPP would only be in the lowest level of emergency because onsite emergency generators are expected to operate and supply power to safety systems. However, as the loss of offsite power continues to the point when fuel supply is challenged, the NRC would consider the need to activate its response capabilities in order to ensure public health and safety with respect to the impacted nuclear plant(s).

The normal progression of emergency response is that the plant operator (NRC licensee) would solve its own logistical needs through commercial arrangements. Should this not be possible due to legalities or degradation of commercial supply capabilities, the licensee would then call upon local offsite response organization support, such as local law enforcement agencies and fire departments. Local authorities might be able to assist with the logistics and/or prioritization of fuel supply, but generally they would not have any transport equipment. When an emergency exceeds local response capabilities, the state is then called upon for assistance. If a geomagnetic storm resulted in a long-term loss of the electrical grid, local authorities would likely require state assistance; this could involve the National Guard and/or assistance from neighboring states or regions to acquire transport equipment and fuel supplies for emergency generators. Local priorities would likely be provided to the state response organization for disposition. Finally, if the emergency situation exceeds state capabilities, then Federal response could be requested through DHS and FEMA.

Throughout any accident at a licensed facility, the NRC would remain in direct contact with the licensee and would be aware of the status of each nuclear plant, including availability of electrical power and fuel oil. Should a licensee need logistical support, the NRC could facilitate that support. Further, nuclear plant licensees can obtain emergency support through corporate, sister plant, and industry assets. As a response to the Fukushima accident, licensees are cooperatively developing regional emergency equipment depots. However, this capability is not in place and may not adequately address fuel supply and transport issues associated with a long-term grid collapse.

The FEMA recognizes the significant impact a CME-induced grid collapse would have on a wide range of infrastructure with public safety concerns and recognizes that nuclear power plants would be one of the many important concerns. To address this concern, the FEMA is considering the potential impact of CMEs as part of an overall concept of addressing all types of impacts on the critical infrastructure.

V. Conclusion

Recent experience and associated analyses regarding space weather events suggest a potentially adverse outcome for today's infrastructure if a historically large geomagnetic storm should recur. The industry and the FERC are considering whether EHV transformers that are critical for stable grid operation should be hardened to protect them from potential GIC damage and whether existing procedures for coping with a GIC event require significant improvements. The transformers required for offsite power for nuclear plants are normally in a standby state or have built-in design margins and are unlikely to be degraded by GICs. The safe shutdown capability of NPPs is not an immediate concern because the onsite EDGs can provide adequate power. In addition, the near-term actions (including a revised station blackout rulemaking (RIN 3150–AJ08, NRC–2011–0299) currently underway in response to the event at the Fukushima Dai-ichi nuclear power plant on March 11, 2011, are expected to include deployment of resources from remote locations to cope with loss of offsite and onsite power for an extended duration. However, in the event of a widespread electrical transmission system blackout for an extended duration (beyond 7 days and up to several months), it may not be possible to transport these and other necessary offsite resources to the affected NPPs in a timely manner. Thus, government assistance (local, state, or Federal) may be necessary to maintain the capability to safely shutdown nuclear plants and cool spent fuel pools in the affected areas. Prior planning is needed to efficiently and effectively use government resources to ensure protection of public health and safety. Current NRC regulations do not require power reactor licensees to undertake mitigating efforts for prolonged grid failure scenarios that could be caused by GICs resulting from an extreme solar storm. Thus, the NRC concludes that the issues and concerns raised by the petitioner need to be further evaluated.

To that end, the NRC will consider the issues raised in the petition in the NRC rulemaking process. The NRC will initiate the rulemaking process for development of a regulatory basis in a phased approach. Initially, the NRC will monitor the progress of several ongoing and potential regulatory activities. The NRC staff will monitor the implementation of Order EA–12–049, which requires that licensees develop, implement, and maintain guidance and strategies to maintain or restore core cooling, containment, and SFP cooling capabilities following a beyond-design-basis external event, and the ongoing enhancements to the station blackout rule being developed under Fukushima NTTF Recommendation 4.1. The NRC staff will also monitor possible rulemakings in response to Fukushima NTTF Recommendation 7.2, which could potentially require all licensees to provide Class 1E (safety-grade) electric power to SFP makeup systems, and the activities being developed for prolonged station blackout scenarios under Fukushima NTTF Recommendations 8 and 9. If an assessment of the progress in these areas concludes that the efforts are not likely to address the diesel generator fuel depletion and resupply issue raised by the petition, then the NRC will begin work to develop a regulatory basis to address the extensive grid outage scenario that could potentially be caused by an extreme solar storm.

Preparation of a proposed rule for public comment and publication in the FR would begin only if a viable regulatory basis is developed. If the NRC proceeds with a proposed rule, the NRC will address the comments received in favor of the PRM. In addition, the petitioner's issue of 2 years unattended water makeup of SFPs would be

addressed as part of that rulemaking action.

If the effort to establish the regulatory basis for this rulemaking does not support the issuance of a proposed rule, then the NRC will issue a supplemental FRN that addresses why the petitioner's requested rulemaking changes were not adopted by the NRC and addresses the comments received in favor of the PRM. Finally, with the publication of this FRN detailing the NRC's decision to consider, in a phased approach, the PRM issues in the NRC rulemaking process, the NRC closes the docket for PRM–50–96.

Although outside the scope of this PRM, it should be noted that the NRC, as a part of its core mission to protect public health and safety, is updating its previous evaluation of the effects of geomagnetic storms on systems and components needed to ensure safe shutdown and core cooling at nuclear power reactors.

VI. Resolution of the Petition

The NRC will review and analyze the underlying technical and policy issues relevant to the PRM and the comments submitted in support of the PRM in the NRC rulemaking process, to address the petitioner's requested rulemaking changes and reliable emergency systems capable to operate for a period of 2 years without human intervention and without offsite fuel resupply. If this phased utilization of the NRC rulemaking process results in the development of a regulatory basis sufficient for a proposed rule, then a proposed rule will be prepared for publication and public comment. If a regulatory basis sufficient for a proposed rule is not feasible, then a supplemental FRN explaining this result will be published. Thus the docket for PRM–50–96 is closed.

Dated at Rockville, Maryland, this 3rd day of December 2012.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Executive Director for Operations.

[FR Doc. 2012–30452 Filed 12–17–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141066–09]

RIN 1545–BL08

Awards for Information Relating To Detecting Underpayments of Tax or Violations of the Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations provide comprehensive guidance for the award program authorized under Internal Revenue Code (Code) section 7623, as amended. The regulations provide guidance on submitting information regarding underpayments of tax or violations of the internal revenue laws and filing claims for award, as well as on the administrative proceedings applicable to claims for award under section 7623. The regulations also provide guidance on the determination and payment of awards, and provide definitions of key terms used in section 7623. Finally, the regulations confirm that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings. The regulations provide needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623. This document also provides notice of a request for a public hearing on the proposed regulations.

DATES: Electronic or written comments and requests for a public hearing must be received by February 19, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–141066–09), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–141066–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–141066–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Meghan M. Howard, at (202) 622–7950; concerning submissions of comments and requests for a public hearing, Oluwafunmilavaio Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 406 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922), enacted on December 20, 2006, amended section 7623 of the Code on the payment of awards to certain persons who provide information to the Internal Revenue Service relating to the detection of underpayments of tax and violations of the internal revenue laws. Section 406 redesignated the existing statutory authority to pay awards at the discretion of the Secretary of the Treasury as section 7623(a), and it added a new provision regarding awards to certain individuals as section 7623(b). Generally, section 7623(b) provides that qualifying individuals will receive an award of at least 15 percent, but not more than 30 percent, of the collected proceeds resulting from the action with which the Secretary proceeded based on the information provided to the IRS by the individual. Section 406 also addressed several award program administrative issues and established a Whistleblower Office within the IRS, which operates at the direction of the Commissioner, analyzes information received under section 7623, as amended, and either investigates the information itself or assigns the investigation to the appropriate IRS office.

In Notice 2008–4, 2008–1 CB 253 (January 14, 2008) (see § 601.601(d)(2)(ii)(*b*) of this chapter), the IRS provided guidance on filing claims for award under section 7623, as amended. In the notice, the IRS recognized that the award program authorized by section 7623(a) had been previously implemented through regulations appearing at § 301.7623–1 of the Procedure and Administration Regulations. The Internal Revenue Manual (IRM) provided additional guidance to IRS officers and employees on the award program authorized by section 7623(a). The notice provided that the IRS would generally continue to follow section 301.7623–1 and the IRM provisions for claims for award within the scope of section 7623(a), subject to certain exceptions listed in the notice. The notice also provided, however, that the regulations would not apply to the new award program authorized under section 7623(b). Instead, the notice provided interim guidance applicable to claims for award submitted under section 7623(b).

On March 25, 2008, the Treasury Department (Treasury) and the IRS

published Temp. Treas. Reg. § 301.6103(n)–2T, and corresponding proposed regulations, describing the circumstances and process in and by which officers and employees of the Treasury may disclose return information to whistleblowers (and their legal representatives, if any) in connection with written contracts for services relating to the detection of violations of the internal revenue laws or related statutes. Under these regulations, whistleblowers and legal representatives who receive return information are subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of return information. The Treasury and the IRS finalized the proposed regulations on March 15, 2011 (TD 9516).

In December 2008, the IRS revised IRM Part 25.2.2, updating policies and procedures concerning the handling of information, processing of claims for awards, and payment of awards under section 7623, as amended. The IRS also redelegated the authority to approve awards to the Director of the Whistleblower Office. In July 2010, the IRS further revised IRM Part 25.2.2 to provide detailed instructions to IRS officials and employees on the computation and payment of awards under section 7623 and to describe the administrative procedures applicable to claims for award under section 7623(b). The revised IRM introduced many guidance elements that are developed in these proposed regulations, including definitions of key terms, the whistleblower administrative proceedings, the fixed percentage award framework and criteria for making award determinations, and rules on handling multiple and joint claimants.

On January 18, 2011, Treasury and the IRS published proposed regulations (REG–131151–10) clarifying the definitions of the terms *proceeds of amounts collected* and *collected proceeds* for purposes of section 7623 and providing that the provisions of existing § 301.7623–1(a), concerning refund prevention claims, apply to claims under both section 7623(a) and section 7623(b). The proposed regulations further provided that the reduction of an overpayment credit balance constitutes proceeds of amounts collected and collected proceeds for purposes of section 7623. The Treasury and the IRS finalized the proposed regulations on February 22, 2012 (TD 9580).

Explanation of Provisions

The purpose of these regulations is to provide comprehensive guidance for the award program authorized under section 7623, as amended. Accordingly, these regulations provide guidance on issues relating to the award program from the filing of a claim to the payment of an award, focusing on three major elements of the program: (i) The submission of information and filing of claims for award; (ii) the whistleblower administrative proceedings applicable to claims for award under section 7623; and (iii) the computational determination and payment of awards. These proposed regulations also provide definitions of key terms under section 7623 and provide that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings.

These proposed rules apply generally to claims for award under both section 7623(a) and section 7623(b), unless otherwise stated. Nonetheless, while the Whistleblower Office will, for example, conduct whistleblower administrative proceedings pursuant to the proposed rules of § 301.7623–3 for claims for award under both section 7623(a) and section 7623(b), the process applicable to claims under section 7623(a) differs from that applicable to claims under section 7623(b). The differences reflect the clear distinction the statute draws between awards under section 7623(a) and section 7623(b) and will avoid placing a heavy administrative burden on the IRS.

Submitting Information and Filing Claims for Award

Section 301.7623–1 of these proposed rules provides guidance on submitting information to the IRS and filing claims for award with the Whistleblower Office. These rules are intended to clarify the process individuals should follow to be eligible to receive awards under section 7623. The proposed rules, in large part, track the rules that Treasury and the IRS have previously provided, as set forth in the existing regulations, Notice 2008–4, and the IRM. This includes, for example, the general information that individuals should submit to claim awards and the descriptions of the type of specific and credible information regarding taxpayers that should be submitted. Most notably, an individual submitting a claim should identify a person and describe and document the facts supporting the claimant's belief that the person owes taxes or violated the tax laws. The proposed rules clarify that the IRS will consider an individual who identifies a pass-through entity as having identified the taxpayers with direct or indirect interests in the entity. Furthermore, the proposed rules provide that if an individual identifies a member of a firm who promoted another identified person's participation in an identified transaction, then the IRS will consider the individual as having identified both the firm and all the other members of the firm. These clarifying provisions complement the proposed rules' definition of the term related action.

The proposed rules also include eligibility requirements for filing claims for award and a list of ineligible claimants. The list of ineligible claimants restates the list published in Notice 2008–4 in its entirety. For example, the proposed rules provide that individuals who are or were required by Federal law or regulation to disclose information are not eligible to file claims for award based on the information.

To enable the IRS to administer the award program, these proposed regulations require individuals to file formal claims for award. The proposed rules provide a process for perfecting incomplete claims for award and permit claimants to perfect and resubmit deficient claims after they are rejected by the Whistleblower Office. Finally, the IRS is considering issues relating to the electronic filing of claims for award, which may be addressed in other published guidance.

The proposed rules also reaffirm the practice of Treasury and the IRS to safeguard the identity of individuals who submit information under section 7623 and these proposed regulations whenever possible. The informant privilege allows the Government to withhold the identity of a person that provides information about violations of law to those charged with enforcing the law. The informant privilege is held by the Government, not the informant, and is not an absolute privilege. There may be instances when, after careful deliberation and high-level IRS approval, the disclosure of the identity of an informant may be determined to be in the best interests of the Government. For example, an informant's identity will have to be revealed when a claimant is needed as a witness in a case in litigation. The IRS will, however, make every effort to notify an informant before disclosing the informant's identity.

Comments are specifically requested on:

(1) The list of ineligible claimants provided in paragraph (b)(2) of § 301.7623–1 of these proposed regulations and whether other identifiable groups of individuals should be treated as ineligible to file claims for award.

(2) Whether electronic claim filing would be appropriate and beneficial to claimants, and, if so, what features should be included in an electronic claim filing system.

Definitions of Key Terms

Section 301.7623–2 of these proposed regulations defines several key terms for purposes of determining awards under section 7623 and the proposed regulations. Two other key terms, *planned and initiated* and *final determination of tax,* are described and defined, respectively, in § 301.7623–4 of these proposed regulations. The definitions are intended to facilitate the IRS's administration of the award program in a manner that is consistent with the statutory language. As described below, several of the definitions, including the definition of the terms *proceeds based on, related action,* and *collected proceeds,* build on definitions contained in Notice 2008–4, TD 9580, and the IRM, while other definitions are new.

Generally, section 7623(b) provides that if the Secretary proceeds with an administrative or judicial action (including any related actions) based on the information provided by the individual, then the individual will receive an award from the collected proceeds resulting from the actions. The definition of the term *proceeds based on* contained in these proposed regulations reflects the ways in which information provided to the IRS may ultimately result in an award under that standard. Further, the definition reflects the requirement, under Section 406 of the 2006 Act, that the IRS must analyze and investigate information received under section 7623(b) by providing that the IRS cannot, for purposes of paying an award under section 7623, proceed based on information without taking some action beyond simply analyzing or investigating the information. The definition provides that the IRS proceeds based on the information provided only when the IRS initiates a new action that it would not have initiated, expands the scope of an ongoing action that it would not have expanded, or continues to pursue an ongoing action that it would not have continued but for the information provided.

The definition of the term *related action* contained in these proposed regulations clarifies which actions may be included for purposes of computing collected proceeds by requiring a clear link between the original action and the other, related action(s). To enable the IRS to administer the award program and to strike an appropriate balance between the individual's substantial contribution and the IRS's independent administration of the tax laws, this clear link requires: (i) A direct relationship between the person identified in the information provided and subject to the original action and the person(s) subject to the other action(s); and (ii) a substantial similarity between the specific facts contained in the information provided and the relevant facts of the other action(s). Consistent with the statutory language, this conjunctive test excludes from the definition of related action actions that are merely factually similar to the original action, for example, actions against unidentified taxpayers that merely engaged in substantially similar transactions to the transaction identified in the information provided. The direct relationship test of the definition's first prong amounts to a one-step rule: The taxpayer subject to the related action can be no more than one step removed—in terms of identification by the IRS—from a taxpayer identified in the information provided. For example, under the proposed rules, if the information provided identifies a party to a transaction and the facts relevant to the transaction, then an action against an unidentified individual or firm that promoted the identified person's participation in the transaction may be a related action. An action against another client of the unidentified promoter, however, is not a related action, regardless of whether the other client engaged in a substantially similar transaction or whether the information provided could be said to have initiated events that led to all the actions. Similarly, if the information provided identifies a party to a particular transaction and the facts relevant to the transaction, then an action against a second, unidentified party to the same transaction may be a related action. An action against another unidentified person that promoted only the second, unidentified party's participation in the transaction, however, is not a related action.

The definition of *collected proceeds* contained in these proposed regulations builds on the definition contained in the final regulations published on February 22, 2012 (TD 9580). The definition restates the rule from those final regulations that collected proceeds include: Tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; amounts collected prior to receipt of the information provided if the information results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

Based on the IRS's experience in administering the award program since the issuance of the final regulations and on stakeholder input on those regulations, the proposed regulations' definition of collected proceeds also addresses refund netting and the treatment of tax attributes generally, which include net operating losses (NOLs). The proposed regulations provide that if any portion of a claim for refund that is substantively unrelated to the information provided is (1) allowed and (2) used to satisfy a tax liability attributable to the information provided instead of refunded to the taxpayer, then the allowed but non-refunded amount constitutes collected proceeds. As to the treatment of tax attributes such as NOLs, the proposed regulations provide a computational rule that reflects the discussion contained in the preamble to T.D. 9580. There, Treasury and the IRS noted that tax attributes such as NOLs do not represent amounts credited to the taxpayer's account that are directly available to satisfy current or future tax liabilities or that can be refunded. Rather, tax attributes such as NOLs are component elements of a taxpayer's liability. The disallowance of an NOL claimed by a taxpayer may affect the taxpayer's liability and, in the context of a whistleblower claim, may result in collected proceeds.

To enable the IRS to administer the award program, the proposed regulations' computational rule provides that, after there has been a final determination of tax, the IRS will compute the amount of collected proceeds taking into account all information known with respect to the taxpayer's account (including all tax attributes such as NOLs). For example: a taxpayer reports an NOL of $10 million for 2009 and a whistleblower's information results in a reduction of the NOL to $5 million. If the NOL is unused as of the date the IRS computes the amount of collected proceeds, then there are no collected proceeds. If, however, the 2009 NOL was partially carried back to 2008, initially generating a $3 million refund, and the whistleblower's information reduced the carryback amount, resulting in a $1.5 million reduction in the refund for

2008, then the amount of the erroneous refund recovered and collected would be collected proceeds. The proposed regulations' definition of collected proceeds, therefore, does not refer explicitly to NOLs, tax credits, or any other tax attributes that may factor into the computation of a taxpayer's liability. Furthermore, the proposed regulations' computational rule does not attempt to assign a present value to these attributes, given that whether, when, or to what extent they may affect a taxpayer's liability or the amount of collected proceeds cannot be determined in advance of their actual use. Nor does the computational rule require the IRS to continue tracking these taxpayers, who may not be under examination, and attributes into future years, given the significant costs and heavy administrative burden that would be required.

Consistent with provisions in the IRM, these proposed regulations provide that amounts recovered under the provisions of non-Title 26 laws do not constitute collected proceeds, because the plain language of section 7623 authorizes awards for detecting ''underpayments of tax'' and violations of the internal revenue laws. The internal revenue laws are contained in Title 26, Internal Revenue Code and guidance issued under that title. Although the IRS may collect penalties for violations of Title 31, Money and Finance, and seize property under Title 18, Crimes and Criminal Procedure, those penalties and seizures do not relate to ''underpayments of tax,'' may be imposed independently of whether a tax underpayment occurs, and are not related to violations of the internal revenue laws under Title 26. For example, the IRS may collect penalties for failure to file Form 90–22.1, ''Report of Foreign Bank and Financial Accounts'' (FBAR), which is an information reporting requirement under Title 31 the violation of which does not necessarily result in an underpayment of tax. As a result, FBAR penalties do not constitute collected proceeds. Moreover, sections 5323(a) and 9703(a) of Title 31 provide independent authority, separate and apart from section 7623, for the payment of rewards for information relating to certain violations of Title 31 or Title 18.

These proposed regulations also provide that criminal fines that must be deposited into the Victims of Crime Fund do not constitute collected proceeds. Under the Victims of Crimes Act of 1984, criminal fines that are imposed on a defendant by a district court are deposited into the Victims of Crime Fund. See 42 U.S.C. § 10601(b)(1). Criminal fines imposed for Title 26 offenses are not exempt from this requirement. The fines imposed in criminal tax cases that are deposited into the Victims of Crime Fund are not available to the Secretary to pay awards under section 7623. These exclusions were previously explained in the preamble to TD 9580 and are further clarified in the text of these proposed regulations. Restitution ordered by a court to the IRS, however, is collected by the IRS as a tax and, therefore, is encompassed in the definition of collected proceeds.

Finally, these proposed regulations provide a rule for determining collected proceeds in cases in which the IRS does not collect the full amount of the assessed liabilities. Pursuant to this rule, collected proceeds, for purposes of paying an award under section 7623, are determined on a pro rata basis based on the ratio that adjustments attributable to the information provided bear against the total adjustments.

Section 301.7623–2 of these proposed regulations also defines the terms *action, administrative action, judicial action, amount in dispute,* and *gross income.*

Comments are specifically requested on:

(1) Each of the key terms defined in this section.

(2) Whether and how the IRS could determine any amount of collected proceeds that arise as a result of a taxpayer's use of tax attributes such as NOLs after the final determination of tax and the computation of collected proceeds, as provided in the proposed regulations.

Whistleblower Administrative Proceedings

Section 301.7623–3 of these proposed regulations describes the administrative proceedings applicable to claims for award under both section 7623(a) and section 7623(b). For purposes of applying these procedures, the IRS may rely on the claimant's description of the amount owed by the taxpayer(s). The IRS may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the $2 million threshold of section 7623(b)(5)(B), but the actual amount in dispute is above the threshold).

Administrative Proceedings for Awards Paid Under Section 7623(a)

In cases under section 7623(a), these proposed regulations provide that the Whistleblower Office will send a preliminary award recommendation letter to the claimant. Sending this letter marks the beginning of the whistleblower administrative proceeding. The claimant will then have 30 days within which to provide comments to the Whistleblower Office. This approach is intended to provide claimants under section 7623(a) with an opportunity to participate in the award process, both to add transparency to the proceeding and to assist the Whistleblower Office in considering all potentially-relevant information in paying awards under section 7623(a), even though those awards are not subject to Tax Court review.

Administrative Proceedings for Awards Paid Under Section 7623(b)

In cases in which the Whistleblower Office will determine an award under section 7623(b), the whistleblower administrative proceeding more closely resembles the whistleblower award determination administrative proceeding contained in the IRM, which only applies to awards determined under section 7623(b). In an effort to both streamline the process and provide information to whistleblowers as early as allowable under section 6103, however, the proposed regulations move the beginning of the proceeding forward. Under the proposed regulations, the whistleblower administrative proceeding begins when the Whistleblower Office sends out the preliminary award recommendation letter. Accordingly, whistleblowers may receive opportunities to participate in the award determination process at the administrative level even before there is a final determination of tax in the underlying taxpayer action. These opportunities will be provided in connection with all awards paid under section 7623(b), and they are in addition to opportunities a whistleblower may be afforded to assist the IRS in connection with the underlying taxpayer action, for example pursuant to §§ 301.6103(n)–2 and 301.7623–1(d) of the proposed regulations.

The Treasury and the IRS emphasize, however, that the proposed regulations do not and cannot move forward a whistleblower's opportunity to appeal an award determination to Tax Court. Under the proposed regulations, the Whistleblower Office will issue an appealable determination or make payment, if a whistleblower has waived the determination, as soon as possible after there has been a final determination of tax (that is, the statutory period for the taxpayer to claim a refund has expired or the underlying taxpayer action is otherwise final).

The whistleblower administrative proceeding generally consists of four steps: (i) A preliminary award recommendation; (ii) a detailed award report; (iii) an opportunity to review documents supporting the preliminary award recommendation; and (iv) an award determination. Under the proposed regulations, the first three steps may occur before the final determination of tax in the underlying taxpayer matter. Given that the amount of collected proceeds is not finally determined until after the final determination of tax, however, the preliminary award recommendation and the detailed award report, as well as the documents made available for inspection, will reflect a tentative or preliminary computation of the amount of collected proceeds.

The whistleblower administrative proceeding is intended to foster a transparent administrative process, to ensure that claimants have a meaningful opportunity to participate in the determination process at the administrative level, to enable the Whistleblower Office to make award determinations based on complete information, and to ensure a fully-documented record on appeal to the Tax Court. The proposed regulations permit claimants to participate in the whistleblower administrative proceeding through a structured process involving correspondence and other communications with the Whistleblower Office. Claimants are afforded opportunities to review the Whistleblower Office's preliminary award recommendation, to provide additional information regarding their claims that is relevant to an award determination, and to submit comments challenging all aspects of the preliminary findings at the administrative level. The Treasury and the IRS recognize that, in some cases, claimants may be able to provide information during the whistleblower administrative proceeding that could be critical to the award determination but that is not already contained in the administrative claim file. For example, a claimant may be able to demonstrate that a determination is based on a misapplication of the lower award percentages of section 7623(b)(2) by providing information that demonstrates that the claimant was the original source of public source information.

The Treasury and the IRS recognize that, while detailed administrative claim files assist the Whistleblower Office in making fair and accurate award determinations, steps should be taken to prevent potential redisclosure or misuse of the taxpayer's confidential return information contained in those files. Section 6103(h)(4) and § 301.6103(h)(4)–1 of the proposed regulations authorize the disclosures made by the Whistleblower Office in the course of the whistleblower administrative proceeding, but they provide neither redisclosure prohibitions nor penalties. Accordingly, the proposed regulations require claimants to execute confidentiality agreements before they may receive a detailed description of the factors that contributed to the preliminary award recommendation or view documents that support the recommendation. A claimant is not required to execute a confidentiality agreement before appealing an award determination to the Tax Court, and executing an agreement does not prevent a claimant from seeking Tax Court review. Moreover, a claimant's execution of a confidentiality agreement would not preclude the claimant from providing to Congress certain information about the preliminary award recommendation, but it would preclude the claimant from providing to Congress information disclosed to the claimant after the execution of the agreement and during the whistleblower administrative proceeding. Section 6103(f), however, provides a general framework for Congress to access taxpayer return information, and this general framework may also be used in connection with whistleblower award claims.

The proposed regulations provide that the Whistleblower Office, in determining the award percentage, may treat a claimant's violation of the terms of the confidentiality agreement as a negative factor and, thus, as a basis for reducing the amount of an award. Further, while the proposed regulations provide claimants with an opportunity to view information in the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, the proposed regulations provide rules intended to safeguard the disclosure of information to a claimant (for example, supervised document review and no photocopying of documents).

Administrative Proceedings for Denials of Awards Under Section 7623(b)

Finally, the proposed regulations provide that in cases in which the Whistleblower Office will reject a claim under section 7623(b), pursuant to § 301.7623–1(b) or (c), or will deny a claim under section 7623(b), either because the IRS did not proceed with an action based on the information provided or because the IRS did not collect proceeds, the Whistleblower Office will send a preliminary denial letter to the claimant. Sending this letter marks the beginning of the whistleblower administrative proceeding. This notice will be provided as promptly as possible under the particular circumstances of a given case. The claimant will then have 30 days within which to provide comments to the Whistleblower Office. Again, this approach is intended to foster a transparent and accurate review process. Given the large administrative burden involved, however, the proposed regulations do not provide preliminary notice and comment procedures applicable to denials of claims for award under section 7623(a).

Comments are specifically requested on:

(1) Whether claimants should be afforded additional opportunities to participate in whistleblower administrative proceedings, and if so, what additional opportunities would be beneficial to the Whistleblower Office and to claimants and why.

(2) Whether additional safeguards should be adopted to further protect taxpayer return information disclosed in the course of whistleblower administrative proceedings and, if so, what safeguards would be effective and appropriate.

(3) Whether starting a whistleblower administrative proceeding before a final determination of tax in the underlying taxpayer action provides a meaningful benefit for whistleblowers.

Determining the Amount of Awards and Paying Awards

Section 301.7623–4 of these proposed regulations provides the framework and criteria that the Whistleblower Office will use in exercising the discretion granted under section 7623 to make awards. The proposed regulations are consistent with, and build on, the award determination provisions provided in the IRM. The rules of this section are proposed to apply to claims for awards under both section 7623(a) and section 7623(b).

Generally, the proposed regulations adopt a fixed percentage approach pursuant to which the Whistleblower Office will assign claims for award to one of a number of fixed percentages within the applicable award percentage range. The fixed percentage approach provides a structure that will promote consistency in the award determination process by enabling the Whistleblower Office to determine awards across the breadth of the applicable percentage range based on meaningful distinctions among cases. In general, the

Whistleblower Office will determine awards at the uppermost end of the applicable percentage range, for example, 30 percent of collected proceeds under section 7623(b)(1), only in extraordinary cases. The fixed percentage approach avoids having to draw fine distinctions that might seem unfair and arbitrary, given the differences among claims for award with respect to both the facts and law of the underlying actions and the nature and extent of the substantial contribution of the claimants.

Under these proposed regulations, the Whistleblower Office generally will assign the fixed percentages to claims for award by evaluating the substantial contribution of the claimant to the underlying action(s) based on the Whistleblower Office's review of the entire administrative claim file and the application of the positive factors and negative factors, listed in § 301.7623–4(b), to the facts. After the application of the positive and negative factors has been completed, the Whistleblower Office will review the planning and initiating factors, if applicable. The purpose of this criteria-based approach is to also promote consistency in the award determination process. In addition, this approach is intended to provide transparency in the process, and the publication of the criteria should provide helpful guidance to claimants when submitting their claims and in understanding the basis for award determinations. For claims involving multiple actions (regardless of the number of taxpayers involved), the proposed regulations enable the Whistleblower Office to determine and apply separate award percentages on an action-by-action basis in appropriate cases. The Treasury and the IRS recognize that a multiple-action determination may result in a lengthier award process, but it may be necessary in some cases.

Section 7623(b)(3) provides for an appropriate reduction of awards to claimants who planned and initiated the actions that led to the underpayment of tax or actions described in section 7623(a)(2) (the underlying acts). Section 7623(b)(3), unlike section 7623(b)(1) and section 7623(b)(2), provides no direction to the Whistleblower Office on what to consider in exercising this grant of discretion. Accordingly, the proposed regulations provide slightly more flexibility to determine the amount of an appropriate reduction under this section than they provide under the respective frameworks for determining awards for substantial and less substantial contributions.

Under the proposed regulations, the Whistleblower Office will make a threshold determination of whether a claimant planned and initiated the underlying acts, but this determination will not result in an automatic or fixed reduction of the award percentage or award amount. A claimant will only satisfy the threshold determination if the claimant (i) designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned an underlying act, (ii) took steps to start, introduce, originate, set into motion, promote or otherwise initiated an underlying act, and (iii) knew or had reason to know that there were tax implications to planning and initiating the underlying act.

If the Whistleblower Office determines that a claimant meets the threshold for planning and initiating, the Whistleblower Office will then categorize and evaluate the extent of the claimant's planning and initiating of the underlying acts, based on the application of factors listed in § 301.7623–4(c)(3)(iv) to the facts contained in the administrative claim file, to determine the amount of the appropriate reduction, if any. The proposed regulations' use of the categories primary, significant, and moderate, like the use of the fixed percentage and criteria approach for determining awards in substantial contribution and less substantial contribution cases, is intended to promote consistency, fairness, and transparency in an award determination process that is inherently subjective.

The proposed regulations do not adopt a ''principal architect'' approach to the application of section 7623(b)(3), based in part on the plain language of the statutory provision, which does not require a single planner. More than one individual may plan and initiate the actions that lead to a tax underpayment or violation. The Treasury and the IRS recognize the value that all whistleblowers may provide, and the proposed regulations balance the goal of incentivizing whistleblowers with the plain language of the statute by providing for a sliding scale of reductions to an award for planning and initiating.

The proposed regulations provide rules for determining awards when two or more independent claims, based on different information, relate to the same collected proceeds. In these situations, the proposed regulations allow the Whistleblower Office to determine multiple awards, limited in aggregate amount to the maximum amount that could have been awarded to a single claimant, rather than restricting the determination to a single award payable to the first individual that files a claim for award or payable on some other basis.

The proposed regulations also provide rules for determining whether affiliated claimants are eligible for awards and, if so, for determining the amount of the awards. The rule covering eligible affiliated claimants is intended to apply when the Whistleblower Office determines that an eligible individual is attempting to avoid a reduced award, for example, based on the application of the rules of section 7623(b)(3) or the application of negative factors, by having another individual to whom those rules would otherwise not apply submit the claim on behalf of the eligible individual. This rule allows the Whistleblower Office to put the actual claimant in the shoes of the purported claimant for purposes of determining the amount of the award.

Comments are specifically requested on:

(1) The efficacy of the fixed percentage approach provided under these proposed regulations.

(2) Whether there are additional positive factors, negative factors, or planning and initiating factors that would be useful for the Whistleblower Office to consider in determining the amount of awards under these regulations.

(3) The threshold determination of whether a whistleblower planned and initiated an underlying act.

(4) Whether the IRS should determine and pay multiple awards in cases in which two or more independent claims relate to the same collected proceeds, as provided under the proposed regulations, or whether only the first individual to provide information or submit a claim relating to particular collected proceeds should receive an award.

(5) The application of the eligible affiliated claimant rule.

Information Disclosures in Whistleblower Administrative Proceedings

Section 6103(h)(4) authorizes the disclosure of returns and return information in administrative or judicial proceedings pertaining to tax administration in certain circumstances. This rule provides the authority to disclose return information for purposes of a whistleblower administrative proceeding under section 7623. Section 301.6103(h)(4)–1 of these proposed regulations specifically authorizes the Director, officers, and employees of the Whistleblower Office to disclose return information to the extent necessary to

conduct whistleblower administrative proceedings. To minimize the potentially adverse consequences of the disclosure, and possible redisclosure, of return information, these proposed regulations provide that the Whistleblower Office will use confidentiality agreements in section 7623(b) whistleblower award determination administrative proceedings, as well as other safeguards, to minimize possible redisclosures of return information while still providing meaningful opportunities for claimants to participate in whistleblower administrative proceedings.

Comments are specifically requested on whether the proposed regulations strike an appropriate balance between minimizing possible redisclosures of confidential return information and providing meaningful opportunities for claimants to participate in the administrative processing of their claims.

Proposed Effective Dates

When finalized, §§ 301.7623–1, 301.7623–2, 301.7623–3, and 301.6103(h)(4)–1 are proposed to apply to information submitted on or after the date these rules are adopted as final regulations in the **Federal Register**, and to claims for award under sections 7623(a) and 7623(b) that are open as of that date. Likewise, § 301.7623–4 is proposed to apply to information submitted on or after that date, and to claims for award under section 7623(b) that are open as of that date. Section 301.7623–4 is not proposed to apply to claims for award under section 7623(a) that are open as of that date. This exception is intended to allow the IRS to continue to apply consistent rules to open claims for award under the discretionary award program of section 7623(a).

Comments are specifically requested on whether the proposed effective dates are appropriate.

Special Analyses

It has been determined that these proposed rules are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury and the IRS request comments on all aspects of the proposed regulations. All comments that are submitted by the public will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Meghan M. Howard and Robert T. Wearing of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 301.7623–1 through 301.7623–4 also issued under 26 U.S.C. 7623. * * *

Section 301.6103(h)(4)–1 also issued under 26 U.S.C. 6103(h)(4) and 26 U.S.C. 6103(q). * * *

Par. 2. Section 301.6103(h)(4)–1 is added to read as follows:

§ 301.6103(h)(4)–1 Disclosure of returns and return information in whistleblower administrative proceedings.

(a) *In general.* A whistleblower administrative proceeding (as described in § 301.7623–3) is an administrative proceeding pertaining to tax administration within the meaning of section 6103(h)(4).

(b) *Disclosures in whistleblower administrative proceedings.* Pursuant to section 6103(h)(4) and paragraph (a) of this section, the Director, officers, and employees of the Whistleblower Office may disclose returns and return information (as defined by section 6103(b)) to an individual (or the individual's legal representative, if any) to the extent necessary to conduct a whistleblower administrative proceeding (as described in § 301.7623–3), including but not limited to—

(1) By communicating a preliminary award recommendation or preliminary denial letter to the individual;

(2) By providing the individual with an award report package;

(3) By conducting a meeting with the individual to review documents supporting the preliminary award recommendation; and

(4) By sending an award decision letter, award determination letter, or award denial letter to the individual.

(c) *Effective/applicability date.* Section 301.6103(h)(4)-1 will be effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. When finalized, this section is proposed to apply with respect to whistleblower administrative proceedings beginning on or after the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 301.7623–1 is revised to read as follows:

§ 301.7623–1 General rules, submitting information on underpayments of tax or violations of the internal revenue laws, and filing claims for award.

(a) *In general.* In cases in which awards are not otherwise provided for by law, the IRS's Whistleblower Office may pay an award under section 7623(a), in a suitable amount, for information necessary for detecting underpayments of tax or detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same. In cases that satisfy the requirements of section 7623(b)(5) and (b)(6) and in which the Internal Revenue Service (IRS) proceeds with an administrative or judicial action based on information provided by an individual, the Whistleblower Office must determine an award under section 7623(b)(1), (2), or (3). The awards provided for by section 7623 and this paragraph must be paid from collected proceeds, as defined in § 301.7623–2(d).

(b) *Eligibility to file claim for award*—(1) *In general.* Any individual, other than an individual described in

paragraph (b)(2) of this section, is eligible to file a claim for award and to receive an award under section 7623 and §§ 301.7623–1 through 301.7623–4.

(2) *Ineligible claimants.* The Whistleblower Office will reject any claim for award filed by an ineligible claimant and will provide written notice of the rejection to the claimant. The following individuals are not eligible to file a claim for award or receive an award under section 7623 and §§ 301.7623–1 through 301.7623–4:

(i) An individual who is an employee of the Department of Treasury or was an employee of the Department of Treasury when the individual obtained the information on which the claim is based;

(ii) An individual who obtained the information through the individual's official duties as an employee of a Federal, State, or local Government, or who is acting within the scope of those official duties as an employee of a Federal, State, or local Government;

(iii) An individual who is or was required by Federal law or regulation to disclose the information or who is or was precluded by Federal law or regulation from disclosing the information;

(iv) An individual who obtained or was furnished the information while acting in an official capacity as a member of a Federal or State body or commission having access to materials such as Federal returns, copies, or abstracts; or

(v) An individual who obtained or had access to the information based on a contract with the Federal government.

(3) *Ineligible affiliated claimants.* If the Whistleblower Office determines that an affiliated claimant, as defined in § 301.7623–2(f), filed a claim for award based on information obtained from an ineligible individual for the purpose of avoiding the rejection of the claim that would result if the claim was filed by the ineligible individual, then the Whistleblower Office may treat the claim as if it had been filed by the ineligible individual. See § 301.7623–4(c)(4) for rules regarding eligible affiliated claimants.

(c) *Submission of information and claims for award*—(1) *Submitting information.* To be eligible to receive an award under section 7623 and §§ 301.7623–1 through 301.7623–4, an individual must submit to the IRS specific and credible information that the individual believes will lead to collected proceeds from persons whom the individual believes have failed to comply with the internal revenue laws. In general, an individual's submission should identify the person(s) believed to have failed to comply with the internal revenue laws and should provide substantive information, including all available documentation, that supports the individual's allegations. Information that identifies a pass-through entity will be considered to also identify all persons with a direct or indirect interest in the entity. Information that identifies a member of a firm who promoted another identified person's participation in a transaction described and documented in the information provided will be considered to also identify the firm and all other members of the firm. Submissions that provide speculative information or that do not provide specific and credible information regarding tax underpayments or violations of internal revenue laws do not provide a basis for an award. If documents or supporting evidence are known to the individual but are not in the individual's control, then the individual should describe the documents or supporting evidence and identify their location to the best of the individual's ability. If all available information known to the individual is not provided to the IRS by the individual, then the individual bears the risk that this information might not be considered by the Whistleblower Office for purposes of an award.

(2) *Filing claim for award.* To claim an award under section 7623 and §§ 301.7623–1 through 301.7623–4 for information provided to the IRS, an individual must file a formal claim for award by completing and sending Form 211, ''Application for Award for Original Information,'' to the Internal Revenue Service, Whistleblower Office, at the address provided on the form, or by complying with other claim filing procedures as may be prescribed by the IRS in other published guidance. The Form 211 should be completed in its entirety and should include the following information:

(i) The date of the claim;

(ii) The claimant's name;

(iii) The claimant's address and telephone number;

(iv) The date of birth of the claimant;

(v) The taxpayer identification number of the claimant; and

(vi) An explanation of how the information on which the claim is based came to the attention and into the possession of the claimant, including, as available, the date(s) on which the claimant acquired the information and a complete description of the claimant's present or former relationship (if any) to the person(s) identified on the Form 211.

(3) *Under penalty of perjury.* No award may be made under section 7623(b) unless the information on which the award is based is submitted to the IRS under penalty of perjury. All claims for award under section 7623 and §§ 301.7623–1 through 301.7623–4 must be accompanied by an original signed declaration under penalty of perjury, as follows: ''I declare under penalty of perjury that I have examined this application, my accompanying statement, and supporting documentation and aver that such application is true, correct, and complete, to the best of my knowledge.'' This requirement precludes the filing of a claim for award by a person serving as a representative of, or in any way on behalf of, another individual. Claims filed by more than one individual (joint claims) must be signed by each individual claimant under penalty of perjury.

(4) *Perfecting claim for award.* If an individual files a claim for award that does not include information described under paragraph (c)(2) of this section, does not contain specific and credible information as described in paragraph (c)(1) of this section, or is based on information that was not submitted under penalty of perjury as required by paragraph (c)(3) of this section, the Whistleblower Office may, in its sole discretion, reject the claim or notify the individual of the deficiencies and provide the individual an opportunity to perfect the claim for award. If an individual does not perfect the claim for award within the time period specified by the Whistleblower Office, then the Whistleblower Office may reject the claim. If the Whistleblower Office rejects a claim, then the Whistleblower Office will provide written notice of the rejection to the claimant. If the Whistleblower Office rejects a claim for the reasons described in this paragraph, then the claimant may perfect and resubmit the claim.

(d) *Request for assistance*—(1) *In general.* The Whistleblower Office, the IRS or IRS Office of Chief Counsel may request the assistance of an individual claimant or the individual claimant's legal representative. Any assistance shall be at the direction and control of the Whistleblower Office, the IRS, or the IRS Office of Chief Counsel assigned to the matter. See § 301.6103(n)–2 for rules regarding written contracts among the IRS, whistleblowers, and legal representatives of whistleblowers.

(2) *No agency relationship.* Submitting information, filing a claim for award, or responding to a request for assistance does not create an agency relationship between a claimant and the Federal government, nor does a claimant or the claimant's legal

representative act in any way on behalf of the Federal government.

(e) *Identification of whistleblowers.* Under the informant's privilege, the IRS will use its best efforts to protect the identity of whistleblowers. In some circumstances, the IRS may need to reveal a whistleblower's identity, for example, when it is determined that it is in the best interests of the Government to use a whistleblower as a witness in a judicial proceeding. In those circumstances, the IRS will make every effort to notify the whistleblower before revealing the whistleblower's identity.

(f) *Effective/applicability date.* When finalized, § 301.7623–1 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 4. Section 301.7623–2 is added to read as follows:

§ 301.7623–2 Definitions.

(a) *Action*—(1) *In general.* For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *action* means an administrative or judicial action.

(2) *Administrative action.* For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *administrative action* means all or a portion of an IRS civil or criminal proceeding against any person that may result in collected proceeds, as defined in paragraph (d) of this section, including, for example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.

(3) *Judicial action.* For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *judicial action* means all or a portion of a proceeding against any person in any court that may result in collected proceeds, as defined in paragraph (d) of this section.

(b) *Proceeds based on*—(1) *In general.* For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the Internal Revenue (IRS) *proceeds based on* information provided by an individual only when the IRS:

(i) Initiates a new action;

(ii) Expands the scope of an ongoing action; or

(iii) Continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, respectively, but for the information provided by the individual. The IRS does not proceed based on when the IRS merely analyzes the information provided by the individual and investigates the matter.

(2) *Example.* The provisions of paragraph (b)(1) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's foreign sales in Country A, and, based on those facts, alleges that the taxpayer was not entitled to a foreign tax credit relating to its foreign sales in Country A. The IRS receives the information after having already initiated an examination of the taxpayer. The IRS's audit plan does not include consideration of the amount of the foreign tax credit relating to the taxpayer's foreign sales in Country A but, based on the information provided, the IRS expands the examination to include the foreign tax credit issue. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the portion of the IRS's examination of the taxpayer relating to the foreign tax credit issue is an administrative action with which the IRS proceeds based on the information provided by the individual. If the examination of the taxpayer included the foreign tax credit issue before the individual provided the information, then no portion of the IRS's examination of the taxpayer is an administrative action with which the IRS proceeds based on the information provided, unless the IRS would not have continued to pursue the examination but for the information provided.

(c) *Related action*—(1) *In general.* For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *related action* is limited to:

(i) A second or subsequent action against the person(s) identified in the information provided and subject to the original action if, in the second or subsequent action, the IRS proceeds based on the specific facts described and documented in the information provided; and

(ii) An action against a person other than the person(s) identified in the information provided and subject to the original action if:

(A) The other, unidentified person is directly related to the person identified in the information provided;

(B) The facts relating to the underpayment of tax or violations of the internal revenue laws by the other person are substantially the same as the facts described and documented in the information provided (with respect to the person(s) subject to the original action); and

(C) The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided. For purposes of this paragraph, an unidentified person is directly related to the person identified in the information provided if the IRS can identify the unidentified person using only the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).

(2) *Examples.* The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes in Year 1. The IRS proceeds with an examination of the taxpayer for Year 1 based on the information provided by the individual. The IRS discovers that the taxpayer engaged in the same activities in Year 2 and expands the examination to Year 2. In the course of the examination, the IRS obtains, through the issuance of IDRs and summonses, additional facts that are unrelated to the activities described in the information provided by the individual. Based on these additional facts, the IRS expands the scope of the examination of the taxpayer for both Year 1 and Year 2. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the portion of the IRS's examination of the taxpayer in Year 2 relating to the activities described and documented in the information provided (with respect to Year 1) is a related action because it satisfies the conditions of paragraph (c)(1)(i) of this section. The portions of the IRS's examination of the taxpayer in both Year 1 and Year 2 relating to the additional facts obtained through the issuance of IDRs and summonses are not related actions (nor are they administrative actions based on the information provided).

Example 2. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, based on those facts, alleges tax underpayments by Taxpayer 1. The information provided also identifies an accountant (CPA 1) and describes and documents specific facts relating to CPA 1's contribution to the activities of Taxpayer 1 that the individual alleges resulted in tax underpayments. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the individual. Using only the information provided, the IRS obtains CPA 1's client list and identifies two taxpayer/clients of CPA 1 (Taxpayer 2 and Taxpayer 3) that appear to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 2 and finds that Taxpayer 2 engaged in the same activities as those described in the information provided with respect to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 3 and finds that Taxpayer 3 engaged in different

activities from those described in the information provided with respect to Taxpayer 1. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the examination of Taxpayer 2 is a related action because it satisfies the conditions of paragraph (c)(1)(ii) of this section. The examination of Taxpayer 3 is not a related action because the relevant facts are not substantially the same as the facts relevant to the examination of Taxpayer 1.

Example 3. Same facts as *Example 2.* Using only the information provided, the IRS identifies a co-promoter of CPA 1 (CPA 2) that appears to have engaged in activities similar to CPA 1. CPA 2 is not a member of CPA 1's firm. The IRS subsequently obtains the client list of CPA 2 and identifies a taxpayer/client of CPA 2 (Taxpayer 4) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 4 and finds that Taxpayer 4 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 2 contributed to the activities in the same way as described in the information provided with respect to CPA 1. The IRS proceeds with an examination of CPA 2's liability for promoter penalties under section 6700 in connection with the activities described in the information provided with respect to Taxpayer 1 and CPA 1. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the examination of CPA 2 is a related action because it satisfies the conditions of paragraph (c)(1)(ii) of this section. The examination of Taxpayer 4 is not a related action because Taxpayer 4 was not related to a person identified in the information provided. CPA 2 was not identified in the information provided and the IRS first had to identify CPA 2 before identifying Taxpayer 4 and proceeding with the examination of Taxpayer 4.

Example 4. Same facts as *Example 2.* An accountant (CPA 3) is a member of CPA 1's firm. Using only the information provided, the IRS obtains the client list of CPA 3 and identifies a taxpayer/client of CPA 3 (Taxpayer 5) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 5 and finds that Taxpayer 5 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 3 contributed to the activities in the same way as described in the information provided with respect to CPA 1. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the examination of Taxpayer 5 is a related action because Taxpayer 5 is related to CPA 3, a person considered to be identified in the information provided under § 301.7623–1(c)(1), and the facts relating to Taxpayer 5 are substantially the same as the facts described and documented in the information provided. An IRS examination of CPA 3's liability for promoter penalties under section 6700, based on the facts described and documented in the information provided with respect to Taxpayer 1 and CPA 1, is an administrative action based on the information provided.

Example 5. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, in particular, Taxpayer 1's participation in a transaction. Based on those facts, the individual alleges that Taxpayer 1 owed additional taxes. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the individual. The IRS identifies the other parties to the transaction described in the information provided (Taxpayer 2 and Taxpayer 3). The IRS proceeds with examinations of Taxpayer 2 and Taxpayer 3 relating to their participation in the transaction described in the information provided. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the IRS's examinations of Taxpayer 2 and Taxpayer 3 relating to the activities described and documented in the information provided are related actions because they satisfy the conditions of paragraph (c)(1)(ii) of this section.

(d) *Collected proceeds*—(1) *In general.* For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the terms *proceeds of amounts collected* and *collected proceeds* (collectively, *collected proceeds*) include: tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided. Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code.

(2) *Refund netting*—(i) *In general.* If any portion of a claim for refund that is substantively unrelated to the information provided is:

(A) Allowed, and

(B) Used to satisfy a tax liability attributable to the information provided instead of refunded to the taxpayer, then the allowed but non-refunded amount constitutes collected proceeds.

(ii) *Example.* The provisions of paragraph (d)(2)(i) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a corporate taxpayer (Corporation), describes and documents specific facts relating to Corporation's activities, and, based on those facts, alleges that Corporation owed additional taxes. Based on the information provided by the individual, the IRS proceeds with an examination of Corporation and determines adjustments that would result in an unpaid tax liability of $500,000. During the examination, Corporation informally claims a refund of $400,000 based on adjustments to items of income and expense that are wholly unrelated to the information provided by the individual. The IRS agrees to the unrelated adjustments. The IRS nets the adjustments and determines a tax deficiency of $100,000. Thereafter, Corporation makes full payment of the $100,000 deficiency. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the collected proceeds include the $400,000 informally claimed as a refund and netted against the adjustments attributable to the information provided, as well as the $100,000 paid by Corporation.

(3) *Criminal fines.* Criminal fines deposited into the Victims of Crime Fund are not collected proceeds and cannot be used for payment of awards.

(4) *Computation of collected proceeds*—(i) *In general.* The Whistleblower Office will monitor each case for collection of proceeds. Pursuant to § 301.7623–4(d)(1), the IRS cannot make an award payment until there has been a final determination of tax. For purposes of determining the amount of an award under section 7623 and §§ 301.7623–1 through 301.7623–4, after there has been a final determination of tax as defined in § 301.7623–4(d)(2), the IRS will compute the amount of collected proceeds based on all information known with respect to the taxpayer's account, including with respect to all tax attributes, as of the date the computation is made.

(ii) *Partial collection.* If the IRS does not collect the full amount of taxes, penalties, interest, additions to tax, and additional amounts assessed against the taxpayer, then any amounts that the IRS does collect will constitute collected proceeds in the same proportion that the adjustments attributable to the information provided bear to the total adjustments.

(e) *Amount in dispute and gross income*—(1) *In general.* Section 7623(b) applies with respect to any action against any taxpayer in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $2,000,000 but, if the taxpayer is an individual, then only if the individual's gross income exceeds $200,000 in at least one taxable year subject to the action.

(2) *Amount in dispute*—(i) *In general.* For purposes of section 7623(b)(5) and §§ 301.7623–1 through 301.7623–4, the term *amount in dispute* means the maximum total of tax, penalties, interest, additions to tax, and additional amounts that could have resulted from the action(s) with which the IRS proceeded based on the information provided, if the formal positions taken by the IRS had been sustained. The IRS will compute the amount in dispute, for purposes of award determinations described in § 301.7623–3(c)(6), when there has been a final determination of tax as defined in § 301.7623–4(d)(2).

(ii) *Example.* The provisions of paragraph (e)(2)(i) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a corporate taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes. The IRS proceeds with an examination of the taxpayer based on the information provided by the individual; makes adjustments to items of income and expense and allows certain credits; and, ultimately, determines a deficiency against the taxpayer of $2,100,000 and issues the taxpayer a statutory notice of deficiency. The taxpayer petitions the notice to the United States Tax Court. The Tax Court sustains the IRS's position, in part, resulting in a deficiency of $1,500,000. The IRS also computes, however, that the total of tax, penalties, interest, additions to tax, and additional amounts that could have resulted from the action, if the court had sustained the IRS's position, in full, was $2,500,000. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the amount in dispute is $2,500,000.

(3) *Gross income.* For purposes of section 7623(b)(5) and §§ 301.7623–1 through 301.7623–4, the term *gross income* has the same meaning as provided under section 61(a). The IRS will compute the individual taxpayer's gross income, for purposes of award determinations described in § 301.7623–3(c)(6), when there has been a final determination of tax as defined in § 301.7623–4(d)(2).

(f) *Affiliated claimant.* For purposes of §§ 301.7623–1 through 301.7623–4, the term *affiliated claimant* means an individual that files a claim for award on behalf of another individual. See § 301.7623–1(b)(3) for rules regarding ineligible affiliated claimants and § 301.7623–4(c)(4) for rules regarding eligible affiliated claimants.

(g) *Effective/applicability date.* When finalized, § 301.7623–2 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 301.7623–3 is added to read as follows:

§ 301.7623–3 Whistleblower administrative proceedings and appeals of award determinations.

(a) *In general.* The Whistleblower Office will pay awards under section 7623(a) and determine awards to individuals under section 7623(b) in whistleblower administrative proceedings pursuant to the rules of this section. The whistleblower administrative proceedings described in this section are administrative proceedings pertaining to tax administration for purposes of section 6103(h)(4). See § 301.6103(h)(4)–1 for additional rules regarding disclosures of return information in whistleblower administrative proceedings. The Whistleblower Office may determine awards for claims involving multiple actions in a single whistleblower administrative proceeding. For purposes of applying the rules of this section, the Internal Revenue Service (IRS) may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the $2 million threshold of section 7623(b)(5)(B), but the actual amount in dispute is above the threshold).

(b) *Awards under section 7623(a)*—(1) *Preliminary award recommendation.* In cases in which the Whistleblower Office recommends payment of an award under section 7623(a), the Whistleblower Office will communicate a preliminary award recommendation under section 7623(a) and §§ 301.7623–1 through 301.7623–4 to the claimant by sending a preliminary award recommendation letter that states the Whistleblower Office's preliminary computation of the amount of collected proceeds, recommended award percentage, recommended award amount (even in cases when the application of section 7623(b)(2) or section 7623(b)(3) results in a reduction of the recommended award amount to zero), and a list of the factors that contributed to the recommended award percentage. The whistleblower administrative proceeding described in paragraphs (b)(1) and (2) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. If the claimant believes that the Whistleblower Office erred in evaluating the information provided, the claimant has 30 days from the date the Whistleblower Office sends the preliminary award recommendation to submit comments to the Whistleblower Office. The Whistleblower Office will review all comments submitted timely by the claimant (or the claimant's legal representative, if any) and pay an award, pursuant to paragraph (b)(2) of this section.

(2) *Decision letter.* At the conclusion of the process described in paragraph (b)(1) of this section, and when there is a final determination of tax, as defined in § 301.7623–4(d)(2), the Whistleblower Office will pay an award under section 7623(a) and §§ 301.7623–1 through 301.7623–4. The Whistleblower Office will communicate the amount of the award to the claimant in a decision letter.

(3) *Denials.* If the Whistleblower Office rejects a claim for award under section 7623(a), pursuant to § 301.7623–1(b) or (c), or if the IRS either did not proceed with an action, as defined in § 301.7623–2(b), or did not collect proceeds, as defined in § 301.7623–2(d), then the Whistleblower Office will not apply the rules of paragraphs (b)(1) or (2) of this section. The Whistleblower Office will provide written notice to the claimant of the denial of any award.

(c) *Awards under section 7623(b)*—(1) *Preliminary award recommendation.* The Whistleblower Office will prepare a preliminary award recommendation based on the Whistleblower Office's review of the administrative claim file and the application of the rules of section 7623 and §§ 301.7623–1 through 301.7623–4 to the facts of the case. See paragraph (e)(2) of this section for a description of the administrative claim file.

(2) *Contents of preliminary award recommendation.* The Whistleblower Office will communicate the preliminary award recommendation under section 7623(b) to the individual by sending:

(i) A preliminary award recommendation letter that describes the individual's options for responding to the preliminary award recommendation;

(ii) A summary report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, the recommended award amount (even in cases when the application of section 7623(b)(2) or section 7623(b)(3) results in a reduction of the recommended award amount to zero), and a list of the factors that contributed to the recommended award percentage;

(iii) An award consent form; and

(iv) A confidentiality agreement. The whistleblower administrative proceeding described in paragraphs (c)(1) through (6) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. The preliminary award recommendation is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The preliminary award recommendation will notify the individual that the IRS cannot determine or pay any award until there

is a final determination of tax, as defined in § 301.7623–4(d)(2).

(3) *Opportunity to respond to preliminary award recommendation.* The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the preliminary award recommendation letter to respond to the preliminary award recommendation in one of the following ways:

(i) If the individual takes no action, then the Whistleblower Office will make a final award determination, pursuant to paragraph (c)(6) of this section;

(ii) If the individual signs, dates, and returns the award consent form agreeing to the preliminary award recommendation and waiving any and all administrative and judicial appeal rights, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section;

(iii) If the individual signs, dates, and returns the confidentiality agreement, then the Whistleblower Office will provide the individual with an opportunity to review documents supporting the report, and a detailed award report pursuant to paragraphs (c)(3) and (4) of this section, and any comments submitted by the individual will be added to the administrative claim file; or

(iv) If the individual submits comments on the preliminary award recommendation to the Whistleblower Office, but does not sign, date, and return the confidentiality agreement, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination, pursuant to paragraph (c)(6) of this section.

(4) *Detailed report*—(i) *Contents of detailed report.* If the individual signs, dates, and returns the confidentiality agreement accompanying the preliminary award recommendation under section 7623(b), pursuant to paragraph (c)(3) of this section, then the Whistleblower Office will send the individual:

(A) A detailed report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, and the recommended award amount, and provides a full explanation of the factors that contributed to the recommended award percentage;

(B) Instructions for scheduling an appointment for the individual (and the individual's legal representative, if any) to review information in the administrative claim file that is not protected by one or more common law or statutory privileges; and

(C) An award consent form. The detailed report is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The detailed report will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623–4(d)(2).

(ii) *Opportunity to respond to detailed report.* The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the detailed report to respond in one of the following ways:

(A) If the individual takes no action, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section;

(B) If the individual requests an appointment to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, then a meeting will be arranged pursuant to paragraph (c)(5) of this section;

(C) If the individual does not request an appointment but does submit comments on the detailed report to the Whistleblower Office, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination pursuant to paragraph (c)(6) of this section; or

(D) If the individual signs, dates, and returns the award consent form agreeing to the preliminary award recommendation and waiving any and all administrative and judicial appeal rights, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section.

(5) *Opportunity to review documents supporting award report recommendations.* Appointments for the individual (and the individual's legal representative, if any) to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges will be held at the Whistleblower Office in Washington, DC, unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. At the appointment, the Whistleblower Office will provide for viewing the pertinent information from the administrative claim file. The Whistleblower Office will supervise the individual's review of the documents and the individual will not be permitted to make copies of the documents. The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the appointment to submit comments on the detailed report and the documents reviewed at the appointment to the Whistleblower Office. All comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination, pursuant to paragraph (c)(6) of this section.

(6) *Determination letter.* After the individual's participation in the whistleblower administrative proceeding, pursuant to paragraph (c) of this section, has concluded, and there is a final determination of tax, as defined in § 301.7623–4(d)(2), a Whistleblower Office official will determine the amount of the award under section 7623(b)(1), (2), or (3), and §§ 301.7623–1 through 301.7623–4, based on the official's review of the administrative claim file. The Whistleblower Office will communicate the award to the individual in a determination letter, stating the amount of the award. If, however, the individual has executed an award consent form agreeing to the amount of the award and waiving the individual's right to appeal the award determination, pursuant to section 7623(b)(4) and paragraph (d) of this section, then the Whistleblower Office will not send the individual a determination letter and will make payment of the award as promptly as circumstances permit.

(7) *Denials.* If the Whistleblower Office rejects a claim for award under section 7623(b), pursuant to § 301.7623–1(b) or (c), or if, with respect to a claim for award under section 7623(b), the IRS either did not proceed with an action, as defined in § 301.7623–2(b), or did not collect proceeds, as defined in § 301.7623–2(d), then the Whistleblower Office will not apply the rules of paragraphs (c)(1) through (6) of this section. The Whistleblower Office will send to the claimant a preliminary denial letter that states the basis for the denial of the claim. The whistleblower administrative proceeding described in this paragraph begins on the date the Whistleblower Office sends the preliminary denial letter. If the claimant believes that the Whistleblower Office erred in evaluating the information provided, the claimant has 30 days from the date the Whistleblower Office sends the preliminary denial letter to submit comments to the Whistleblower Office. The Whistleblower Office will review all comments submitted timely by the claimant and, following that review, the Whistleblower Office will either provide written notice to the claimant of the denial of any award or apply the rules

of paragraphs (c)(1) through (c)(6) of this section.

(d) *Appeal of award determination.* Any determination regarding an award under section 7623(b)(1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court.

(e) *Administrative record*—(1) *In general.* The administrative record comprises all information contained in the administrative claim file that is not protected by one or more common law or statutory privileges that is relevant to the award determination.

(2) *Administrative claim file.* The administrative claim file will include the following materials relating to the action(s) with respect to which the IRS proceeded based on the information provided by the individual, as applicable, and to which the determination relates:

(i) The Form 211 filed by the individual and all information provided by the individual (whether provided with the individual's original submission or through a subsequent contact with the IRS).

(ii) Copies of all debriefing notes and recorded interviews held with the individual (and the individual's representative, if any).

(iii) Form(s) 11369, ''Confidential Evaluation Report on Claim for Award,'' including narratives prepared by the relevant IRS office(s), explaining the individual's contributions to the actions and documenting the actions taken by the IRS in the case(s). The Form 11369 will refer to and incorporate additional documents relating to the issues raised by the claim, as appropriate, including, for example, relevant portions of revenue agent reports, copies of agreements entered into with the taxpayer(s), tax returns, and activity records.

(iv) Copies of all contracts entered into among the IRS, the individual, and the individual's legal representative (if any), and an explanation of the cooperation provided by the individual (or the individual's legal representative, if any) under the contract.

(v) Any information that reflects actions by the individual that may have had a negative impact on the IRS's ability to examine the taxpayer(s).

(vi) All correspondence and documents sent by the Whistleblower Office to the individual.

(vii) All notes, memoranda, and other documents made by officers and employees of the Whistleblower Office and considered by the official making the award determination.

(viii) All correspondence and documents received by the Whistleblower Office from the individual (and the individual's legal representative, if any) in the course of the whistleblower administrative proceeding.

(ix) All other information considered by the official making the award determination.

(f) *Effective/applicability date.* When finalized, § 301.7623–3 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 301.7623–4 is added to read as follows:

§ 301.7623–4 Amount and payment of award.

(a) *In general.* The Whistleblower Office will pay all awards under section 7623(a) and determine all awards under section 7623(b). For all awards under section 7623 and §§ 301.7623–1 through 301.7623–4, the Whistleblower Office will—

(1) Analyze the claim by applying the rules provided in paragraph (c) of this section to the information contained in the administrative claim file to determine an award percentage; and

(2) Multiply the award percentage by the amount of collected proceeds. If the award determination arises out of a single whistleblower administrative proceeding involving multiple actions, the Whistleblower Office may determine separate award percentages on an action-by-action basis and apply the separate award percentages to the collected proceeds attributable to the corresponding actions. The Internal Revenue Service (IRS) will pay all awards in accordance with the rules provided in paragraph (d) of this section. All relevant factors will be taken into account by the Whistleblower Office in determining whether an award will be paid and, if so, the amount of the award. No person is authorized under this section to make any offer or promise or otherwise bind the Whistleblower Office with respect to the amount or payment of an award.

(b) *Factors used to determine award percentage*—(1) *Positive factors.* The application of the following non-exclusive factors may support increasing an award percentage under paragraphs (c)(1) or (2) of this section:

(i) The individual acted promptly to inform the IRS or the taxpayer of the tax noncompliance.

(ii) The information provided identified an issue of a type previously unknown to the IRS.

(iii) The information provided identified taxpayer behavior that the IRS was unlikely to identify or that was particularly difficult to detect through the IRS's exercise of reasonable diligence.

(iv) The information provided thoroughly presented the factual details of tax noncompliance in a clear and organized manner, particularly if the manner of the presentation saved the IRS work and resources.

(v) The individual (or the individual's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action(s), for example by providing a useful technical or legal analysis of the taxpayer's records in response to a request from the Whistleblower Office, the IRS, or the IRS Office of Chief Counsel.

(vi) The information provided identified assets of the taxpayer that could be used to pay liabilities, particularly if the assets were not otherwise known to the IRS.

(vii) The information provided identified connections between transactions, or parties to transactions, that enabled the IRS to understand tax implications that might not otherwise have been understood by the IRS.

(viii) The information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to correct a previously-reported improper position.

(2) *Negative factors.* The application of the following non-exclusive factors may support decreasing an award percentage under paragraphs (c)(1) or (2) of this section:

(i) The individual delayed informing the IRS after learning the relevant facts, particularly if the delay adversely affected the IRS's ability to pursue an action or issue.

(ii) The individual contributed to the underpayment of tax or tax noncompliance identified.

(iii) The individual directly or indirectly profited from the underpayment of tax or tax noncompliance identified.

(iv) The individual (or the individual's legal representative, if any) negatively affected the IRS's ability to pursue the action(s), for example by disclosing the existence or scope of an enforcement activity.

(v) The individual (or the individual's legal representative, if any) violated instructions provided by the IRS, particularly if the violation caused the IRS to expend additional resources.

(vi) The individual (or the individual's legal representative, if any) violated the terms of the confidentiality agreement described in § 301.7623–3(b)(2).

(vii) The individual (or the individual's legal representative, if any) violated the terms of a contract entered into with the IRS pursuant to § 301.6103(n)–2.

(viii) The individual provided false or misleading information or otherwise violated the requirements of section 7623(b)(6)(C) or § 301.7623–1(c)(3).

(c) *Amount of award percentage*—(1) *Award for substantial contribution*—(i) *In general.* If the IRS proceeds with any administrative or judicial action based on information brought to the IRS's attention by an individual, such individual shall, subject to paragraphs (c)(2) and (3) of this section, receive as an award at least 15 percent but not more than 30 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The amount of any award under this paragraph depends on the extent of the individual's substantial contribution to the action(s). See paragraph (c)(5) of this section for rules regarding multiple claimants.

(ii) *Computational framework.* Starting the analysis at the statutory minimum of 15 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the individual merits an increased award percentage of 22 percent or 30 percent. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors. The Whistleblower Office will then analyze the contents of the administrative claim file using the factors listed in paragraph (b)(2) of this section to determine whether the individual merits a decreased award percentage of 15 percent, 18 percent, 22 percent, or 26 percent. The Whistleblower Office may decrease the award percentage based on the presence and significance of negative factors. Although the factors listed in paragraphs (b)(1) and (2) of this section are described as positive and negative factors, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of negative factors may offset the presence and significance of positive factors and, while the presence and significance of negative factors alone cannot result in an award percentage of less than 15 percent, the absence of negative factors does not mean that an award percentage will be greater than 15 percent.

(iii) *Example.* The operation of the provisions of paragraph (c)(1)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. It is not intended to provide a standard against which the substantial contribution of an individual submitting a claim for award may be compared. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(1) and paragraph (c)(1)(ii) of this section will depend on the specific facts of each case.

Example. Individual A, an employee in Corporation's sales department, submitted to the IRS a claim for award under section 7623 and information indicating that Corporation improperly claimed a credit in tax year 2006. Individual A's information consisted of numerous non-privileged documents relevant to Corporation's eligibility for the credit. Individual A's original submission also included an analysis of the documents, as well as information about meetings in which the claim for credit was discussed. When interviewed by the IRS, Individual A clarified ambiguities in the original submission, answered questions about Corporation's business and accounting practices, and identified potential sources to corroborate the information. Some of the documents provided by Individual A were not included in Corporation's general record-keeping system and their existence may not have been easily uncovered through normal IRS examination procedures. Corporation initially denied the facts revealed in the information provided by Individual A, which were essential to establishing the impropriety of the claim for credit. IRS examination of Corporation's return confirmed that the credit was improperly claimed by Corporation in tax year 2006, as alleged by Individual A. Corporation agreed to the ensuing assessments of tax and interest and paid the liabilities in full. In this case, Individual A provided specific and credible information that formed the basis for action by the IRS. Individual A provided information that was difficult to detect, provided useful assistance to the IRS, and helped the IRS sustain the assessment. Based on the presence and significance of these positive factors, viewed against all the specific facts relevant to Corporation's 2006 tax year, the Whistleblower Office could increase the award percentage to 22 percent of collected proceeds. If Individual A violated instructions provided by the IRS and the violation caused the IRS to expend additional resources, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 18 percent or 15 percent (but not to lower than 15 percent of collected proceeds).

(2) *Award for less substantial contribution*—(i) *In general.* If the Whistleblower Office determines that the action described in paragraph (c)(1) of this section is based principally on disclosures of specific allegations resulting from public source information including a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media, then the Whistleblower Office may determine an award of no more than 10 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The appropriate amount of any award under this paragraph depends on the significance of the individual's information and the role of the individual (and the individual's legal representative, if any) in contributing to the action(s). If the individual is the original source of the public source information, however, then the award percentage will be determined under paragraph (c)(1) of this section.

(ii) *Computational framework.* The Whistleblower Office will analyze the administrative claim file to determine whether any of the information provided by the individual contained public source information and, if it did, whether the action described in paragraph (c)(1) of this section was based principally on the public source information. The Whistleblower Office will make this determination based on the extent to which the public source information described a tax violation or facts and circumstances from which a tax violation reasonably may be inferred. If the Whistleblower Office determines that the action was based principally on public source information, then, starting at 1 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the individual merits an increased award percentage of 4 percent, 7 percent, or 10 percent. The Whistleblower Office will then determine whether the individual merits a decreased award percentage of zero, 1 percent, 4 percent, or 7 percent using the factors listed in paragraph (b)(2). The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors and may decrease the award percentage based on the presence and significance of negative factors. Like the analysis described in paragraph (c)(1)(ii) of this section, the Whistleblower Office's analysis cannot be reduced to a

mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of negative factors may offset the presence and significance of positive factors or result in a zero award, but the absence of negative factors does not mean that an award percentage will be greater than 1 percent.

(iii) *Example.* The operation of the provisions of paragraph (c)(2)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. It is not intended to provide a standard against which the substantial contribution of an individual submitting a claim for award may be compared. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(2) and paragraph (c)(2)(ii) of this section will depend on the specific facts of each case.

Example. Individual A submitted to the IRS a claim for award under section 7623 and information indicating that Taxpayer B was the defendant in a criminal prosecution for embezzlement. Individual A's information further indicated that evidence presented at Taxpayer B's trial revealed Taxpayer B's efforts to conceal the embezzled funds by depositing them in bank accounts of entities controlled by Taxpayer B. In this case, Individual A's information is based principally on disclosures of specific allegations resulting from a judicial hearing. Absent information demonstrating that the investigation leading to the embezzlement charge was based on information provided by Individual A, section 7623(b)(2) and paragraph (c)(2) of this section applies to the determination of Individual A's award. In this case, there is no reason for the Whistleblower Office to increase the applicable award percentage above 1 percent, the starting point for its analysis, given the absence of positive factors. Accordingly, Individual A may receive an award of 1 percent of collected proceeds.

(3) *Reduction in award and denial of award*—(i) *In general.* If the Whistleblower Office determines that a claim for award is brought by an individual who planned and initiated the actions, transaction, or events (underlying acts) that led to the underpayment of tax or actions described in section 7623(a)(2), then the Whistleblower Office may appropriately reduce the amount of the award percentage that would otherwise result under section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable. The Whistleblower Office will deny an award if the individual is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts.

(ii) *Threshold determination.* An individual *planned and initiated* the underlying acts if the individual:

(A) Designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned, an underlying act,

(B) Took steps to start, introduce, originate, set into motion, promote or otherwise initiate an underlying act, and

(C) Knew or had reason to know that there were tax implications to planning and initiating the underlying act. The individual need not have been the sole person involved in planning and initiating the underlying acts. An individual who merely furnishes typing, reproducing, or other mechanical assistance in implementing one or more underlying acts will not be treated as initiating any underlying act. If the Whistleblower Office determines that an individual has satisfied this initial threshold of planning and initiating, the Whistleblower Office will then reduce the award amount based on the extent of the individual's planning and initiating, pursuant to paragraph (c)(3)(iii) of this section.

(iii) *Computational framework.* After determining the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, the Whistleblower Office will analyze the administrative claim file to make the threshold determination described in paragraph (c)(3)(ii) of this section. If the individual is determined to have planned and initiated the underlying acts, then the Whistleblower Office will reduce the award based on the extent of the individual's planning and initiating. The Whistleblower Office's analysis and the amount of the appropriate reduction determined in a particular case cannot be reduced to a mathematical equation. To determine the appropriate award reduction, the Whistleblower Office will:

(A) Categorize the individual's role as a planner and initiator as primary, significant, or moderate; and

(B) Appropriately reduce the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, by 67 percent to 100 percent in the case of a primary planner and initiator, by 34 percent to 66 percent in the case of a significant planner and initiator, or by 0 percent to 33 percent in the case of a moderate planner and initiator. If the individual is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts, then the Whistleblower Office will deny an award without regard to whether the Whistleblower Office categorized the individual's role as a planner and initiator as primary, significant, or moderate.

(iv) *Factors demonstrating the extent of an individual's planning and initiating.* The application of the following non-exclusive factors may support a determination of the extent of an individual's planning and initiating of the underlying acts:

(A) The individual's role as a planner and initiator. Was the individual the sole decision-maker or one of several contributing planners and initiators?

(B) The nature of the individual's planning and initiating activities. Was the individual involved in legitimate tax planning activities? Did the individual take steps to hide the actions at the planning stage? Did the individual commit any identifiable misconduct (legal, ethical, etc.)?

(C) The extent to which the individual knew or should have known that tax noncompliance could result from the course of conduct.

(D) The extent to which the individual acted in furtherance of the noncompliance, including, for example, efforts to conceal or disguise the transaction.

(E) The individual's role in identifying and soliciting others to participate in the actions reported, whether as parties to a common transaction or as parties to separate transactions.

(v) *Examples.* The operation of the provisions of paragraphs (c)(3)(ii) and (iii) of this section may be illustrated by the following examples. These examples are intended to illustrate the operation of the computational framework. They are not intended to provide standards against which the planning and initiating of an individual submitting a claim for award may be compared. The examples provide simplified descriptions of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case. The application of section 7623(b)(3) and paragraph (c)(3) of this section will depend on the specific facts of each case.

Example 1. Individual A is employed in the finance department of a corporation (Corporation 1) and is responsible for performing research and drafting activities for, and at the direction of, Supervisor B.

Individual A performed research on financial products for Supervisor B that Supervisor B used in advising Corporation 1 on a financial strategy. After Corporation 1 executed the strategy, Individual A submitted a claim for award under section 7623 along with information about the strategy to the IRS. The IRS initiated an examination of Corporation 1 based on Individual A's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Individual A did nothing to design or set into motion Corporation 1's activities. Individual A did not know or have reason to know that there were tax implications to the research activities. Accordingly, as a threshold matter, Individual A was not a planner and initiator of Corporation 1's strategy, and the award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section is not subject to reduction under section 7623(b)(3) and paragraph (c)(3) of this section.

Example 2. Individual C is employed in the HR department of a corporation (Corporation 2). Corporation 2 tasked Individual C with hiring a large number of temporary employees to meet Corporation 2's seasonal business demands. Individual C organized, scheduled, and conducted job fairs and job interviews to hire the seasonal employees. Individual C was not responsible for, had no knowledge of, and played no part in, classifying the seasonal employees for Federal income tax purposes. Individual C later discovered, however, that Corporation 2 classified the seasonal employees as independent contractors. After discovering the misclassification, Individual C submitted a claim for award under section 7623 along with non-privileged information describing the employee misclassification to the IRS. The IRS initiated an examination of Corporation 2 based on Individual C's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would not be subject to a reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual C did not satisfy the requirements of the threshold determination of a planner and initiator. Individual C did not know and had no reason to know that her actions had tax implications or that Corporation 2 would misclassify the employees as independent contractors.

Example 3. Individual D is employed as a supervisor in the finance department of a corporation (Corporation 3) and is responsible for planning Corporation 3's overall financial strategy. Pursuant to the overall financial strategy, Individual D and others at Corporation 3, in good faith but incorrectly, planned tax-advantaged transactions. Individual D and others at Corporation 3 prepared documents needed to execute the transactions. After Corporation 3 executed the transactions, Individual D submitted a claim for award under section 7623 along with non-privileged information about the transactions to the IRS. The IRS initiated an examination of Corporation 3 based on Individual D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual D satisfies the requirements of the threshold determination of a planner and initiator. Individual D planned the transactions, prepared the necessary documents, and knew the tax implications of the transactions. Individual D was not the sole planner and initiator of Corporation 3's transactions. Individual D did nothing to conceal Corporation 3's activities. Corporation 3 had a good faith basis for claiming the disallowed tax benefits. On the basis of those facts, Individual D was a moderate-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual D's award by 0 to 33 percent.

Example 4. Same facts as *Example 3,* except that Individual D independently planned a high-risk tax avoidance transaction and prepared draft documents to execute the transaction. Individual D presented the transaction, along with the draft documents, to Corporation 3's Chief Financial Officer. Without the further involvement of Individual D, Corporation 3's Chief Financial Officer, Chief Executive Officer, and Board of Directors subsequently approved the execution of the transaction. After Corporation 3 executed the transaction, Individual D submitted a claim for award under section 7623 along with non-privileged information about the transaction to the IRS. The IRS initiated an examination of Corporation 3 based on Individual D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual D satisfies the requirements of the threshold determination of a planner and initiator. Individual D planned the transaction, prepared the necessary documents, and knew the tax implications of the transaction. Working independently, Individual D designed and took steps to effectuate the transaction while knowing that the planning and initiating of the transaction was likely to result in tax noncompliance. Individual D, however, did not approve the execution of the transaction by Corporation 3 and, therefore, was not a decision-maker. On the basis of those facts, Individual D was a significant-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual D's award by 34 to 66 percent.

Example 5. Individual E is a financial planner. Individual E designed a financial product that the IRS identified as an abusive tax avoidance transaction. Individual E marketed the transaction to taxpayers, facilitated their participation in the transaction, and, initially, took steps to disguise the transaction. After several taxpayers had participated in the transaction, Individual E submitted a claim for award under section 7623 along with non-privileged information to the IRS about the transaction and the participating taxpayers. The IRS initiated an examination of the identified taxpayers based on Individual E's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Individual E was not criminally prosecuted. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual E satisfies the requirements of the threshold determination of a planner and initiator. Individual E designed the financial product, marketed and facilitated its use by taxpayers, and knew the tax implications of the transaction. Individual E was the sole designer of the transaction, solicited clients to participate in the transaction, and facilitated and attempted to conceal their participation in the transaction. Individual E knew that the planning and initiating of the taxpayers' participation in the transaction was likely to result in tax noncompliance. On the basis of those facts, Individual E was a primary-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual E's award by 67 to 100 percent.

(4) *Eligible affiliated claimants*—(i) *In general.* If the Whistleblower Office determines that an affiliated claimant, as defined in § 301.7623–2(f), filed a claim for award based on information obtained from an otherwise eligible individual for the purpose of avoiding any reduction in the amount of any award that could result if the claim was filed by the otherwise eligible individual, then the Whistleblower Office may, for purposes of determining the amount of an award, treat the claim as if it had been filed by the otherwise eligible individual. Any award to the affiliated claimant that filed the claim for award will be paid pursuant to paragraph (d)(1) of this section. See § 301.7623–1(b)(3) for rules regarding ineligible affiliated claimants.

(ii) *Example.* Individual A is employed as a supervisor in the finance department of Corporation. Individual A planned and initiated the actions that led to an underpayment of tax by Corporation, within the meaning of section 7623(b)(3) and paragraph (c)(3) of this section. To avoid the application of section 7623(b)(3) and paragraph (c)(3) of this section, Individual A provided non-privileged information to Individual B that described and documented specific facts relating to Corporation's tax underpayment. Individual B did not plan and initiate

the actions that led to an underpayment of tax by Corporation. Individual B submitted to the IRS the information received from Individual A, alleging that Corporation owed additional taxes and filing a claim for award under section 7623. The IRS proceeded with an examination of Corporation based on the information provided by Individual B, determined a deficiency against Corporation and, ultimately, collected proceeds from Corporation. For purposes of determining the amount of any award payable to Individual B, as the individual that filed the claim for award, the Whistleblower Office may treat the claim as if it had been filed by Individual A.

(5) *Multiple claimants.* If two or more independent claims relate to the same collected proceeds, then the Whistleblower Office may evaluate the contribution of each individual to the action(s) that resulted in collected proceeds. The Whistleblower Office will determine whether the information submitted by each individual would have been obtained by the IRS as a result of the information previously submitted by any other individual. If the Whistleblower Office determines that multiple individuals submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine the amount of each individual's award based on the extent to which each individual contributed to the action(s). The aggregate award amount in cases involving two or more independent claims that relate to the same collected proceeds will not exceed the maximum award amount that could have resulted under section 7623(b)(1) or section 7623(b)(2), as applicable, subject to the award reduction provisions of section 7623(b)(3), if a single claim had been submitted.

(d) *Payment of Award*—(1) *In general.* The IRS will pay any award determined under section 7623 and §§ 301.7623–1 through 301.7623–4 to the individual(s) that filed the corresponding claim for award. Payment of an award will be made as promptly as the circumstances permit, but not until there has been a final determination of tax with respect to the action(s), as defined in paragraph (d)(2) of this section, the Whistleblower Office has determined the award, and all appeals of the Whistleblower Office's determination are final or the individual has executed an award consent form agreeing to the amount of the award and waiving the individual's right to appeal the determination.

(2) *Final determination of tax.* For purposes of §§ 301.7623–1 through 301.7623–4, a *final determination of tax* means that the proceeds resulting from the action(s) subject to the award determination have been collected and either the statutory period for filing a claim for refund has expired or the taxpayer(s) subject to the action(s) and the IRS have agreed with finality to the tax or other liabilities for the period(s) at issue and the taxpayer(s) have waived the right to file a claim for refund.

(3) *Joint Claimants.* If multiple individuals jointly submit a claim for award, the IRS will pay any award in equal shares to the joint claimants unless the joint claimants specify a different allocation in a written agreement, signed by all the joint claimants and notarized, and submitted with the claim for award. The aggregate award payment in cases involving joint claimants will be within the award percentage range of section 7623(b)(1) or section 7623(b)(2), as applicable, and subject to the award reduction provisions of section 7623(b)(3).

(4) *Deceased Claimant.* If a claimant dies before or during the whistleblower administrative proceeding, the Whistleblower Office will substitute an executor, administrator, or other legal representative on behalf of the deceased claimant for purposes of conducting the whistleblower administrative proceeding.

(5) *Tax treatment of award.* All awards are subject to current Federal tax reporting and withholding requirements.

(e) *Effective/applicability date.* When finalized, § 301.7623–4 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under section 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–30512 Filed 12–14–12; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0590]

RIN 1625–AA11

Regulated Navigation Area; Youngs Bay PacifiCorp Sediment Cap; Youngs Bay, Columbia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a Regulated Navigation Area (RNA) at the Youngs Bay PacifiCorp property in Astoria, OR. This RNA is necessary to preserve the integrity of an engineered sediment cap as part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This proposed RNA will do so by prohibiting activities that could disturb or damage the engineered sediment cap.

DATES: Comments and related material must be received by the Coast Guard on or before March 18, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0590 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 ENS Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *msupdxwwm@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

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 [USCG–2012–0590] 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 [USCG–2012–0590] 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. Basis and Purpose

The Coast Guard proposes a Regulated Navigation Area (RNA) to protect the engineered sediment cap currently in place located at the PacifiCorp site in Youngs Bay, Astoria, OR. This sediment cap is part of an Oregon Department of Environmental Quality (DEQ) required remedial action. This regulated navigation area is based on the Coast Guard District Commander's authority under 33 CFR 165.11 to regulate vessel traffic in areas with hazardous conditions.

The engineered sediment cap is designed to be compatible with normal port operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, grounding of large vessels, deployment of barge spuds, etc. Such damage could disrupt the function or impact the effectiveness of the cap to contain the underlying contaminated sediment and shoreline soil in these areas. Disruption of the cap may result in a hazardous condition and harm to the marine environment. As such, this RNA is necessary to help ensure the cap is protected and will do so by prohibiting maritime activities that could disturb or damage it.

C. Discussion of Proposed Rule

The proposed rule would create a RNA adjacent to the PacifiCorp Property in Youngs Bay, Astoria, OR encompassing all waters above the sediment cap, and it would prohibit activities such as anchoring, dragging, dredging, or trawling which could damage the sediment cap.

D. Regulatory Analyses

We developed this proposed 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 proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those orders. The Coast Guard has made this determination based on the fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for activities that may damage the engineered sediment cap.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. However, this proposed rule may affect the following entities, some of which might be small entities: The owners or operators of vessels operating in the area covered by the RNA. The RNA will not have a significant economic impact on a substantial number of small entities, because the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for activities such as anchoring, dragging, or grounding that may damage the engineered sediment cap.

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

qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

4. Collection of Information

This proposed 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 proposed rule under that Order and have determined that it 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1338 to read as follows:

§ 165.1338 Regulated Navigation Area; Youngs Bay PacifiCorp Sediment Cap; Columbia River, Youngs Bay, Astoria, OR.

(a) *Regulated Navigation Area.* All waters encompassed within the following points are a regulated navigation area:

Latitude	Longitude
46–10′17.21″ N	123–50′35.37″ W
46–10′15.09″ N	123–50′33.39″ W
46–10′13.50″ N	123–50′33.41″ W
46–10′13.07″ N	123–50′31.79″ W
46–10′13.45″ N	123–50′30.06″ W
46–10′14.94″ N	123–50′28.79″ W
46–10′18.13″ N	123–50′28.89″ W
46–10′18.13″ N	123–50′30.22″ W
46–10′19.51″ N	123–50′30.90″ W
46–10′19.51″ N	123–50′31.77″ W
46–10′17.31″ N	123–50′31.79″ W
46–10′17.21″ N	123–50′35.37″ W

(b) *Regulations.* All vessels are prohibited from anchoring, dragging, dredging, or trawling in the regulated navigation area established by this section. See 33 CFR 165 subpart B for additional information and requirements.

Dated: November 27, 2012.

K.A. Taylor,

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

[FR Doc. 2012–30409 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0502; FRL–9763–1]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Disapproval of $PM_{2.5}$ Permitting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to Wisconsin's State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) in a letter dated May 12, 2011. The revision concerns permitting requirements relating to particulate matter of less than 2.5 micrometers ($PM_{2.5}$). EPA is proposing to disapprove the revisions because they do not meet the 2008 $PM_{2.5}$ SIP requirements.

DATES: Comments must be received on or before January 17, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0502, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: damico.genevieve@epa.gov.*
3. *Fax:* (312) 385–5501.
4. *Mail:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0502. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353–6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6058, *morgan.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. The State's Submittal
III. Does this submittal comply with Federal regulations?
IV. What action is EPA taking on this submittal?
V. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. The State's Submittal

In May 2008, EPA finalized regulations to implement the New Source Review (NSR) Implementation Rule for $PM_{2.5}$ to include the major source threshold, significant emissions rate and offset ratios for $PM_{2.5}$, interpollutant trading for offsets and applicability of NSR to $PM_{2.5}$ precursors. On October 20, 2010, EPA amended the requirements for $PM_{2.5}$ under the Prevention of Significant Deterioration (PSD) program by adding maximum allowable increase in ambient pollutant concentrations and screening tools known as the Significant Impact Levels and Significant Monitoring Concentration (SMC) for $PM_{2.5}$.

On May 12, 2011, Wisconsin requested a revision to its SIP to include

new permit requirements relating to $PM_{2.5}$. The provisions were designed to match the requirements set forth in the May 2008 and October 2010 rules. Wisconsin submitted revisions to its rules NR 400, 404, 405, 406, 407, 408, and 484 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revisions to Wisconsin's SIP: (1) Amend NR 400.02(40), (70), and (79); (2) create NR 400.02(123m); (3) amend NR 400.02(135); (4) create NR 400.03(4)(ki); (5) renumber and amend NR 404.02(4e) and (4m); (6) amend NR 405.02(25k)(intro.); (7) create NR 405.02(27)(a)5m in Table A; (8) amend NR 405.07(8)(a)3m; (9) amend NR 406.04(1)(n)(intro) and 1. and 2. (intro); (10) create NR 406.04(2)(cs); (11) create NR 407.03(2)(be); (12) create NR 408.02(32)(a)5m; (13) create NR 408.06(1)(cm); (14) amend NR 484.03(5) in Table 1; (15) and amend NR 484.04(5) and (6g) in Table 2.

The submittal included permanent rules to define major source thresholds and significant emission increase levels; establish the SMC for $PM_{2.5}$; establish interpollutant trading ratios for $PM_{2.5}$, sulfur dioxide (SO_2) and nitrogen oxides (NO_X); and clarify existing nonattainment area permitting rules. EPA announced through a memorandum, on July 21, 2011, a change in its policy concerning the development and adoption of interpollutant trading provisions for $PM_{2.5}$. The new policy requires that any ratio involving $PM_{2.5}$ precursors submitted to EPA for approval for use in a state's interpollutant offset program for $PM_{2.5}$ nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such a ratio for the $PM_{2.5}$ nonattainment area in which it will be applied. In a letter dated March 5, 2012, WDNR requested to withdraw its request to have NR 408.06(1)(cm), the provision pertaining to interpollutant trading ratios, included in its 2011 submittal.

NR 400 contains Wisconsin's air pollution control definitions and the following revisions to NR 400 were submitted. NR 400.01(40), (70), and (79) and NR 400.02(135) were revised to clarify existing rules by updating references within the rule. These amendments do not change the effect or intent of these rules. NR 400.02(123m) created a definition of ''$PM_{2.5}$ emissions''. NR 400.03(4)(ki) created a definition for ''$PM_{2.5}$''.

NR 404 contains Wisconsin's Ambient Air Quality requirements, and the following revision to NR 404 was submitted. NR 404.02 (4e) and (4m) were renumbered to NR 400.02(123e) and (123s) and were revised to clarify the definitions of ''$PM_{2.5}$'' and ''particulate matter of less than 10 micrometers'' (PM_{10}).

NR 405 contains Wisconsin's PSD program requirements, and the following revisions to NR 405 were submitted. NR 405.02(25k) (intro) was amended to clarify language. NR 405.02(27)(a)5m in Table A was created to include the 10 tons per year (tpy) significance thresholds for $PM_{2.5}$, and 40 tpy threshold for NO_X and SO_2, the precursors to $PM_{2.5}$. The inclusion of these significance values would cause sources for which annual emissions exceed the significance value to trigger the PSD program requirements. NR 405.07(8)(a)3m was created to exempt major sources from the monitoring requirements for $PM_{2.5}$ of NR 405.11 if one of the following criteria are met: (a) The emissions increase of $PM_{2.5}$ from a new stationary source or the net emissions increase of the $PM_{2.5}$ from a major modification would cause, in any area, air quality impacts less than 2.3 mg/m^3, 24 hour average; (b) The concentration of $PM_{2.5}$ in the area that the source or modification would affect is less than 2.3 mg/m^3.

NR 406 contains Wisconsin's construction permitting requirements, and the following revisions to NR 406 were submitted. NR 406(1)(n), NR 406(1)(n)1 and NR 406(1)(n)2 were amended to clarify otherwise unaffected existing rules. These changes do not change the effect or intent of the rule. NR 406.04(2)(cs) was created to exempt sources with a maximum theoretical emission for $PM_{2.5}$ of less than 2.2 pounds per hour from obtaining a construction permit.

NR 407 contains Wisconsin's operation permit requirements, and WDNR submitted NR 407.03(2)(be) to require any source with a maximum theoretical emissions of $PM_{2.5}$ greater than 2.2 pounds per hour to obtain an operation permit.

NR section 408 contains Wisconsin's requirements for construction permits in nonattainment areas and WDNR included NR 408.02(32)(a)5m in its submission. NR 408.02(32)(a)5m defined ''Significant'', in reference to a net emissions increase or the potential of a source to emit any of $PM_{2.5}$, as a rate of emissions that would equal or exceed 10 tpy of $PM_{2.5}$ emissions or 40 tpy of NO_X or SO_2. While the original submittal requested to create NR 408.06(1)(cm), Wisconsin withdrew the request to include this provision from the SIP approval in a letter dated March 5, 2012.

NR 484 contains those parts of Wisconsin's regulations that are incorporated by reference from the regulations. Wisconsin submitted a request to amend NR 484.03(5) in Table 1 and NR 484.04(5) and (6g) in Table 2. The updates would correct citations in the Wisconsin SIP so that they are up to date with Wisconsin's current regulations.

III. Does This Submittal Comply With Federal Regulations?

EPA has evaluated WDNR's proposed revisions to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. The revisions described in Section II above are intended to update the Wisconsin SIP to comply with current rules. As discussed below, EPA is proposing to disapprove these revisions because they do not meet all the requirements of the 2008 rules.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

WDNR's revision to NR 400.03(4)(ki) provides the definition of ''$PM_{2.5}$'' as particulate matter with an aerodynamic diameter $\leq 2.5\mu m$'' and NR 400.02(123e) defines ''$PM_{2.5}$'' as ''particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured *in the ambient air* by a reference method based on appendix L of 40 CFR part 50, incorporated by reference in NR 484.04(6g), and designated in accordance with 40 CFR part 53, incorporated by reference in NR 484.03(5), or by an equivalent method.'' Similarly, the requested revisions do not include the explicit language identifying PM_{10} and $PM_{2.5}$ condensables. EPA recognizes that Wisconsin Administrative Code NR 439 contains the requirements for reporting, recordkeeping, testing, inspection, and determination of compliance for air contaminant sources and their owners and operators. Of note, NR 439.02(4) defines ''condensable particulate matter'' as ''any material, except uncombined water, that may not be collected in the front half of the particulate emission sampling train but which exists as a solid or liquid at

standard conditions.'' While this definition is SIP approved, it was only approved as it applies to Wisconsin Administrative Code NR 419 to NR 425. Wisconsin's permitting requirements are codified in NR 405 to 408. Further, EPA regulations require that permitting requirements contain the explicit language that, ''Particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.'' Wisconsin's current SIP does not contain the explicit language to account for $PM_{2.5}$ and PM_{10} condensables in permitting decisions, as codified in 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi), and to date, the State has not made a submission with such revisions.

WDNR's revisions to NR 405.02(27)(a)(5) include the significant emissions rates for direct $PM_{2.5}$, and SO_2 and NO_X as $PM_{2.5}$ precursors, consistent with the 2008 NSR Rule. However, Wisconsin's PSD regulations include only generic language to define what constitutes a regulated NSR pollutant that does not directly account for $PM_{2.5}$ and its precursors. NR 405(02)(25i) defines ''Regulated NSR air contaminant'' as ''Any air contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the air contaminants identified by the administrator * * * ''. The 2008 NSR Rule obligates the State to explicitly identify the precursors to $PM_{2.5}$ as part of the definition for ''Regulated NSR air contaminant.'' EPA concludes that although Wisconsin has incorporated the significant emissions rates in accordance with the 2008 NSR Rule, WDNR has not explicitly identified SO_2 and NO_X as precursors to $PM_{2.5}$ in defining pollutants regulated by the PSD program.

Since the proposed revision to Wisconsin's SIP does not include the prescribed language required for the identification of precursors and does not account for $PM_{2.5}$ or PM_{10} condensables, EPA proposes to disapprove the submitted revisions. EPA's proposed action is consistent with the narrow disapproval of the infrastructure requirements published on October 29, 2012 (77 FR 65478). The infrastructure SIP was disapproved in part because of the deficiencies with regards to the identification of precursors to $PM_{2.5}$ and $PM_{2.5}$ and PM_{10} condensables.

IV. What action Is EPA taking on this Submittal?

EPA is proposing to disapprove the revisions to Wisconsin rules NR 400, 404, 405, 406, 407, 408 and 484, submitted by the State on May 12, 2011, for approval into the SIP. The rule revisions submitted, described in Section II, above, are not consistent with Federal regulations governing state permitting programs. See Section III, above. EPA is also soliciting comment on this proposed disapproval.

Under section 179(a) of the Clean Air Act (CAA), final disapproval of a submission that addresses a requirement of a part D plan (section 171–193 of the CAA), or is required in response to a finding of substantial inadequacy as described in section 110(k)(5), starts a sanction clock. The submission EPA is proposing to disapprove was not submitted to meet either of these requirements. Therefore if EPA takes final action to disapprove these submissions, no sanctions under 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. However, since elements of this SIP revision were narrowly disapproved under the infrastructure SIP, the two year timeframe began with the final narrow disapproval of Wisconsin's Infrastructure SIP (October 29, 2012; 77 FR 65478). EPA will actively work with Wisconsin to incorporate changes to its PSD program that explicitly identify $PM_{2.5}$ precursors and account for $PM_{2.5}$ and PM_{10} condensables in permitting emissions limits, consistent with the 2008 NSR Rule. In the interim, EPA expects WDNR to adhere to the associated requirements of the 2008 NSR Rule in its PSD program, specifically with respect to the explicit identification of $PM_{2.5}$ precursors, and accounting for $PM_{2.5}$ and PM_{10} condensables in permitting emissions limits.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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.*).

Regulatory Flexibility Act

This action merely disapproves state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule 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.*).

Unfunded Mandates Reform Act

Because this rule disapproves 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).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it disapproves a state rule.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 10, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–30449 Filed 12–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0762; FRL-9762–7]

Approval and Promulgation of Implementation Plans; Tennessee: Knox County Supplemental Motor Vehicle Emissions Budget Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, through parallel processing, a draft revision to the Tennessee State Implementation Plan (SIP), submitted to EPA on October 12, 2012, by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC). Tennessee's October 12, 2012, draft SIP revision includes changes to the maintenance plan for the Knox County 1-hour ozone area submitted on August 26, 1992, and approved by EPA on September 27, 1993, and a subsequent SIP revision approved by EPA on August 5, 1997. The Knox County 1-hour ozone area was comprised of Knox County in its entirety. The October 12, 2012, draft revision proposes to increase the safety margin allocated to motor vehicle emissions budgets (MVEB) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for Knox County to account for changes in the emissions model and vehicle miles traveled (VMT) projection model. EPA is proposing approval of this draft SIP revision pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before January 17, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0762 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0762,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Kelly Sheckler may be reached by phone at (404) 562–9222 or by electronic mail address *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Parallel Processing
II. Background
III. EPA's Analysis of Tennessee's SIP Revision
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Parallel Processing

Consistent with EPA regulations found at 40 CFR Part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before going out for public comment. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

If the revision that is finally adopted and submitted by the state is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On October 12, 2012, the State of Tennessee, through TDEC submitted a request for parallel processing of a draft SIP revision that the State had already taken through public comment. TDEC requested parallel processing so that EPA could begin to take action on its draft SIP revision in advance of the State's submission of the final SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Tennessee, (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes made by the State after the October 12, 2012, draft was submitted to EPA.

II. Background

The Knox County, Tennessee, 1-hour ozone attainment and maintenance area is comprised of only Knox County in its

entirety in Tennessee (hereafter referred to as the ''Knox County Area'' or ''Area''). Knox County Area was originally designated as marginal nonattainment for the 1-hour ozone national ambient air quality standards (NAAQS) on November 6, 1991 (56 FR 56694).[1] Knox County was redesignated as attainment for the 1-hour ozone NAAQS on September 27, 1993 (58 FR 50271). In this approval, was a 10-year air quality maintenance plan covering the years 1994–2004.

A subsequent revision to the Knox County Area maintenance plan was approved by EPA on August 5, 1997, that established MVEB for transportation conformity purposes. That plan satisfied the CAA requirement for a 10-year update of the Knox County 1-hour ozone maintenance plan. Changes included revisions to the emissions inventory for both on-road and off-road mobile sources using the latest at that time, EPA approved mobile emissions and NONROAD models. New emissions data for both the new base year (attainment year) and the projected years (2004 and 2014) were calculated. The plan updated the 2004 MVEB and provided for a new MVEB for the year 2014. EPA is now proposing to approve Tennessee's October 12, 2012, revision to the safety margin for the previously approved MVEB.

III. EPA's Analysis of Tennessee's SIP Revision

As discussed above, on October 12, 2012, the State of Tennessee, through TDEC, submitted a SIP revision to revise the MVEB for Knox County in the Knox County 1-hour ozone maintenance plan to increase the safety margin as a result of new emissions model, VMT projection models, and other emission model input data. The MVEB (expressed in tons per day (tpd)) that are being updated through today's action were originally approved by EPA on September 27, 1993, updated on August 5, 1997, and are outlined in the table below.

TABLE 1—ORIGINAL MVEB FOR KNOX COUNTY FOR 2004 NO_X

NO_X	29.24 tpd	22.12 tpd
VOC	33.89 tpd	31.71 tpd

TDEC is currently allocating portions of the available safety margin[2] to the MVEB to account for new emissions models, VMT projections models, as well as changes to future vehicle mix assumptions, that influence the emission estimations. TDEC has now decided to allocate a majority of the safety margin available to the MVEB. Specifically, 7.97 tpd of the available VOC safety margin (15.94) is allocated to the 2004 MVEB, and 11.61 tpd for the available 2014 MVEB (23.22). Additionally, 2.79 tpd of the available NO_X safety margin are allocated to the 2004 MVEB and 18.43 tpd for the 2014 MVEB. The remaining safety margin for VOC for 2004 is 7.97 tpd and for 2014 is 11.61 tpd. As a result, there will be no safety margin remaining for NO_X for 2004 and 2014.

The following tables provide the adjusted VOC and NO_X emissions data, for the 2004 base attainment year inventories, as well as the projected VOC and NO_X emissions inventory 2014.

TABLE 2—KNOX COUNTY TOTAL VOLATILE ORGANIC COMPUNDS EMISSIONS

Year	Area	Non-road	Biogenic	Mobile	Point	Total	Available saftey margin
1990	28.82	9.81	32.43	40.84	8.06	119.96	.....
1993	29.25	9.96	32.43	32.35	8.64	112.63	.....
2004	30.90	10.52	32.43	21.27	8.90	104.02	15.94
2010	31.84	10.84	32.43	13.93	9.76	98.80	.....
2014	32.48	11.06	32.43	19.51	10.26	96.74	23.22

TABLE 3—KNOX COUNTY TOTAL NITROGEN OXIDES EMISSIONS

Year	Area	Non-Road	Biogenic	Mobile	Point	Total	Saftey Margin
1990	3.66	9.77	0	37.62	8.96	60.01	.....
1993	3.72	9.92	0	34.85	9.54	58.03	.....
2004	3.92	10.48	0	31.10	11.73	57.23	2.79
2010	4.04	10.79	0	19.99	12.53	47.35	.....
2014	4.13	11.01	0	13.27	13.17	41.58	18.43

[1] Subsequent to designating Knox County nonattainment for the 1-hour ozone NAAQS, EPA has since designated Knox County as part of the larger Knoxville nonattainment area for the 1997 8-hour ozone NAAQS (*see* 69 FR 23857, April 30, 2004) and the 2008 8-hour ozone NAAQS (*see* 77 FR 30160, May 21, 2012). This proposed action relates primarily to the MVEB established for Knox County for the 1-hour ozone NAAQS, and does not relate to the MVEB approved for 1997 8-hour ozone NAAQS for the Knoxville Area, nor does it relate to any pending MVEB that may be contemplated for the Knoxville Area for the 2008 8-hour ozone NAAQS.

[2] A safety margin is the difference between the attainment level of emissions from all source categories (i.e., point, area, and mobile) and the projected level of emissions from all source categories. The State may choose to allocate some of the safety margin to the MVEB, for transportation conformity purposes, so long as the total level of emissions from all source categories remains equal to or less than the attainment level of emissions.

TABLE 4—KNOX COUNTY NO_X MVEB

[tpd]

	2004	2014
NO_X Emissions		
Base Emissions	57.23	41.48
Safety Margin Allocated to MVEB	2.79	18.43
NO_X Conformity MVEB	36.68	50.14

TABLE 5—KNOX COUNTY VOC MVEB

[tpd]

	2004	2014
VOC Emissions		
Base Emissions	104.02	96.74
Safety Margin Allocated to MVEB	7.97	11.61
VOC Conformity MVEB	37.21	33.73

Taking into consideration the portion of the safety margin applied to the MVEB, the resulting difference between the attainment level of emissions from all sources and the projected level of emissions from all sources in the maintenance area, the area still attains the NAAQS and meets the maintenance requirements. The new safety margins, are listed below in Table 6.

TABLE 6—NEW SAFETY MARGINS FOR THE KNOX COUNTY

Year	VOC tpd	NO_X tpd
2004	7.97	0
2014	11.61	0

As shown in Tables 2 and 3 above, VOC and NO_X total emissions in Knox County are projected to steadily decrease from 2004 to the maintenance year of 2014. This VOC and NO_X emission decrease demonstrates continued attainment/maintenance of the 1-hour ozone NAAQS for ten years from 2004 (the year the Area was effectively designated attainment for the 1-hour ozone NAAQS) as required by the CAA.

The revised MVEB that Tennessee submitted for the Knox County Area were developed with projected mobile source emissions derived using the MOBILE6 motor vehicle emissions model. This model was the most current model available at the time Tennessee was performing its analysis. However, EPA has now issued an updated motor vehicle emissions model known as Motor Vehicle Emission Simulator or MOVES. In its announcement of this model, EPA established a two-year grace period for continued use of MOBILE6.2 in regional emissions analyses for transportation plan and transportation improvement programs (TIPs) conformity determinations (extending to March 2, 2012),[3] after which states (other than California) must use MOVES in conformity determinations for TIPs. As stated above, MOBILE6.2 was the applicable mobile source emissions model that was available when the original SIP was submitted.

IV. Proposed Action

EPA is proposing to approve Tennessee's October 12, 2012, SIP revision concerning the Knox County 1-hour ozone maintenance plan and increasing the safety margin allocated to MVEB to account for changes in the emissions model and VMT projection model. This action, if finalized, would result in higher NO_X and VOC MVEB for transportation conformity purposes for Knox County, and would still be consistent with attainment for the 1-hour ozone NAAQS. EPA is proposing this action because it is consistent with the CAA and the transportation conformity requirements at 40 CFR 93.

V. Statutory and Executive order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: December 7, 2012.

A. Stanley Meiburg,

Regional Administrator, Region 4.

[FR Doc. 2012–30358 Filed 12–17–12; 8:45 am]

BILLING CODE 6560–50–P

[3] EPA previously extended the grace period to use MOVES for regional emissions analysis in conformity determinations to March 2, 2013 (77 FR 11394).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 11–69; Report No. 2970]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, Petition for Reconsideration and/or a Petition for Clarification (Petition) has been filed in the Commission's rulemaking proceeding by Chuck Powers, Director, Engineering and Technology Policy, on the behalf of Motorola Solutions Inc.

DATES: Oppositions to the Petition must be filed on or before January 2, 2013. Replies to an opposition must be filed on or before January 14, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tim Maguire, Wireless Telecommunications Bureau, 202–418–2155, *tim.maguire@fcc.gov mailto:tim.maguire@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No.2970, released November 29, 2012. The full text of Report No. 2970 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

SUBJECT: Amendment of Part 90 of the Commission's Rules to Permit Terrestrial Trunked Radio (TETRA) Technology; Request by the TETRA Association for Waiver of §§ 90.209, 90.210 and 2.1043 of the Commission's rules, published at 77 FR 61535, October 10, 2012, in WT Docket No. 11–69, and published pursuant to 47 CFR 1.429(e) of the Commission's rules. *See also* 47 CFR 1.4(b)(1).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–30484 Filed 12–17–12; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 77, No. 243

Tuesday, December 18, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 13, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 17, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 764, Direct Loan Making.

OMB Control Number: 0560–0237.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR 764, is provided under 5 U.S.C. 301, which provides that ''The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business * * *.'' The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The Farm Service Agency (FSA) also provides the requirements associated with Farm Ownership, Operating, Emergency and Farm Storage Facility loan programs.

Need and Use of the Information: Information is submitted by the applicants to the local agency office serving the county in which their business is headquartered. The information is necessary to thoroughly evaluate the applicant's request for a direct loan and is used by agency officials to: (1) Ensure that cash flow projections used in determining loan repayment are based on the actual production history of the operation, (2) Ensure that a loan is adequately secured. (3) Ensure the applicant meets the statutorily established program eligibility requirements, and (4) Obtain assignment on income or sales proceeds, when appropriate, to ensure timely repayment of the loans. Since the agency is mandated to provide supervised credit, failure to collect the information, or collecting it less frequently, could result in the failure of the farm operation or loss of agency security property.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 181,922.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 320,891.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–30419 Filed 12–17–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request a revision for a currently approved information collection in support of the CCC's Dairy Export Incentive Program (DEIP) based on re-estimates. Although the Export Enhancement Program (EEP) was repealed by the Food, Conservation and Energy Act of 2008, the regulations for EEP, found at 7 CFR part 1494, subpart B, also apply to the DEIP. The request for revision of this information collection applies only to DEIP.

DATES: Comments on this notice must be received by February 19, 2013 to be assured of consideration.

Additional Information or Comments: Contact Mark Rowse, Director, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1025, Washington, DC 20250–1025, telephone (202) 720–6211.

SUPPLEMENTARY INFORMATION:

Title: Dairy Export Incentive Program (DEIP).

OMB Number: 0551–0028.

Expiration Date of Approval: March 31, 2013.

Type of Request: Revision of a currently approved information collection.

Abstract: The major objective of the DEIP is to expand U.S. agricultural exports by paying cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at competitive prices. When the program is operational, approximately 100 countries and 3

regions are targeted export destinations. Approximately 425 exporters are currently eligible to participate under the DEIP.

Under 7 CFR part 1494, exporters are required to submit the following: (1) Information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), and (4) documentation evidencing export to support payment of the bonus (section 1494.701). In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the DEIP as outlined in section 1494.1001. The information collected is used by CCC to manage, plan for, evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 37 minutes per response.

Respondents: Exporters of U.S. agricultural commodities.

Estimated Number of Respondents: 20 per annum.

Estimated Number of Responses per Respondent: 84 per annum.

Estimated Total Annual Burden on Respondents: 1,036 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578.

Requests for comments: Send comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Rowse, Director, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1025, Washington, DC 20250–1025, telephone (202) 720–6211, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on October 5, 2012.

Janet Nuzum,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–30485 Filed 12–17–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Federal and Non-Federal Financial Assistant Instruments

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, OMB 0596–0217, Federal and Non-Federal Financial Assistant Instruments.

DATES: Comments must be received in writing on or before February 19, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Clark Woolley, USDA Forest Service, Director of Acquisitions Management, 1400 Independence Ave. SW., Mailstop 1138, Washington, DC 20250.

Comments also may be submitted via facsimile to 703–605–5100 or by email to: *cmwoolley@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, 1621 N. Kent Street, RPE Suite 707, Arlington, VA 22209 during normal business hours. Visitors are encouraged to call ahead to 703–605–4719 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Clark Woolley, Acquisitions Management, 703–605–4654.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal and Non-Federal Financial Assistant Instruments.

OMB Number: 0596–0217.

Expiration Date of Approval: 02/28/2014.

Type of Request: Revision of a currently approved collection.

Abstract: In order to perform specific Forest Service activities, Congress created several authorities to assist the Agency in carrying out its mission. The Forest Service issues Federal Financial Assistance (FFA) awards, which are grants and cooperative agreements, as authorized by the Federal Grants and Cooperative Agreements Act (FGCAA). This collection includes the following forms:

(1) Federal Financial Assistance Standard Forms,

(2) Pre-certification forms,

(3) Award and administrative related correspondence, and

(4) A new questionnaire related to a recipient's accounting system and financial management capabilities.

In addition to FFA, Congress created specific authorizations for acts outside the scope of the FGCAA. Appropriations language was developed to convey authority for the Forest Service to enter into relationships that are outside the scope of the FGCAA. The Forest Service implements these authorizations using instruments such as collection agreements, FGCAA exempted agreements, memorandums of understanding, and other agreements which mutually benefit participating parties. These instruments fall outside the scope of the Federal Acquisition Regulations (FAR) and often require financial plans and statements of work. Forest Service employees collect information from cooperating parties from the pre-award to the closeout stage via telephone calls, emails, postal mail, and person-to-person meetings to create, develop, and administer these funded and non-funded agreements. The multiple means for respondents to communicate their responses include forms, non-forms, electronic documents, face-to-face, telephone, and Internet. The scope of information collected varies, however, it typically includes the project type, project scope, financial plan, statement of work, and cooperator's business information.

The Forest Service would not be able to create, develop, and administer these funded and non-funded agreements without the collected information. The Agency would also be unable to develop or monitor projects, make or receive payments, or identify financial and accounting errors.

Estimate of Annual Burden: 1 to 4 hours annually per person.

Type of Respondents: Non-profit and for profit institutions; institutions of

higher education; State, local, and Native American tribal governments, individuals; foreign governments; and organizations.

Estimated Annual Number of Respondents: 15,000.

Estimated Annual Number of Responses per Respondent: 1 to 4.

Estimated Total Annual Burden on Respondents: 28,000 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: December 10, 2012.

J. Lenise Lago,

Deputy Chief, Business Operations.

[FR Doc. 2012–30415 Filed 12–17–12; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Intent To Seek OMB Approval To Collect Information: On-Line Architectural Barriers Act (ABA) Complaint Form

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to request approval by the Office of Management and Budget (OMB) of a new information collection. As required by the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment on this notice, and publishing a second notice requesting public comments for an additional 30 days, we plan to submit an information collection request package to OMB and request approval for three years.

DATES: Written comments on this notice must be received by February 19, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Address all comments concerning this notice to Lisa Fairhall, Deputy General Counsel, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Lisa Fairhall, Deputy General Counsel, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004; telephone 202–272–0046; TTY 202–272–0082; or send email to *fairhall@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: On-line Architectural Barriers Act (ABA) Complaint Form.

OMB Number: 3014–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: New information collection.

Abstract: The Architectural and Transportation Barriers Compliance Board (Access Board) is seeking to make the process for submitting complaints under the Architectural Barriers Act (ABA) easier to use, more efficient, and timely. Complainants will be able to submit a complaint on-line using a standardized web-based complaint form which will prompt them to provide pertinent data necessary for the Access Board to investigate an ABA complaint. You may view the electronic data collection instrument on-line at *http://cts.access-board.gov/formsiq/form.do?formset_id=2&ds=fdd&reload=true* or obtain a copy of the instrument from Ms. Fairhall.

Use of the Information

The Access Board enforces the ABA by investigating complaints submitted by members of the public concerning particular buildings or facilities designed, altered, or built, by or on behalf of, or leased by, federal agencies, or financed by federal funds. Complaints can currently be submitted by email, mail or fax. The proposed on-line complaint form will allow complainants to submit ABA complaints electronically and receive notification that their complaint has been received, together with the complaint number for them to use when making inquiries about the status of their complaint. The Access Board is not requiring all complaints to be submitted using the on-line complaint form; the Access Board will continue to accept complaints submitted by email, mail, or fax.

Complainants must submit in writing the name and address of the building or facility and a brief description of each barrier to accessibility they have found at the building or facility. Additional information about the facility, such as when it was built or known sources of federal funding, is helpful but not necessary. Personal information, including the complainant's name, address, phone number and email address is optional and, where provided, is not disclosed without written permission from the complainant. The new on-line complaint form will prompt complainants to provide the information necessary for Access Board staff to initiate an investigation into a complaint. In addition, complainants will be able to attach electronic files containing pictures, drawings, or other relevant documents to the on-line complaint form when it is filed. The Access Board anticipates that use of the on-line complaint form will improve the completeness of the information included in complaints that are submitted for investigation, and this will expedite processing of complaints. In addition, complainants will be able to submit complaints 24 hours a day, seven days a week and receive electronic notification that their complaint has been received.

Estimate of Burden

Public reporting burden for this collection of information is estimated to average less than 30 minutes to complete the on-line complaint form, depending on the number of alleged barriers the complainant identifies.

There is no financial burden on the complainant. Use of the on-line form should relieve much of the burden that the current practice of mailing paper complaints puts on complainants. The Access Board is not requiring all complaints to be submitted using the on-line complaint. The Access Board will continue to accept complaints submitted by email, mail, or fax.

Respondents

Individuals. Approximately 200 individuals file accessibility complaints with the Access Board each year.

Estimated Number of Responses

Assuming all complainants choose to file complaints using the on-line complaint form, approximately 200

individuals would use the on-line complaint form annually.

Frequency of Responses

Complainants need only submit one on-line form for each building or facility at which they have found accessibility barriers, regardless of the number of barriers they found. Most complainants file only one ABA complaint. Complainants will need to submit a separate form for each additional building or facility at which they have found an accessibility barrier.

Estimated Total Annual Burden on Respondents

Approximately 30 minutes per respondent total time is all that will be needed to complete the on-line complaint form, for a total of 100 hours annually.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information from respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

David M. Capozzi,

Executive Director.

[FR Doc. 2012–30375 Filed 12–17–12; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, January 7–9, 2013 on the times and location listed below.

DATES: The schedule of events is as follows:

Monday, January 7, 2013

10:30–4:00 p.m. Ad Hoc Rulemaking Committees: Closed to Public

Tuesday, January 8, 2013

9:30–11:00 a.m. Ad Hoc Committee on Frontier Issues

11:00–Noon Planning and Evaluation Committee

1:30–2:30 p.m. Technical Programs Committee

3:00–3:30 Ad Hoc Committee on Accessible Design in Education

3:30–4:00 Budget Committee

Wednesday, January 9, 2013

9:30 a.m.–Noon Ad Hoc Committee on Information and Communications Technologies: Closed to Public

1:30–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, January 9, the Access Board will consider the following agenda items:

- Administer Oath of Office to new appointees
- Approval of the draft September 12, 2012 meeting minutes (vote)
- Approval of the draft November 13–14, 2012 meeting minutes (vote)
- Planning and Evaluation Committee Report
- Technical Programs Committee Report
- Budget Committee Report
- Ad Hoc Committee Reports: Outdoor Developed Areas, final rule conforming amendment (vote); Transportation Vehicles, charter for new Rail Advisory Committee (vote)
- Executive Director's Report
- Public Comment, Open Topics

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2012–30473 Filed 12–17–12; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Working Group on Access to Information on Prescription Drug Container Labels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration Safety and Innovation Act authorizes the Access Board to convene a stakeholder working group to develop best practices for making information on prescription drug container labels accessible to people who are blind or visually impaired. The working group will hold its first meeting on January 10 and 11, 2013.

DATES: The Working Group will meet on January 10, 2013, from 9:30 a.m. to 5:00 p.m. and on January 11, 2013, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Access Board's Conference Room, 1331 F Street NW., suite 800, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: Susan Crawford, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0029. Electronic mail address: *crawford@access-board.gov.*

SUPPLEMENTARY INFORMATION: On July 9, 2012, the President signed into law the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144, 126 Stat. 993). Section 904 of the Act authorizes the Access Board to convene a stakeholder working group to develop best practices for making information on prescription drug container labels accessible to people who are blind or visually impaired. See 29 U.S.C. 792 note. The Act exempts the working group from the Federal Advisory Committee Act. The Board has formed an 18-member working group with equal representation from national organizations representing blind and visually-impaired individuals, the elderly, and industry groups representing retail, mail order, and independent community pharmacies to develop best practices for pharmacies on providing independent access to prescription drug container labels. The working group will explore various alternatives, including braille, large print labels, and various auditory technologies such as ''talking bottles'' and radio frequency identification tags.

The group's recommendations, which are to be developed within one year, will be advisory only, not mandatory, and will not have the force of guidelines or standards.

The law also calls upon the National Council on Disability to conduct an informational and educational campaign in cooperation with the stakeholder working group to inform the public, including people with disabilities and pharmacists, of the best practices. The Government Accountability Office will undertake a review at a later date to assess the extent to which pharmacies are following the best practices and to what extent barriers to information on prescription drug container labels remain.

The working group will hold its first meeting on January 10 and 11, 2013. The agenda for the meeting includes initial remarks, introduction of working group members, discussion of administrative issues, discussion of prescription label access needs of consumer members, discussion of current practices, discussion and review of evaluation criteria to use to determine best practices, hands-on demonstrations of recommended practices, evaluation of recommended practices, and discussion of next steps. The preliminary meeting agenda, along with information about the working group, is available at *http://www.access-board.gov/news/drug-labels-working-group.htm.*

Working group meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the working group on issues of interest to them during public comment periods scheduled on each day of the meeting.

The meetings will be accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/about/policies/fragrance.htm* for more information). Persons wishing to provide handouts or other written information to the working group are requested to provide electronic formats to Susan Crawford via email prior to the meetings so that alternate formats can be distributed to working group members.

David M. Capozzi,

Executive Director.

[FR Doc. 2012–30413 Filed 12–17–12; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 120913451–2681–02]

Call for Applications for the International Buyer Program Calendar Years 2014 and 2015

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice extending application deadline.

SUMMARY: The U.S. Department of Commerce (DOC) is amending the Notice and Call for Applications for the International Buyer Program (IBP) for calendar year 2014 (January 1, 2014 through December 31, 2014) published at 77 FR 61,740 (Oct. 11, 2012) to extend the deadline for receipt of applications from December 10, 2012 to December 21, 2012. The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Specifically, through the IBP, the DOC selects domestic trade shows which will receive DOC assistance in the form of global promotion in foreign markets, providing export counseling to exhibitors, and providing export counseling and matchmaking services at the trade show. This notice covers selection for IBP participation during calendar year 2014. It also extends the deadline for applications to a new pilot initiative for the IBP, which will allow up to 20% of the 2014 IBP shows to be preselected for IBP participation in calendar year 2015 (January 1, 2015 through December 31, 2015) without having to reapply for the second year. Eligibility for this pilot initiative is limited to annual trade shows that participated in the IBP in calendar years 2011 or 2012. Applicants interested in being considered for this pilot must indicate so in the application. For more information about the IBP, including eligibility, participation fees, the responsibilities of the show organizers and the DOC, and how to apply, please see the prior notice, which is also available on the IBP Web site *http://www.export.gov/IBP*.

DATES: Applications for the IBP must be received by December 21, 2012.

ADDRESSES: The IBP application may be downloaded from *http://www.export.gov/IBP*. Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Suite 800M—Mezzanine Level—Atrium North, Washington DC 20004. Telephone (202) 482–0691; (2) Facsimile: (202) 482–7800; or (3) email: *IBP2014@trade.gov*. Facsimile and email applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are timely received by the deadline, applicants are strongly urged to send applications by hand delivery service (e.g., U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Gary Rand, Acting Director, International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington DC 20004; Telephone (202) 482–0691; Facsimile: (202) 482–7800; Email: *IBP2014@trade.gov*.

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–30250 Filed 12–17–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee), will hold a meeting via teleconference on Friday, January 11, 2013 from 1 p.m. to 3 p.m. Eastern Time. The primary purpose of this meeting is to discuss the NCST Advisory Committee's draft annual

report to Congress. A copy of the draft report will be posted prior to the meeting on the NCST Advisory Committee's Web site at *http://www.nist.gov/el/disasterstudies/ncst/index.cfm.* Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The NCST Advisory Committee will hold a meeting via teleconference on Friday, January 11, 2013, from 1 p.m. until 3 p.m. Eastern Time.

ADDRESSES: Questions regarding the meeting should be sent to the Disaster and Failure Studies Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Letvin, Disaster and Failure Studies Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Mr. Letvin's email address is *eric.letvin@nist.gov* and his phone number is (301) 975–5412.

SUPPLEMENTARY INFORMATION: The NCST Advisory Committee was established pursuant to Section 11 of the National Construction Safety Team Act (15 U.S.C. 7301 *et seq.*). The NCST Advisory Committee is comprised of ten members, appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The NCST Advisory Committee advises the Director of NIST on the functions and composition of Teams established under the NCST Act and on the exercise of authorities enumerated in the NCST Act and reviews the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at *http://www.nist.gov/el/disasterstudies/ncst.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will hold a meeting via teleconference on Friday, January 11, 2013, from 1 p.m. until 3 p.m. Eastern Time. There will be no central meeting location. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number. The primary purpose of this meeting is to discuss the NCST Advisory Committee's draft annual report to Congress. A copy of the draft report will be posted on the NCST Advisory Committee's Web site at *http://www.nist.gov/el/disasterstudies/ncst/index.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the NCST Advisory Committee's affairs are invited to request detailed instructions by contacting Eric Letvin on how to dial in from a remote location to participate in the meeting. Eric Letvin's email address is *eric.letvin@nist.gov,* and his phone number is 301–975–5412. Approximately fifteen minutes will be reserved from 2:45 p.m.–3 p.m. Eastern Time for public comments; speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–4032, or electronically by email to *ncstac@nist.gov.*

All participants in the meeting are required to pre-register. Anyone wishing to participate must register by 5:00 p.m. Eastern Time on Thursday, January 10, 2013, in order to be included. Please submit your name, email address, and phone number to Eric Letvin. After registering, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Eric Letvin's email address is *eric.letvin@nist.gov,* and his phone number is (301) 975–5412.

Dated: December 13, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–30469 Filed 12–17–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting—Cloud Computing and Big Data Forum and Workshop

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public forum and workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces a Cloud Computing and Big Data Forum and Workshop to be held on Tuesday, January 15, Wednesday, January 16, and Thursday, January 17, 2013. The format is a two-day forum followed by a one-day hands-on workshop. The NIST Cloud Computing and Big Data Forum and Workshop will bring together leaders and innovators from industry, academia and government in an interactive format that combines keynote presentations, panel discussions, interactive breakout sessions, and open discussion. The forum and workshop are open to the general public. NIST invites organizations to display posters and participate as exhibitors as described in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The NIST Cloud Computing and Big Data Forum and Workshop will be held 9:00 a.m.–4:30 p.m. Eastern Time (ET) on Tuesday, January 15, 9:00 a.m.–5:30 p.m. ET on Wednesday, January 16, and 9:00 a.m.–12:40 p.m. ET on Thursday, January 17, 2013.

ADDRESSES: To register, go to: *http://www.nist.gov/itl/cloud/cloudbdworkshop.cfm.* The event will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899 in the Red Auditorium of the Administration Building (Building 101). Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Romayne Hines by email at *romayne.hines@nist.gov* or by phone at (301) 975–4090. Additional information may be found at: *http://www.nist.gov/itl/cloud/cloudbdworkshop.cfm.*

SUPPLEMENTARY INFORMATION: NIST hosted five prior Cloud Computing Forum & Workshop events in May 2010, November 2010, April 2011, November 2011 and June 2012. The purpose of this series of workshops was to respond to the request of the U.S. Chief Information

Officer that NIST lead federal efforts on standards for data portability, cloud interoperability, and security [1]. The workshops' goals were to engage with industry to accelerate the development of cloud standards for interoperability, portability, and security, discuss the Federal Government's experience with cloud computing, report on the status of the NIST Cloud Computing efforts, launch and report progress on the NIST-led initiative to collaboratively develop a U.S. Government (USG) Cloud Computing Technology Roadmap among multiple federal and industrial stakeholders, and to advance the dialogue among all of these groups. The series has been expanded to focus on the emerging trend of Big Data in the context of its convergence with and complementary relationship to Cloud Computing.

On the first day, the workshop presenters will provide information on the USG Cloud Computing Technology Roadmap initiative as well as a status update on NIST efforts to help develop open standards in interoperability, portability and security in cloud computing. On the second and third days, the workshop will focus on the intersection of Cloud Computing and Big Data. Fully realizing the power of Big Data depends on meeting the unprecedented demands on storage, integration, and analysis presented by massive data sets—demands that Cloud Computing innovators are working to meet today. The workshop will explore possibilities for harmonizing Cloud Computing and Big Data measurement, benchmarking, and standards in ways that bring the power of these two approaches to bear in driving progress and prosperity.

NIST invites members of the public, especially Cloud Computing and Big Data community stakeholders, to participate in this event with a poster display or as an exhibitor. On Tuesday, January 15 and Wednesday, January 16, 2013, space will be available for 30 academic, industry, and standards developing organizations to exhibit their respective Cloud Computing or Big Data work at a demonstration booth or table. Space will also be available for 16 academic, industry, and standards developing organizations to display posters related to Cloud Computing or Big Data at the event. Interested organizations should contact Romayne Hines at *romayne.hines@nist.gov* or (301) 975–4090. Requests to exhibit and to display posters will be granted on a first-come, first-serve basis. The first 30 organizations requesting to exhibit will be accepted for the exhibits. The first 16 organizations requesting to display posters will be accepted for the poster display. Responses must be submitted by an authorized representative of the organization. Logistics information will be provided to accepted exhibitors. NIST will provide the poster and exhibit location space and one work table free of charge. Exhibitors are responsible for the cost of the poster or exhibit, including staffing and materials. NIST reserves the right to exercise its judgment in the placement of posters and exhibits. General building security is supplied; however, exhibitors are responsible for transporting and securing exhibit equipment and materials.

The workshop is open to the general public; however, those wishing to attend must register at *http://www.nist.gov/itl/cloud/cloudbdworkshop.cfm* by 5:00 p.m. ET on Thursday, January 10, 2013. All visitors to the NIST site are required to pre-register to be admitted and have appropriate government-issued photo ID to gain entry to NIST.

Dated: December 13, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–30467 Filed 12–17–12; 8:45 am]

BILLING CODE 3510–13–P

[1] Office of Management and Budget, U.S. Chief Information Officer, *Federal Cloud Computing Strategy,* Feb. 8, 2011. Online: *https://cio.gov/wp-content/uploads/downloads/2012/09/Federal-Cloud-Computing-Strategy.pdf.*

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2012–0050]

Request for Comments on a Patent Small Claims Proceeding in the United States

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is seeking comments as to whether the United States should develop a small claims proceeding for patent enforcement. Among the information of interest to the USPTO is whether there is a need and desire for this type of proceeding, in what circumstances is this proceeding needed if such a need exists, and what features this proceeding should possess. In particular the USPTO seeks information about core characteristics of a patent small claims proceeding including characteristics such as subject matter jurisdiction, venue, case management, appellate review, available remedies, and conformity with the U.S. constitutional framework (e.g. 7th Amendment). Additional details may be found in the supplementary information section of this notice.

DATES: To be ensured of consideration, written comments must be received on or before March 18, 2013.

ADDRESSES: Written comments should be sent by email to *ip.policy@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop OPEA, P.O. Box 1450, Alexandria, VA 22313–1450, ATTN: Elizabeth Shaw. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email. Written comments should be identified in the subject line of the email or postal mailing as ''Patent Small Claims.''

Comments will be made publicly available after the comment period via the USPTO Internet Web site (address: *http://www.uspto.gov*). As such, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: David Gerk, Office of Policy and External Affairs, by phone 571–272–9300, by email at *David.Gerk@uspto.gov* or by mail addressed to: Mail Stop OPEA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, ATTN: David Gerk.

SUPPLEMENTARY INFORMATION: This inquiry correlates to several recent discussions the USPTO has had with Federal judges, academia, private practitioners and various stakeholder groups and bar and industry associations, exploring the desire and need for a patent small claims proceeding in the United States. The idea of a U.S. patent small claims court, however, is not new, having been raised first by industry and patent litigators over 20 years ago. In 1989, a conference hosted by Franklin Pierce Law Center, in cooperation with the Kenneth J. Germenshausen Center for the Law of Innovation and Entrepreneurship at the University of New Hampshire, examined how to streamline patent litigation through a small claims court. After this conference, both the American Intellectual Property Law Association (AIPLA) and American Bar Association Intellectual Property Section (ABA–IP) further recognized the need for such a small claims solution, and adopted measures to support a patent small claims court. In 1990, the

AIPLA endorsed the creation of a ''small'' claims patent court that was described in Resolution 401.4, and in the same year the Secretary of Commerce formed an Advisory Commission on Patent Law Reform, which suggested further study of small claims procedures for patent cases in Federal courts. While a U.S. patent small claims proposal failed to advance further at that time, renewed discussion and consideration by bar associations, industry groups, practitioners, and members of the Federal judiciary, have now revived consideration and discussion of a patent small claims proceeding in the United States.

On Thursday, May 10, 2012, a roundtable of intellectual property experts co-sponsored by the USPTO and the United States Copyright Office convened at The George Washington University Law School (GWU) to consider the possible introduction of small claims proceedings for patent and copyright claims in the United States. Conformity with the U.S. Constitution and a potential structural framework for small claims proceedings in the realm of patents and copyrights were among the topics explored. On October 1, 2012, in continuation of the discussion initiated at the GWU roundtable, the USPTO hosted a Patent Small Claims Proceeding Forum composed of experts to discuss the concept of a patent small claims proceeding. Now, the USPTO also seeks comments from the public regarding a patent small claims proceeding.

Issues for Comment: Interested members of the public are invited to submit written comments on issues that they believe are relevant to a U.S. patent small claims proceeding. The topics and questions listed below are included to identify specific issues upon which the USPTO is interested in obtaining public opinion. The tenor of the following questions should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular views.

Comments on One or More of the Following Would Be Helpful

1. Provide a general description of your understanding of the need or lack of a need for a patent small claims court or other streamlined proceedings. If you believe there is a need, please provide a description of which types of patent cases would benefit from such proceedings. If you believe that there is not a need for such a court or proceedings, please share why you hold such a view.

2. Please share your views, along with any corresponding analysis and empirical data, as to what a preferred patent small claims proceeding should look like. In doing so, please comment on any of the following issues:

(a) What the possible *venues* for a small claims proceeding should be, including whether patent small claims should be heard by Federal District Court judges or magistrates, whether patent small claims should be handled by an Article I court, such as the U.S. Court of Federal Claims, or whether patent small claims should be heard in another venue not specifically listed here;

(b) What the preferred *subject matter jurisdiction* of the patent small claims proceeding should be, including which if any claims, counterclaims, and defenses should be permitted in a patent small claims proceeding;

(c) Whether parties should agree to waive their right to a *jury trial* as a condition of participating in a small claims proceeding;

(d) Whether there should be certain required *pleadings or evidence* to initiate a small claims proceeding;

(e) Whether a *filing fee* should be required to initiate a small claims proceeding and what the nature of that fee should be;

(f) Whether *multiple parties* should be able to file claims in a small claims proceeding and whether multiple defendants may be sued together;

(g) What role *attorneys* should have in a small claims proceeding including whether corporations should be able to represent themselves;

(h) What the preferred *case management characteristics* that would help to control the length and expense of a small claims proceeding should be;

(i) What the preferred *remedies* in a small claims proceeding should be including whether or not an injunction should be an available remedy and any minimum threshold or maximum cap on damages that should be imposed;

(j) Whether a small claims proceeding should include *attorney's fees* or some form of a ''loser pays'' system;

(k) Whether a small claims proceeding should include *mediation* and whether mediation should be mandatory or permissive;

(l) What type of *record* should be created during a small claims proceeding including whether hearings should be transcribed and whether a written decision should be issued;

(m) What *weight* should be given to a decision rendered in a small claims proceeding in terms of precedent, *res judicata,* and estoppel;

(n) How should a decision in a small claims proceeding be *enforced;*

(o) What the nature of *appellate review* should be including whether there should be a direct appeal to the U.S. Court of Appeals for the Federal Circuit or whether there should be intermediate review by a U.S. district court or some other venue;

(p) What, if any, *constitutional* issues would be raised by the creation of Federal small claims proceedings including separation of powers, the right to a jury trial, and/or due process;

(q) Whether the patent small claim proceedings should be *self-supporting financially,* including whether the winning and/or losing parties should be required to defray any administrative costs, and if so, how would this be accomplished;

(r) Whether and how to *evaluate* patent small claims proceedings, including whether evaluations should be periodic and whether the patent small claims proceeding should be launched initially as a pilot program; and

(s) Any other additional pertinent issues not identified above that the USPTO should consider.

3. Please share any concerns you may have regarding any unintended negative consequences of a patent small claims proceeding along with any proposed safeguards that would reduce or eliminate the risk of any potential negative unintended consequences, to the extent any such concerns exist.

The USPTO will make any comments it receives publicly available via the USPTO Internet Web site (address: *http://www.uspto.gov*). The USPTO will also make various background materials regarding small claims proceedings available via its Web site.

Dated: December 13, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–30483 Filed 12–17–12; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0047]

Fair Credit Reporting Act Disclosures

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice regarding charges for certain disclosures under the Fair Credit Reporting Act.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) announces that the ceiling on allowable

charges under Section 612(f) of the Fair Credit Reporting Act (FCRA) will remain unchanged at $11.50 for 2013. The Bureau is required to increase the $8.00 amount referred to in Section 612(f)(1)(A)(i) of the FCRA on January 1 of each year, based proportionally on changes in the Consumer Price Index for All Urban Consumers (CPI–U), with fractional changes rounded to the nearest fifty cents. The CPI–U increased 42.74 percent between September 1997, the date the FCRA amendments took effect, and September 2012. This increase in the CPI–U, and the requirement that any increase be rounded to the nearest fifty cents, results in no change in the maximum allowable charge of $11.50.

DATES: Effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Office of Regulations, Bureau of Consumer Financial Protection, 202–435–7700.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act (the FCRA) provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the FCRA.[1] Section 612(f)(1)(A) of the FCRA provides that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609 of the FCRA, the charge shall not exceed $8.00 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) of the FCRA states that the Bureau shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

In 2011, the responsibility for performing this task was transferred from the Federal Trade Commission to the Bureau pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[2] Like the Federal Trade Commission, the Bureau's calculations are based on the CPI–U, which is the most general Consumer Price Index and covers all urban consumers and all items.

Section 211(a)(2) of the FACT Act added a new Section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Bureau is using the $8.00 amount set forth in Section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under Section 609 of the FCRA. Since the effective date of the amended FCRA was September 30, 1997, the Bureau calculated the proportional increase in the CPI–U from September 1997 to September 2012. The Bureau then determined what modification, if any, from the original base of $8.00 should be made effective for 2013, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2012, the CPI–U increased by 42.74 percent—from an index value of 161.2 in September 1997 to a value of 230.1 in September 2012. An increase of 42.74 percent in the $8.00 base figure would lead to a new figure of $11.42. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge is $11.50. The Bureau therefore determines that the maximum allowable charge for the year 2013 will remain unchanged at $11.50.

Dated: December 8, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–30373 Filed 12–17–12; 8:45 am]

BILLING CODE 4810–AM–P

[1] This provision, originally Section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabeled Section 612(f) by Section 211(a)(1) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159, which was signed into law on December 4, 2003.

[2] Public Law 111–203, Title X, Section 1088.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–65]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–65 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 7, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 26 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-65, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $130 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–65

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Saudi Arabia.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0 million.
Other	$130 million.
TOTAL	$130 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(ii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Technical services to recertify the functional shelf life of up to 300 PATRIOT Advanced Capability-2 (PAC–2) (MIM–104D) Guidance Enhanced Missiles (GEM), modernization of existing equipment, spare and repair parts, support equipment, U.S. Government and contractor representatives logistics, engineering, and technical support services, and other related elements of logistics and program support.

(iv) *Military Department:* Army (UAU).

(v) *Prior Related Cases, if any:* FMS Case JBV—$3.1 billion—16 Dec 92.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology:* See attached annex.

(viii) *Date Report Delivered to Congress:* 26 Nov 2012.

POLICY JUSTIFICATION

Saudi Arabia—PATRIOT PAC–2 Guided Enhanced Missiles (GEM) Recertification

The Government of Saudi Arabia has requested a possible sale of technical services to recertify the functional shelf life of up to 300 PATRIOT Advanced Capability-2 (PAC–2) (MIM–104D) Guidance Enhanced Missiles (GEM), modernization of existing equipment, spare and repair parts, support equipment, U.S. Government and contractor representatives logistics, engineering, and technical support services, and other related elements of logistics and program support. The estimated cost is $130 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an important partner which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed recertification program will allow the Royal Saudi Air Defense Forces to extend the shelf life of the PAC–2 missiles in its inventory for an additional twelve years.

The proposed recertification program will not alter the basic military balance in the region.

The principal contractor will be Raytheon Corporation in Andover, Massachusetts. The recertification process will be performed by Letterkenny Army Depot in Chambersburg, Pennsylvania. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require one contractor representative to travel to the Missile Assembly Disassembly Facility in Jeddah, Saudi Arabia on an extended basis for missile assembly/disassembly support, system checkout, training and technical and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–65

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The PATRIOT Air Defense System contains classified components and critical/sensitive technology. The PATRIOT PAC–2 (MIM–104D) GEM missile contains hardware components that are classified Confidential.

2. The PATRIOT PAC–2 (MIM–104D) GEM missile is a certified round that has an engineered shelf life which requires a periodic inspection and testing process to recertify it as reliable and safe for continued use. This process requires the replacement of limited life components and testing of other components to maintain a predictable and acceptable level of reliability over the specified certification period. The recertified components are the transmitter (part of the missile forebody), radome, and safety and arming device. The internal sensor assembly and the control section must also be tested to maintain the certification of the missile round. All components are Unclassified. In addition to this recertification process, the missile downlink will be modified to correct performance deficiencies.

3. The missile's sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to the GEM fuze. No design or manufacturing data will be provided to Saudi Arabia under this case.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–30428 Filed 12–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Audit Advisory Committee (DAAC); Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense (Comptroller), DoD.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Audit Advisory Committee will be held.

DATES: Tuesday, January 29, 2013, beginning at 2:30 p.m. and ending at 4:30 p.m.

ADDRESSES: Pentagon, Room 3E754, Washington, DC (escort required, see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: For meeting information, please contact Ms. Patricia Dees, the Committee's Designated Federal Officer, Office of the Under Secretary of Defense (Comptroller) (OUSD(C)), 1100 Defense Pentagon, Room 3E769, Washington, DC 20301–1100, *patricia.dees@osd.mil,* (703) 695–7000.

SUPPLEMENTARY INFORMATION:

(a) Purpose

The mission of the DAAC is to provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice and recommendations on DoD financial management to include financial reporting processes, systems of internal controls, audit processes, and processes for monitoring compliance with relevant laws and regulations.

(b) Agenda

Below is the agenda for the January 29, 2013, DAAC meeting:

2:30 p.m.—Welcome Remarks (HON Robert Hale)
2:35 p.m.—Swearing in of Members for New Term (Ms. Annette Hamm-Brown)
2:40 p.m.—Opening of Committee Meeting (Mr. Ernest Almonte)
2:45 p.m.—Recap of November 2012 Financial Improvement and Audit Readiness Plan Status Report (Mr. Joseph Quinn)
3:30 p.m.—Break
3:45 p.m.—U.S. Marine Corps Audit Lessons Learned (Ms. Ann-Cecile McDermott)
4:25 p.m.—Closing Remarks (Mr. Mark Easton)
4:30 p.m.—Adjournment (Mr. Ernest Almonte)

(c) Accessibility to the Meeting

Pursuant to 5 U.S.C. § 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact Ms. Dees at the number listed in **FOR FURTHER INFORMATION CONTACT** no later than noon on Thursday, January 24, 2013, to arrange a Pentagon escort. Public attendees should arrive at the Pentagon Metro Entrance on January 29, 2013, by 1:30 p.m., and complete outer security screenings by 1:45 p.m. Please meet your arranged escort at the inner Pentagon Metro Entrance Visitors Center no later than 1:50 p.m. to ensure completion of remaining entrance screenings and arrival at the meeting venue on time. Security screenings require two forms of identification: (1) A government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (i.e. debit card, credit card, work badge, social security card).

Special Accommodations: Individuals requiring special accommodation to access the public meeting should contact Ms. Dees at least five business days prior to the meeting to ensure appropriate arrangements can be made.

(d) Procedures for Providing Written Comments

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 comments to the Committee about its mission and topics pertaining to this public session.

Written comments are accepted until the date of the meeting, however, written comments should be received by the Designated Federal Officer at least five business days prior to the meeting date so that the comments may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted to the Designated Federal Officer listed

in **FOR FURTHER INFORMATION CONTACT**. Email submissions should be in Adobe Acrobat or Word formats.

Please note: Because the Committee operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection, up to and including being posted on the OUSD(C) Web site.

Dated: December 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–30429 Filed 12–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 1781a, as amended, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act), and 41 CFR 102–3.50(a), the Department of Defense (DoD) gives notice that it is renewing the charter for the Department of Defense Military Family Readiness Council (''the Council'').

The Council is a non-discretionary federal advisory committee that shall review and make recommendations to the Secretary of Defense regarding the policy and plans required under 10 U.S.C. 1781b, monitor requirements for the support of military families readiness by the DoD, and evaluate and assess the effectiveness of the military family readiness programs and activities of the DoD.

The Council, no later than February 1 of each year, shall submit a report on military family readiness. Each report, at a minimum shall include the following: (a) An assessment of the adequacy and effectiveness of the military family readiness programs and activities of the DoD during the preceding fiscal year in meeting the needs and requirements of military families; and (b) Recommendations on actions to be taken to improve the capability of the military family readiness programs and activities of the DoD to meet the needs and requirements of military families, including actions relating to the allocation of funding and other resources to and among such programs and activities.

The annual report referenced above shall be submitted to the Secretary of Defense and the congressional defense committees.

The DoD, through the Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), shall provide support, as deemed necessary, for the Council's performance, and shall ensure compliance with the requirements of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies/procedures.

The Council, pursuant to 10 U.S.C. 1781a(b), as amended, shall be composed of 18 members, appointed as specified below:

a. The USD (P&R), who shall serve as chair of the Council. The Principal Deputy Under Secretary of Defense for Personnel and Readiness, as approved by the Secretary of Defense, may, in the absence of the USD(P&R), serve as the Council's chair with all rights and privileges thereunto;

b. One representative from each of the Army, Navy, Marine Corps, and Air Force, each of whom shall be a member of the armed force to be represented;

c. The Secretary of Defense has approved the following ex officio appointments for a two-year term of service with annual renewals:

1. Army—the Assistant Chief of Staff for Installation Management;

2. Navy—the Chief of Naval Personnel;

3. Air Force—the Deputy Chief of Staff for Manpower and Personnel; and

4. Marine Corps—the Deputy Commandant for Manpower & Reserve Affairs.

d. One representative of the Army National Guard or the Air National Guard, who may be a member of the National Guard;

The Secretary of Defense, based upon the recommendation of the Chief, National Guard Bureau through the USD(P&R) shall appoint one individual to serve on the Council. If the Secretary appoints a person who is a full-time or permanent part-time federal officer or employee, then that individual shall be appointed as a regular Government member of the Council. If the Secretary appoints a person who is not a full-time or permanent part-time federal officer or employee or a member of the Army or Air National Guard, then that individual shall be appointed as an expert and consultant under the authority of 5 U.S.C. 3109 to serve as a special Government employee (SGE). Representation on the Council shall rotate between the Army National Guard and Air National Guard every two years on a calendar year basis with annual renewals.

e. One spouse or parent of a member of each of the Army, Navy, Marine Corps, and Air Force, two of whom shall be the spouse or parent of an active component member and two of whom shall be the spouse or parent of a reserve component member.

The Secretary of Defense shall appoint these individuals based upon the recommendation of the USD(P&R). Spouse or parent nominees of Regular Component members shall begin with the Army and Navy followed by the Air Force and Marine Corps. Spouse or parent nominees of Reserve Component members shall begin with the Air Force and Marine Corps followed by the Army and the Navy. A spouse or parent of a member of the Regular or Reserve Component appointed by the Secretary of Defense, unless he or she is a full-time or permanent part-time Federal officer or employee, shall be appointed to the Council as an expert and consultant under the authority of 5 U.S.C. 3109 and serve as a SGE. The term of service for these members shall be two years with annual renewals.

f. Three individuals appointed by the Secretary of Defense from among representatives of military family organizations, including military family organizations of families of members of the regular components and families of members of the reserve components.

For the period 2012–2015, the following military family organizations are invited to serve on the Council: The National Military Family Association, the American Red Cross, and the Blue Star Families. Individuals appointed by the Secretary of Defense from these three organizations who are not full-time or permanent part-time federal officers or employees shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 to serve as a SGE. The term of service shall be three years with annual renewals.

g. The senior enlisted advisors from each of the Army, Navy, Marine Corps, and Air Force, except that two of these members may instead be selected from among the spouses of the senior enlisted advisors.

The Secretary of Defense shall appoint two Senior Enlisted Advisors beginning with the Navy and Marine Corps and followed by the Army and Air Force. The Secretary of Defense shall appoint two spouses of Senior Enlisted Advisors beginning with the Army and Air Force and followed by the Navy and Marine Corps. A spouse of a Senior Enlisted Advisor of the Army, Navy, Air Force or Marine Corps

appointed by the Secretary of Defense, unless he or she is a full-time or permanent part-time Federal officer or employee, shall be appointed to the Council as an expert and consultant under the authority of 5 U.S.C. 3109 and serve as a SGE. The term of service for Senior Enlisted Advisors shall be two years with annual renewals. The term of service for spouses of Senior Enlisted Advisors shall be either two years or until the conclusion of the Service member's tour of duty as Senior Enlisted Advisor during which the spouse was appointed to the Council, whichever is earlier, with annual renewals.

h. The Director of the Office of Community Support for Military Families with Special Needs (''the Director'').

The Director is appointed as a regular Government (ex officio) member of the Council. The Director may send someone to attend a Council meeting if he or she is unable to attend; however, this person shall not engage in Council deliberations, vote on matters before the Council, or count toward a quorum.

With the exception of travel and per diem for travel related to the Council, members of the Council shall serve without compensation.

The Department, when necessary, and consistent with the Council's mission and DoD policies/procedures, may establish subcommittees, task groups, and working groups to support the Council. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the USD(P&R).

Such subcommittees shall not work independently of the Council, and shall report all their recommendations and advice solely to the Council for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Council; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a Council member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one-to-four years; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service.

Subcommittee members, if not full-time or part-time Government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as SGEs, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of per diem for official travel related to the Council or its subcommittees, subcommittee members shall serve without compensation.

Each subcommittee member is appointed to provide advice on behalf of the Government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

SUPPLEMENTARY INFORMATION: The Council shall meet at the call of the Council's Designated Federal Officer (DFO), in consultation with Council's Chairperson. The estimated number of meetings by the Council is two per year.

In addition, the DFO is required to be in attendance at all meetings of the Council and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Council's DFO, a properly approved Alternate DFO, duly appointed to the Council according to DoD policies/procedures, shall attend the entire duration of meetings of the Council or subcommittees.

The DFO, or the Alternate DFO, shall call all of the Council and its subcommittees; prepare and approve all meeting agendas; and adjourn any meeting, when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the USD(P&R).

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Department of Defense Military Family Readiness Council membership about the Council's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Department of Defense Military Family Readiness Council.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Military Family Readiness Council, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Military Family Readiness Council's DFO can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Military Family Readiness Council. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

Dated: December 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–30430 Filed 12–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 9, 2013, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of November 14, 2012 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on December 10, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–30461 Filed 12–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2.

DATES: Friday, January 4, 2013; 9:00 a.m.–12:30 p.m.

ADDRESSES: National Academy of Sciences (in the Lecture Room), 2101 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the Webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Amber Hartman Scholz, PCAST Acting Executive Director, at *ascholz@ostp.eop.gov,* (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and, Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 4, 2013 from 9:00 a.m. to 12:30 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide information on science and technology innovations that improve the quality and decrease the costs of healthcare and hear from Federal officials on current ''Open Government'' efforts. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on January 4, 2013, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 4, 2013, at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at: *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. (EST) on December 28, 2012. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. (EST) on December 28, 2012, so that the comments may be made available to the PCAST members prior to this meeting

for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Amber Hartman Scholz at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on December 12, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer .

[FR Doc. 2012–30432 Filed 12–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 9, 2013, 2:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Conference Room, 94 Cities of Gold Road, Pojoaque, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

1. Approval of Agenda
2. Approval of Minutes of November 14, 2012
3. Old Business
   - Approval of Minutes of September 26, 2012
   - Consideration and Action on Draft Recommendations from Chairs' Meeting
4. New Business
5. Update from Executive Committee—Carlos Valdez, Chair
6. Update from DOE—Ed Worth, Deputy Designated Federal Officer
7. 2:45 p.m. Presentation by Rich Mirenda, Los Alamos National Security
   - Biological and Human Health Assessments
8. 3:45 p.m. Public Comment Period
9. 4:00 p.m. Adjourn

Public Participation: The NNMCAB's EMS&R and WM Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on December 10, 2012.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2012–30459 Filed 12–17–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–23–000]

Perryville Gas Storage LLC; Notice of Amendment

Take notice that on December 3, 2012, Perryville Gas Storage LLC (Perryville), Three Riverway, Suite 1350, Houston, Texas 77056, filed in the above referenced docket an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for an order amending the certificate of public convenience and necessity issued in Docket No. CP09–418–000, and amended in Docket Nos. CP11–159–000 and CP12–460–000, to authorize Perryville to make certain changes to its certificated project. Perryville proposes to move the surface location of one of the approved storage cavern wells (Cavern Well PGS–2) approximately 400 feet, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to J. Gordon

Pennington, Attorney at Law, 1101 30th Street NW., Suite 500, Washington, DC 20007, at (202) 625–4330, or by email at *pennington5@verzion.net*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 2, 2013.

Dated: December 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30396 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–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: RP12–887–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Final Status Report by The Louisiana Municipal Gas Authority on Negotiations under CP12–490, *et. al.*
Filed Date: 12/11/12.
Accession Number: 20121211–5078.
Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–380–000.
Applicants: El Paso Marketing Company, L.L.C., Kinder Morgan Tejas Pipeline LLC.
Description: Joint Petition of El Paso Marketing Company, L.L.C. and Kinder Morgan Tejas Pipeline LLC for Temporary Waiver of Capacity Release Regulations and Policies.
Filed Date: 12/11/12.
Accession Number: 20121211–5190.
Comments Due: 5 p.m. ET 12/18/12.

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: RP13–271–001.
Applicants: Granite State Gas Transmission, Inc.
Description: Granite State Gas Transmission, Inc. submits tariff filing per 154.203: Compliance Filing Section 5 and Section 9 to be effective 12/10/2012.
Filed Date: 12/11/12.
Accession Number: 20121211–5094.
Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–40–001.
Applicants: National Grid LNG, LP.
Description: National Grid LNG, LP submits tariff filing per 154.203: Adoption of NAESB Version 2.0—Section 34 to be effective 12/1/2012.
Filed Date: 12/11/12.
Accession Number: 20121211–5048.
Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–73–001.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Pipeline Company, L.L.C. submits tariff filing per

154.203: Compliance with Order to Amend NAESB Version 2.0 Filing to be effective 12/1/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5132.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–76–001.

Applicants: Garden Banks Gas Pipeline, LLC.

Description: Garden Banks Gas Pipeline, LLC submits tariff filing per 154.203: Refile to comply with Order on NAESB Version 2.0 Filing to be effective 12/1/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5139.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–78–001.

Applicants: Mississippi Canyon Gas Pipeline, L.L.C.

Description: Mississippi Canyon Gas Pipeline, L.L.C. submits tariff filing per 154.203: Refile to comply with Order on NAESB Version 2.0 Filing to be effective 12/1/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5144.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–80–001.

Applicants: Nautilus Pipeline Company, L.L.C.

Description: Nautilus Pipeline Company, L.L.C. submits tariff filing per 154.203: Compliance Refile for NAESB Compliance filing to be effective 12/1/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5131.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–112–001.

Applicants: Blue Lake Gas Storage Company.

Description: Blue Lake Gas Storage Company submits tariff filing per 154.203: RP13–112, NAESB Compliance to be effective 12/1/2012.

Filed Date: 12/12/12.

Accession Number: 20121212–5013.

Comments Due: 5 p.m. ET 12/24/12.

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: December 12, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2012–30426 Filed 12–17–12; 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 rate filings:

Docket Numbers: ER13–150–002.

Applicants: Midwest Independent Transmission System Operator, Inc., Northern Indiana Public Service Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): 12–10–12 NIPSCO Amendment to be effective 1/1/2013.

Filed Date: 12/11/12.

Accession Number: 20121211–5001.

Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: ER13–301–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Errata Filing in Docket No. ER13–301—MKEC Formula Rate Revisions to be effective 1/1/2013.

Filed Date: 12/10/12.

Accession Number: 20121210–5211.

Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: ER13–368–001.

Applicants: The Procter & Gamble Paper Products Company.

Description: The Procter & Gamble Paper Products Company submits tariff filing per 35.17(b): MBRA Tariff to be effective 1/14/2013.

Filed Date: 12/10/12.

Accession Number: 20121210–5171.

Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: ER13–538–000.

Applicants: Consumers Energy Company.

Description: Consumers Energy Company submits tariff filing per 35.13(a)(2)(iii): Consumers Energy Company—MBR to be effective 12/11/2012.

Filed Date: 12/10/12.

Accession Number: 20121210–5102.

Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: ER13–539–000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: Appalachian Power Company submits FRR Capacity Formula Rate Filing to be effective 2/9/2013.

Filed Date: 12/10/12.

Accession Number: 20121210–5220.

Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: ER13–540–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits tariff filing per 35.13(a)(2)(iii: RATFA, Revised and Restated Transmission Facilities Agreement with PacifiCorp to be effective 2/8/2013.

Filed Date: 12/11/12.

Accession Number: 20121211–5000.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–541–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Ajo Improvement Company Interconnection Agreement, Service Agreement No. 326 to be effective 12/28/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5058.

Comments Due: 5 p.m. ET 1/2/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–142–000.

Applicants: Wasatch Integrated Waste Management District.

Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of Wasatch Integrated Waste Management District.

Filed Date: 12/10/12.

Accession Number: 20121210–5159.

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: December 11, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30387 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3069–004; ER10–3070–004.

Applicants: Alcoa Power Marketing LLC, Alcoa Power Generating Inc.

Description: Notice of Non-Material Change in Status of Alcoa Power Marketing LLC, *et al.*

Filed Date: 12/11/2012.

Accession Number: 20121211–5100.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–113–002.

Applicants: Sunbury Energy, LLC.

Description: Sunbury Energy, LLC submits tariff filing per 35.17(b): Amended Filing No. 2 to be effective 12/21/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5093.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–247–000.

Applicants: NV Energy, Inc.

Description: Sierra Pacific Power Company submits Transmission Rate Case Exhibit No. SPPC–9.2 Depreciation Study and Supporting Testimony Filed with the Public Utilities Commission of Nevada.

Filed Date: 12/6/12.

Accession Number: 20121206–5163.

Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: ER13–542–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: OATT Att M LGIA Rev to be effective 12/12/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5098.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–543–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 12–11–12 CONE Compliance to be effective 6/1/2012 .

Filed Date: 12/11/12.

Accession Number: 20121211–5102.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–544–000

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.13(a)(2)(iii: 2012_12_11_DPC Lufkin SS–333 to be effective 11/15/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5103.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: ER13–545–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: SA 2501 BREC-Vectren IA to be effective 12/12/2012.

Filed Date: 12/11/12.

Accession Number: 20121211–5114

Comments Due: 5 p.m. ET 1/2/13.

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: December 11, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30388 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–138]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2146–138.

c. *Date Filed:* October 5, 2012.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* Neely Henry Lake, Gadsden, Etowah County, Alabama.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David K. Anderson, Alabama Power Company, 600 18th Street North, Birmingham, AL 35203–8180, (205) 257–1000.

i. *FERC Contact:* Jade Alvey, (202) 502–6864, *jade.alvey@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: January 11, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2146–138) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Alabama Power Company requests Commission approval to grant Jack's Family Restaurant, a fast food restaurant, a permit to use project lands and waters for the installation of wooden pilings around an existing pier inside the project boundary on Lake Neely Henry. The proposal includes a total of twenty 8-foot long wooden pilings measuring 8 inches in diameter. The pilings would allow for the temporary mooring of a total of 10 watercraft at any one time. The temporary mooring locations would be for use by patrons who access the restaurant by boat.

l. *Locations of the Application:* A copy of the application is available for

inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2146) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30394 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 20, 2012 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items, struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

988th—Meeting

Regular Meeting December 20, 2012, 10:00 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM10–11–001	Integration of Variable Energy Resources.
E–2	EL11–44–001	Iberdrola Renewables, Inc., PacificCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC v. Bonneville Power Administration.
E–3	EL11–44–002	Iberdrola Renewables, Inc., PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC v. Bonneville Power Administration.
E–4	RM11–12–000	Availability of E-Tag Information to Commission Staff.
E–5	RM12–6–000 RM12–7–000	Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure.
E–6	OMITTED	
E–7	RR12–8–000	North American Electric Reliability Corporation.
E–8	NP11–238–001	North American Electric Reliability Corporation.
E–9	RM12–9–000	Regional Reliability Standard PRC–006–SERC–01-Automatic Underfrequency Load Shedding Requirements.
E–10	OMITTED	
E–11	ER13–178–000	Southwest Power Pool, Inc.

Item No.	Docket No.	Company
E–12	ER13–207–000	City of Colton, California.
E–13	ER13–168–000	California Independent System Operator Corporation.
E–14	ER13–218–000	California Independent System Operator Corporation.
E–15	ER13–219–000	California Independent System Operator Corporation.
E–16	ER13–49–000	Valley Electric Association, Inc.
E–17	EC12–119–000	FirstEnergy Generation Corp. and American Transmission System, Incorporated.
E–18	OMITTED	
E–19	OMITTED	
E–20	OMITTED	
E–21	OMITTED	
E–22	EL12–109–000	Avalon Wind, LLC, Avalon Wind 2, LLC, Catalina Solar, LLC, Catalina Solar 2, LLC, Pacific Wind Lessee, LLC, Pacific Wind 2, LLC, Valentine Solar, LLC, and EDF Renewables Development, Inc.
E–23	OMITTED	
Gas		
G–1	RP11–2061–002, RP11–2061–003	Northern Natural Gas Company.
G–2	RP12–814–000	Gulf Crossing Pipeline Company LLC.
G–3	RP12–820–000	Texas Gas Transmission, LLC.
G–4	RP12–813–000	Gulf South Pipeline Company, LP.
G–5	OR12–27–000	Enbridge Pipelines (Southern Lights) LLC.
Hydro		
H–1	P–13213–004	Lock 14 Hydro Partners, LLC.
	P–13214–004	Lock 12 Hydro Partners, LLC.
H–2	P–14354–001	Utah Independent Power, Inc.
H–3	HB81–09–2–002	Hudson River-Black River Regulating District, Erie Boulevard Hydropower L.P., Curtis/Palmer Hydroelectric Co., South Glens Falls Limited Partnership, et al., Northern Electric Power Co., et al., Fort Miller Associates, Stillwater Hydro Associates, New York State Electric & Gas Corp., Albany Engineering Corporation, and Green Island Power Co.
Certificates		
C–1	RM12–11–000	Revisions to the Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations.
C–2	CP12–25–000	Brian Hamilton v. El Paso Natural Gas Company.
C–3	CP12–72–000	Dominion Transmission, Inc.

Dated: December 13, 2012.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through www.ferc.gov. Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit www.CapitolConnection.org or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2012–30544 Filed 12–14–12; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–10–000]

Seaway Crude Pipeline Company LLC; Notice of Petition for Declaratory Order

Take notice that on December 10, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Seaway Crude Pipeline Company LLC (Seaway), filed a petition seeking a declaratory order affirming that the tariff rates agreed to by shippers who sign contracts in an open season applies equally to Seaway's Shippers that signed Transportation Services Agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to

serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Monday, January 7, 2013

Dated: December 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30393 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–9–000]

Sunoco Pipeline L.P.; Notice of Petition for Declaratory Order

Take notice that on December 7, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Sunoco Pipeline L.P., filed a petition seeking a declaratory order approving priority service, the tariff and rate structure, and service request allocation methodology for the proposed Mariner East Project.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Friday, January 4, 2013.

Dated: December 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30392 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance

PacifiCorp	Docket No. ER13–64–000.
Deseret Generation & Transmission Cooperative, Inc.	Docket No. ER13–65–000.
Northwestern Corporation (Montana)	Docket No. ER13–67–000.
Portland General Electric Company	Docket No. ER13–68–000.
Idaho Power Company	Docket No. ER13–127–000.
Public Service Company of Colorado	Docket No. ER13–75–000.
Terra-Gen Dixie Valley, LLC	Docket No. ER13–76–000.
Tucson Electric Power Company	Docket No. ER13–77–000.
UNS Electric, Inc.	Docket No. ER13–78–000.
Public Service Company of New Mexico	Docket No. ER13–79–000.
Arizona Public Service Company	Docket No. ER13–82–000.
El Paso Electric Company	Docket No. ER13–91–000.
Black Hills Power, Inc., et al.	Docket No. ER13–96–000.
Black Hills Colorado Electric Utility Company	Docket No. ER13–97–000.
NV Energy, Inc	Docket No. ER13–105–000.
Cheyenne Light, Fuel and Power Company	Docket No. ER13–120–000.
Avista Corporation	Docket No. ER13–93–000.
Avista Corporation	Docket No. ER13–94–000.
Puget Sound Energy	Docket No. ER13–98–000.
Puget Sound Energy	Docket No. ER13–99–000.
Bonneville Power Administration	Docket No. NJ13–1–000.
California Independent System Operator Corporation	Docket No. ER13–103–000.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on December 19, 2012, members of its staff will attend a meeting hosted by NV Energy, Inc. regarding the interregional coordination requirements established by Order No. 1000. The agenda and other documents for the meeting are available at *http://www.columbiagrid.org/O1000Inter-documents.cfm.*

The meeting is open to all stakeholders and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Melissa Lozano at *Melissa.Lozano@ferc.gov.*

Dated: December 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30395 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14115–001]

AJT Mining Properties, Inc.; Notice of Surrender of Preliminary Permit

Take notice that AJT Mining Properties, Inc., permittee for the proposed Yeldagalga Creek Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on October 21, 2011, and would have expired on October 1, 2014.[1] The project would have been located on the Yeldagalga Creek, near Haines, in the boroughs of Haines and Juneau, Alaska.

The preliminary permit for Project No. 14115 will remain in effect until the close of business, January 10, 2013. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open. 18 CFR 385.2007(a)(2) (2010). New applications for this site may not be submitted until after the permit surrender is effective.

Dated: December 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30391 Filed 12–17–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0754; FRL- 9525–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to extend the current approval for the Information Collection Request (ICR) entitled ''Pesticide Data Call-In Program'' and identified as EPA ICR No. 2288.02 and OMB Control No. 2070–0174. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost, and is available in the docket for additional public review and comment.

DATES: Additional comments may be submitted on or before January 17, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OPP–2011–0754, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by mail to the OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001, and (2) OMB by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division, 7506P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–305–5454; fax number: 703- 308–5884; email address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures under the PRA (44 U.S.C. 3501 *et seq.*), as prescribed in 5 CFR 1320.12. On October 12, 2012 (77 FR 62232), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). Given the nature of this request, EPA did not consider new public comments. As required by the PRA, EPA is hereby soliciting additional comments on this ICR, which should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2011–0754, which is available for online viewing at *http://www.regulations.gov.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Title: Pesticide Data Call-In Program.

ICR numbers: EPA ICR No. 2288.02, OMB Control No. 2070–0174.

ICR Status: EPA is requesting a short renewal of the currently approved ICR. The submitted ICR package is unchanged from that which is currently approved. This extension will provide additional time to allow EPA to finish restructuring the ICR and related improvements to the electronic forms and instructions, as well as to consult with stakeholders and OMB on those changes and the corresponding adjustments to the burden estimates. This extension is necessary because the ICR covers ongoing activities that are required to support the statutorily mandated pesticide reviews.

The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost. The existing approval is scheduled to expire on November 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 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 in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), every pesticide product must be registered with EPA. An applicant for registration must supply data to demonstrate that the pesticide product will not cause ''unreasonable adverse effects'' on humans or to the environment. Under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA must determine, from data supplied by the applicant or registrant, that the level of pesticide residues in food and feed will be safe for human consumption, defined as ''a reasonable certainty that no harm'' will result from exposures to pesticide residues. Although data is provided with the initial applications, the Agency issues Data Call-Ins (DCIs) when it has determined that more information is necessary to make the necessary decision pursuant to the mandates in FIFRA and FFDCA.

The programs represented in this proposed ICR renewal and consolidation share a common statutory authority, section 3(c)(2)(B) of FIFRA, which authorizes EPA to require pesticide registrants to generate and submit data to the Agency, when such data are needed to maintain an existing registration of a pesticide. EPA's

[1] 137 FERC ¶ 62,069.

determination that additional data are needed can occur for various reasons, with the following four reasons being the most common:

1. *Reregistration program.* Section 4 of FIFRA requires EPA to re-assess the health and safety data for all pesticide active ingredients registered before November 1, 1984, to ''reregister'' them, i.e., determine whether these ''older'' pesticides meet the criteria for registration that would be expected of a pesticide being registered today for the first time. FIFRA section 4 directs EPA to use FIFRA section 3(c)(2)(B) authority to obtain the required data. Although the Reregistration Eligibility Decisions are complete, the Agency may still need to issue DCIs to close out the program.

2. *Registration review program.* Section 3(g) of FIFRA contains provisions to help achieve the goal of reviewing each pesticide every 15 years to assure that the pesticide continues to pose no risk of unreasonable adverse effects on human health or the environment. FIFRA section 3(g) instructs EPA to use the FIFRA section 3(c)(2)(B) authority to obtain the required data.

3. *Special review program.* Though rare, EPA may conduct a Special Review if EPA believes that a pesticide poses risks of unreasonable adverse effects on human health or the environment. Section 3(c)(2)(B) of FIFRA provides a means of obtaining any needed data.

4. *Anticipated residue/percent crop treated information.* Under section 408 of FFDCA, before a pesticide may be used on food or feed crops, the Agency must establish a tolerance for the pesticide residues on that crop or established an exemption from the requirement to have a tolerance. Section 408(b)(2)(E) and (F) of FFDCA authorize the use of anticipated or actual residue (ARs) data and percent crop treated (PCT) data to establish, modify, maintain, or revoke a tolerance for a pesticide. The FFDCA requires that if AR data are used, data must be reviewed five years after a tolerance is initially established. If PCT data are used, the FFDCA affords EPA the discretion to obtain additional data if any or all of several conditions are met.

The Agency issues DCIs when it has determined that more information is necessary to make a decision about pesticides pursuant to the mandates in FIFRA and FFDCA. Agency decisions requiring additional data are based on the data requirements set forth in 40 CFR parts 150 through 180, with the majority of the data requirements captured in 40 CFR parts 158 and 161.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range from 59 to 13,636 hours per response, depending on the review program and type of DCI issued. Burden is defined in 5 CFR 1320.3(b). The ICR 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, which may be identified by the North American Industrial Classification System (NAICS) code 32532, pesticide and other agricultural chemical manufacturing.

Frequency of Collection: On Occasion.

Estimated No. of Potential Respondents: 1643.

Estimated No. of Total Annual Responses: 184.

Estimated Total Annual Burden on Respondents: 262,301 hours.

Estimated Total Annual Costs: $12,506,726.

Changes in the Estimates: The total estimated burden for this ICR is unchanged from that currently approved by OMB.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–30344 Filed 12–17–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0550]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP085332XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP085332XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of locomotive kits to South Africa

Brief non-proprietary description of the anticipated use of the items being exported:

To be owned and operated by the State-Owned Freight Transport company for purposes of transporting freight mainly within South Africa but also in some cases in nearby countries in Southern Africa.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: GE Transportation.

Obligor: Transnet SOC Ltd.

Guarantor(s): N/A.

Description of Items Being Exported:

Locomotive Kits.

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before *January 14, 2013* to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2012–0050 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2012–0050 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2012–30408 Filed 12–17–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Revision; Comment Request; Purchaser Eligibility Certification

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on revision of the information collection described below.

DATES: Comments must be submitted on or before February 19, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Revise the Following Currently Approved Collection of Information

Title: Asset Purchaser Eligibility Certification.

OMB Number: 3064–0135.

Form Number: FDIC 7300/06, ''Purchaser Eligibility Certification''; 7300/07, ''Pre-Qualification Request''; and 7300/08, ''Contact Information Form''.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 600.

Estimated Time per Response: 1.0 hour (*Purchaser Eligibility Certification,* 30 minutes; *Pre-Qualification Request,* 20 minutes; and *Contact Information Form,* 10 minutes).

Total Annual Burden: 600 hours.

General Description of Collection: The FDIC uses the *Purchaser Eligibility Certification* form, FDIC Form No. 7300/06, to identify prospective bidders who are not eligible to purchase assets of failed institutions from the FDIC. Specifically, section 11(p) of the Federal Deposit Insurance Act prohibits the sale of assets of failed institutions to certain individuals or entities that profited or engaged in wrongdoing at the expense of those failed institutions, or seriously mismanaged those failed institutions. The FDIC is proposing to update the Privacy Act Statement in the *Purchaser Eligibility Certification* form. In addition, the FDIC is proposing to add two forms to the Purchaser Eligibility Certification information collection: the *Pre-Qualification Request* form, FDIC Form No. 7300/07, is designed to determine which prospective bidders are qualified to bid on particular types of assets offered by the FDIC (*e.g.,* securities, mortgage servicing portfolios, shared national credits. Interests in structured transactions, credit card receivables) for which no further qualification criteria are required to be met and to ensure that prospective bidders understand the terms and conditions of asset sales; and the *Contact Information Form,* FDIC Form No. 7300/08, determines the type of assets a prospective bidder is interested in and facilitates communication with the prospective bidder. A link to copies of the forms can be found directly beneath this notice on the FDIC's **Federal Register** Citations Web page at: *http://www.fdic.gov/regulations/laws/federal/notices.html.*

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 12th day of December 2012.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30343 Filed 12–17–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Modifications to Statement of Policy for Section 19 of the Federal Deposit Insurance Act

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Modifications to Statement of Policy for Section 19 of the Federal Deposit Insurance Act.

SUMMARY: The FDIC originally promulgated the Statement of Policy for Section 19 of the Federal Deposit Insurance Act (SOP) in December 1998. The FDIC, in 2007, issued a clarification to the SOP based on the 2006 amendment to Section 19 of the Federal Deposit Insurance Act, which addressed institution-affiliated parties (IAPs) participating in the affairs of Bank Holding Companies, or Savings and Loan Holding Companies. The FDIC, in 2011, clarified the SOP as to: (i) The applicability of section 19 on bank and thrift holding company institution-affiliated parties; (ii) the term ''complete expungement;'' and (iii) the factors for considering *de minimis* convictions. The FDIC is restating the full SOP, including previous changes, and modifying what the FDIC views as the definition of *de minimis* offenses.

DATES: The change to the policy statement is effective December 18, 2012.

FOR FURTHER INFORMATION CONTACT: Martin P. Thompson, Senior Review Examiner (202) 898–6767, in the Division of Risk Management Supervision; or Michael P. Condon, Counsel, (202) 898–6536, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829, (FDI Act) prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial

diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party (IAP), owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19. The FDIC's SOP was published in December 1998 (63 FR 66177) to provide the public with guidance relating to Section 19, and the application thereof.

The Financial Services Regulatory Relief Act of 2006, Public Law 109–351, § 710, modified Section 19 to include coverage of IAPs of Bank Holding Companies, and Savings and Loan Holding Companies. In response to this amendment of the statute, the FDIC amended the SOP by including a footnote that noted the authority of the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision's in regard to bank and savings and loan holding companies under Section 19. (72 FR 73823, December 28, 2007, with correction issued at 73 FR 5270, January 29, 2008). In May of 2011, the FDIC subsequently eliminated the footnote added in December of 2007 and incorporated the change directly into the text of the SOP. It also noted the coming transfer of authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–202, § 312 (2010) (Dodd-Frank) of savings and loan holding company jurisdiction to the Board of Governors of the Federal Reserve System. In addition, the FDIC made certain clarifications regarding the scope of the *de minimis* exception to filing the requirement to file an application for the FDIC's consent under Section 19. (76 FR 28031, May 13, 2011). The FDIC now proposes to amend the SOP to address two *de minimis* exception factors regarding the potential fine and the jail time served.

The SOP, as revised herein, will be on the FDIC's Web site at *www.fdic.gov.*

II. Modifications to the Statement of Policy

The SOP will be clarified in the following areas:

B. Standards for Determining Whether an Application Is Required—De Minimis Offenses

The 1998 SOP created a category of covered offenses that it would deem to be *de minimis* due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction. Based on its experience in the processing and approving of numerous applications involving such minor crimes, the FDIC has recognized a category of offenses to which it would grant blanket approval under section 19 without the need to file an application. The FDIC is modifying in two ways which offenses fall within the *de minimis* offenses exception of the SOP.

The FDIC has received a number of Section 19 individual waiver applications where the filing did not meet one of the *de minimis* factors regarding the maximum potential fine or the jail time served. Experience has shown that a significant number of applications processed by the FDIC for approval involved individuals covered by Section 19 who are usually one-time offenders for minor infractions, who may have served some limited jail time, and for which the jurisdiction could have imposed fines of $2,500 or less. Adjusting the *de minimis* exceptions to permit an increase in the potential fine to $2,500 or less and a limited number days of actual jail time served for minor infractions appears just and reasonable. Additionally, we have seen numerous cases where minimal, actual jail time was included as part of the sentence, which has not been a significant factor in our decision.

First, currently under that portion of the *de minimis* exception to filing an application, the maximum potential fine is $1,000 or less. The FDIC is modifying this aspect of the SOP so that this element of the *de minimis* exception to filing an application will apply if the maximum potential fine is $2,500 or less.

Second, currently, the *de minimis* exception requires that no jail time was served as part of the sentencing or conviction. The FDIC is modifying this aspect of the SOP so that the *de minimis* offenses provision will apply if the individual has served three (3) days or less of actual jail time.

The change to the maximum amount of the potential fine will apply to both convictions and program entries. Similarly, the change as to actual jail time will apply to both but is unlikely to impact program entries since no actual jail time is usually involved. These proposed changes should not have a material impact on the Deposit Insurance Fund, provide immediate relief to those currently covered by Section 19, pose no significant additional risk to insured depository intuitions, and maintain the integrity of Section 19.

III. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* 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 Office of Management and Budget (OMB) control number. These modifications to the Statement of Policy for Section 19 of the FDI Act include clarification of reporting requirements in an existing FDIC information collection, entitled *Application Pursuant to Section 19 of the Federal Deposit Insurance Act* (3064–0018) that should result in a decrease in the number of applications filed. Specifically, the revised policy statement broadens the application of the *de minimis* exception to filing an application due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction or program entry. By modifying these provisions, the FDIC believes that there will be a reduction in the submission of applications in situations where blanket approval has been granted by virtue of the *de minimis* offenses section of the policy statement. If so, this change in burden would be submitted to OMB as a non-significant, nonmaterial change to an existing information collection. The current estimated burden for the information collection is as follows:

Title: ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act''.

Affected Public: Insured depository institutions and individuals.

OMB Number: 3064–0018.

Estimated Number of Respondents: 26.

Frequency of Response: On occasion.

Average Time per Response: 16 hours.

Estimated Annual Burden: 416 hours.

Comments are invited on:

(a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

All comments will become a matter of public record. Comments may be submitted to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3877), Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., NYA–5046, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act,'' OMB No. 3064–0018.

IV. Changes to FDIC Statement of Policy for Section 19

For the reasons set forth above, the entire text of the FDIC Statement of Policy for Section 19 is stated as follows. The revised text, as identified in this notice, is located in

B. Standards for Determining Whether an Application Is Required, Paragraph (5)

FDIC Statement of Policy for Section 19 of the FDI Act

Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. It imposes a ten-year ban against the FDIC's consent for persons convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and court approval.

Section 19 imposes a duty upon the insured institution to make a reasonable inquiry regarding an applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered offense. The FDIC believes that at a minimum, each insured institution should establish a screening process that provides the insured institution with information concerning any convictions or program entry pertaining to a job applicant. This would include, for example, the completion of a written employment application that requires a listing of all convictions and program entries. The FDIC will look to the circumstances of each situation to determine whether the inquiry is reasonable. Upon notice of a conviction or program entry, an application seeking the FDIC's consent prior to the person's participation must be filed,

Section 19 applies, by operation of law, as a statutory bar to participation absent the written consent of the FDIC. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, a person is fit to participate in the conduct of the affairs of an insured institution without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application warrants approval.

A. Scope of Section 19

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u) and others who are participants in the conduct of the affairs of an insured institution. This Statement of Policy applies only to insured institutions, their institution-affiliated parties, and those participating in the affairs of an insured depository institution. Therefore, all employees of an insured institution fall within the scope of Section 19. In addition, those deemed to be *de facto* employees as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to Section 19. Whether other persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. For example, Section 19 would not apply to persons who are merely employees of an insured institution's holding company, but would apply to its directors and officers to the extent that they have the power to define and direct the policies of the insured institution. Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an insured institution or its holding company will be covered if they are in a position to influence or control the management or affairs of the insured institution. Those who exercise major policymaking functions of an insured institution would be deemed participants in the affairs of that institution and covered by section 19. Typically, an independent contractor does not have a relationship with the insured institution other than the activity for which the insured institution has contracted. Under 12 U.S.C. 1813(u), independent contractors are institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured institution. In terms of participation, an independent contractor who influences or controls the management or affairs of the insured institution, would be covered by Section 19. Further, ''person'' for purposes of Section 19 means an individual, and does not include a corporation, firm or other business entity.

Individuals who file an application with the FDIC under the provisions of Section 19 who are participating in the affairs of a bank or savings and loan holding company may also have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. § 1819(d) in the case of a bank holding company, and the Office of Thrift Supervision under 12 U.S.C. § 1819(e), in the case of a savings and loan holding company until the Transfer Date as that term is used in the Dodd-Frank Wall Street Reform Act (Pub. L. 111–203, § 311, July 21 2010). Upon the Transfer Date applications related to savings and loan holding companies should be filed with the Board of Governors of the Federal Reserve System.

Section 19 specifically prohibits a person subject to its coverage from owning or controlling an insured institution. For purposes of defining ''control'' and ''ownership'' under Section 19, the FDIC has adopted the definition of ''control set forth in the Change in Bank Control Act (12 U.S.C. 1817(j)(8)(B)). A person will be deemed to exercise ''control'' if that person has the power to vote 25 percent or more of the voting shares of an insured

institution (or 10 percent of the voting shares if no other person has more shares) or the ability to direct the management or policies of the insured institution. Under the same standards, person will be deemed to ''own'' an insured institution if that person owns 25 percent or more of the insured institution's voting stock, or 10 percent of the voting shares if no other person owns more. These standards would also apply to an individual acting in concert with others so as to have such ownership or control. Absent the FDIC's consent, persons subject to the prohibitions of section 19 will be required to divest their ownership of shares above the foregoing limits.

B. Standards for Determining Whether an Application Is Required

Except as indicated in paragraph (5), below, an application must be filed where there is present a conviction by a court of competent jurisdiction for a covered offense by any adult or minor treated as an adult, or where such person has entered a pretrial diversion or similar program regarding that offense.

(1) Convictions. There must be present a conviction of record. Section 19 does not cover arrests, pending cases not brought to trial, acquittals, or any conviction that has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been granted will require an application. A conviction that has been completely expunged is not considered a conviction of record and will not require an application. For an expungement to be considered complete, no one, including law enforcement, can be permitted access to the record even by court order under the state or federal law that was the basis of the expungement.

(2) Pretrial Diversion or Similar Program. Program entry, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other noncriminal or nonpunitive alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and will be considered by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by Section 19.

(3) Dishonesty or Breach of Trust. The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust or money laundering. ''Dishonesty'' means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. ''Breach of trust'' means a wrongful act, use, misappropriation or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application.

(4) Youthful Offender Adjudgments. An adjudgment by a court against a person as a ''youthful offender'' under any youth offender law, or any adjudgment as a ''juvenile delinquent'' by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses.

(5) *De minimis* Offenses. Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis,* because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;
- The offense was punishable by imprisonment for a term of one year or less and/or a fine of $2,500 or less, and the individual served three (3) days or less of actual jail time;
- The conviction or program was entered at least five years prior to the date an application would otherwise be required; and
- The offense did not involve an insured depository institution or insured credit union.

A conviction or program entry of record based on the writing of a ''bad'' or insufficient funds check(s) shall be considered a *de minimis* offense under this provision even if it involved an insured depository institution or insured credit union if the following applies:

- All other requirements of the *de minimis* offense provisions are met;
- The aggregate total face value of the bad or insufficient funds check(s) cited in the conviction was $1000 or less; and
- No insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction.

Any person who meets the foregoing criteria shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate.

C. Procedures

When an application is required, forms and instructions should be obtained from, and the application filed with, the appropriate FDIC Regional Director. The application must be filed by an insured institution on behalf of a person unless the FDIC grants a waiver of that requirement. Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown.

D. Evaluation of Section 19 Applications

The essential criteria in assessing an application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution, and whether the affiliation, ownership, control or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety and soundness of the insured institution or the interests of its depositors or threaten to impair public confidence in the insured institution. In determining the degree of risk, the FDIC will consider:

(1) The conviction or program entry and the specific nature and circumstances of the covered offense;

(2) Evidence of rehabilitation including the person's reputation since the conviction or program entry, the person's age at the time of conviction or program entry, and the time that has elapsed since the conviction or program entry;

(3) The position to be held or the level of participation by the person at an insured institution;

(4) The amount of influence and control the person will be able to exercise over the management or affairs of an insured institution;

(5) The ability of management of the insured institution to supervise and control the person's activities;

(6) The degree of ownership the person will have of the insured institution;

(7) The applicability of the insured institution's fidelity bond coverage to the person;

(8) The opinion or position of the primary Federal and/or state regulator; and

(9) Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date.

Some applications can be approved without an extensive review because the person will not be in a position to constitute any substantial risk to the safety and soundness of the insured institution. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured institution. Approval orders will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions. In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will be conditioned upon that person disclosing the presence of the conviction to all insured institutions in the affairs of which he or she wishes to participate. When deemed appropriate, approval orders may also be subject to the condition that the prior consent of the FDIC will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the Regional Director, require a new application. In situations in which an approval has been granted for a person to participate in the affairs of a particular insured institution and subsequently seeks to participate at another insured institution, approval does not automatically follow. In such cases, another application must be submitted.

By Order of the Board of Directors.

Dated at Washington, DC, this 11th day of December, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30351 Filed 12–17–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice to Delete a System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the Federal Deposit Insurance Corporation (FDIC) deletes one system of records from its existing inventory of systems of records subject to the Privacy Act.

DATES: Effective Date is July 23, 2012.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Counsel, FDIC, 550 17th Street NW., Washington, DC 20429, (703) 562–2677.

SUPPLEMENTARY INFORMATION: The FDIC deletes its system of records for the Nationwide Mortgage Licensing System and Registry, 76 FR 15309 (March 21, 2011). Section 1100 of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the Bureau of Consumer Financial Protection (CFPB) authority to develop and maintain the national registration system for residential mortgage loan originators required by Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act. The CFPB published its own notice of the establishment of a Privacy Act system of records for the Nationwide Mortgage Licensing System and Registry, 77 FR 35359 (June 13, 2012), effective as of July 23, 2012.

The deletion is not within the purview of subsection (r) of the Privacy Act, which requires submission of a report on a new or altered system of records. The FDIC's systems of records notices subject to the Privacy Act have been published in the **Federal Register** and may be viewed at *http://www.fdic.gov/regulations/laws/rules/2000-4000.html* on the FDIC's Privacy Web page.

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of December 2012.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30254 Filed 12–17–12; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, December 20, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of December 6, 2012;
Draft Advisory Opinion 2012–35: Global Transaction Services Group, Inc.;
Draft Advisory Opinion 2012–37: Yamaha Motor Corporation, U.S.A.;
Itemization of Ultimate Payee of Committee Disbursements;
Request for Comment on the Enforcement Process;
Election of Officers;
Future Meeting Dates;
Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–30492 Filed 12–14–12; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Unaccompanied Refugee Minor Placement and Outcomes Reports; ORR–3 and ORR–4.

OMB No.: 0970–0034.

Description: The two reports collect information necessary to administer the Unaccompanied Refugee Minor (URM) program. The ORR–3 (Placement Report) is submitted to the Office of Refugee Resettlement (ORR) by the State agency at initial placement within 30 days of the placement, and whenever there is a change in the child's status, including termination from the program, within 60 days of the change or closure of the case. The ORR–4 (Outcomes Report) is submitted within approximately 12 months of the initial placement and each subsequent 12 months to record outcomes of the

child's progress toward the goals listed in the child's case plan and particularly for youth 17 years of age and above related to independent living and/or educational plans. ORR–4 is also submitted as a baseline report along with the initial ORR–3 report for 17 years old and above youth, and as a follow-up annual report for cases that have terminated and are 17 to 21 years old. ORR regulations at 45 CFR 400.120 describes specific URM program reporting requirements.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–3	15	75	0.25 (15 Minutes).	281.25
ORR–4	15	119	1.5 (1 Hour and 30 Minutes).	2,677.5

Estimated Total Annual Burden Hours: 2,958.75.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–30390 Filed 12–17–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1197]

Draft Guidance for Industry on Certification of Designated Medical Gases; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Certification Process for Designated Medical Gases.'' This draft guidance describes the new certification process created by the Food and Drug Administration Safety and Innovation Act (FDASIA) for certain medical gases and explains how FDA plans to implement that process.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 19, 2013. Submit either electronic or written comments concerning the collection of information proposed in the draft guidance and attached Form 3864 by February 19, 2013.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Michael Folkendt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1900; or Germaine Connolly, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8331.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Certification Process for Designated Medical Gases.'' This guidance is intended to help persons or entities interested in requesting a certification for a designated medical gas under the new approval process for designated medical gases created by FDASIA (Pub. L. 112–144, 126 Stat. 993).

Title XI, subtitle B, of FDASIA added sections 575 and 576 to the Federal Food, Drug, and Cosmetic Act (the FD&C Act), which created a certification process for designated medical gases. Specifically, section 575 provides that oxygen, nitrogen, nitrous oxide, carbon dioxide, helium, carbon monoxide, and medical air are designated medical gases. Section 576 permits any person, beginning on January 5, 2013, to request a certification of a medical gas for certain indications and describes when FDA will grant or deny these requests.

This draft guidance explains how FDA plans to implement this new certification process. Specifically, the draft guidance describes the medical gases that are eligible for certification, who should submit a certification request, what information should be submitted, and how FDA will evaluate and act on the request. The draft guidance also describes how the new certification requirement will be enforced and describes FDA's intent to exercise enforcement discretion in certain instances.

FDA has also developed a form to help requestors submit their certification requests. FDA recommends that requestors use this form. The form

and an instructions page for use in completing the form are attached to this draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the Agency's current thinking on the certification process for designated medical gases. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if that approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (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 before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Request for Certification Process for Designated Medical Gas.

Description of Respondents: Respondents to this collection of information are manufacturers and/or marketers of certain medical gas drug products.

Burden Estimate: Under section 576 of the FD&C Act and the draft guidance, the following information would be submitted to FDA by a person requesting certification of a designated medical gas product: The requestor's name, address, and other contact information; the name, address, and other contact information of the manufacturing facilities involved in the production of the gas; and certain affirmations that the gas meets applicable compendial standards and that the product is manufactured in accordance with current good manufacturing practice. Requestors will make certification requests using FDA Form 3864 and will include a cover letter explaining the nature of the submission (as explained in the Instructions page to the form). In certain circumstances FDA may ask followup questions if additional information is needed from the requestor to determine whether a medical gas qualifies for certification as a designated medical gas.

Based on our knowledge of the medical gas marketplace, we estimate that a total of approximately 50 requestors (''number of respondents'' in table 1) will submit certification requests for designated medical gases in 2013. We expect that a small number (we estimate five) of these requestors will need to resubmit their certification requests, which we also expect to occur in 2013. Thus, for 2013, we estimate approximately 55 ''total responses'' in table 1. In 2014 and beyond we expect to receive only a small number of submissions. We estimate 5 per year, and estimate 1 out of 10 such submissions will require resubmission, for a total of 5.5 annualized responses (as reflected in table 2). Those submissions would consist of new certification requests, resubmissions, and postapproval submissions to provide FDA with updated information (e.g., a change of ownership or closure of a particular manufacturing facility). In every case the requestor should submit a new Form 3864 together with a cover letter explaining the nature of the submission. For all submissions, we estimate that preparing and submitting the form and cover letter to FDA will take approximately 2 hours per requestor (''average burden per response'' in the tables in this document). This estimate includes the time that some requestors may need to reply to followup questions by FDA.

TABLE 1—ESTIMATED 2013 REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total hours
Form FDA 3864 and other requested information.	50	1.1	55	2	110

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN IN 2014 AND SUBSEQUENT YEARS [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Form FDA 3864 and other requested information.	5	1.1	5.5	2	11

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* 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.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm or http://www.regulations.gov.* Always access an FDA guidance document by using FDA's Web site listed in the previous sentence to find the most current version of the guidance.

Dated: December 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30382 Filed 12–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Transformation Accountability Reporting System—(OMB No. 0930–0285)—Extension

The Transformation Accountability (TRAC) Reporting System is a real-time, performance management system that captures information on the substance abuse treatment and mental health services delivered in the United States. A wide range of client and program information is captured through TRAC for approximately 700 grantees. This request includes an extension of the currently approved data collection effort.

This information collection will allow SAMHSA to continue to meet the Government Performance and Results Act (GPRA) of 1993 reporting requirements that quantify the effects and accomplishments of its programs, which are consistent with OMB guidance. In order to carry out section 1105(a)(29) of GPRA, SAMHSA is required to prepare a performance plan for its major programs of activity. This plan must:

- Establish performance goals to define the level of performance to be achieved by a program activity;
- Express such goals in an objective, quantifiable, and measurable form;
- Briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;
- Establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;
- Provide a basis for comparing actual program results with the established performance goals; and
- Describe the means to be used to verify and validate measured values.

In addition, this data collection supports the GPRA Modernization Act of 2010 which requires overall organization management to improve agency performance and achieve the mission and goals of the agency through the use of strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved. Specifically, this data collection will allow CMHS to have the capacity to report on a consistent set of performance measures across its various grant programs that conduct each of these activities. SAMHSA's legislative mandate is to increase access to high quality substance abuse and mental health prevention and treatment services and to improve outcomes. Its mission is to improve the quality and availability of treatment and prevention services for substance abuse and mental illness. To support this mission, the Agency's overarching goals are:

- Accountability—Establish systems to ensure program performance measurement and accountability
- Capacity—Build, maintain, and enhance mental health and substance abuse infrastructure and capacity
- Effectiveness—Enable all communities and providers to deliver effective services

Each of these key goals complements SAMHSA's legislative mandate. All of SAMHSA's programs and activities are geared toward the achievement of these goals and performance monitoring is a collaborative and cooperative aspect of this process. SAMHSA will strive to coordinate the development of these goals with other ongoing performance measurement development activities.

The total annual burden estimate is shown below:

ESTIMATES OF ANNUALIZED HOUR BURDEN—CMHS CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS

Type of response	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Hourly wage cost	Total hour cost
Client-level baseline interview	15,681	1	15,681	0.48	7,527	[1] $15	$112,903
Client-level 6-month reassessment interview	10,637	1	10,637	0.367	3,904	15	58,557
Client-level discharge interview [2]	4,508	1	4,508	0.367	1,776	15	26,644
Client-level baseline chart abstraction [3]	2,352	1	2,352	0.1	235	15	3,528
Client-level reassessment chart abstraction [4]	8,703	1	8,703	0.1	870	15	13,055
Client-level discharge chart abstraction [5]	8,241	1	8,241	0.1	824	15	12,362

ESTIMATES OF ANNUALIZED HOUR BURDEN—CMHS CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS—Continued

Type of response	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Hourly wage cost	Total hour cost
Client-level Subtotal [6]					15,137	15	227,048
Infrastructure development, prevention, and mental health promotion quarterly record abstraction	942	4	3,768	4	15,072	[7] 35	527,520
Total	16,623				29,298		885,135

[1] Based on minimum wage.
[2] Based on an estimate that 35 percent will leave the program annually, and it will be possible to conduct discharge interviews on 40 percent of those who leave the program.
[3] Based on 13 percent non-response for those eligible at baseline (18,033); baselines are required for all consumers served or an admin baseline for non-responders.
[4] Based on 40 percent non-response for those eligible for six-month reassessment.
[5] Based on 60 percent non-response for those discharged.
[6] This is the maximum burden if all consumers complete the baseline and periodic reassessment interviews.
[7] To be completed by grantee Project Directors, hence the higher hourly wage.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email a copy to *summer.king@samhsa.hhs.gov.* Written comments must be received before 60 days after the date of the publication in the **Federal Register**.

Summer King,

Statistician.

[FR Doc. 2012–30386 Filed 12–17–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Services Accountability Improvement System—(OMB No. 0930–0208)—Extension

This is an extension to the previously OMB approved instrument. The Services Accountability Improvement System (SAIS), which is a real-time, performance management system that captures information on the substance abuse treatment and mental health services delivered in the United States. A wide range of client and program information is captured through SAIS for approximately 600 grantees. Substance abuse treatment facilities submit their data on a monthly and even a weekly basis to ensure that SAIS is an accurate, up-to-date reflection on the scope of services delivered and characteristics of the treatment population. Over 30 reports on grantee performance are readily available on the SAIS Web site. The reports inform staff on the grantees' ability to serve their target populations and meet their client and budget targets. SAIS data allow grantees information that can guide modifications to their service array. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Act of 1993 (GPRA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs which are consistent with OMB guidance.

Note that there are no changes to the instrument or the burden hours from the previous OMB submission.

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]—CSAT GPRA CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS

Center/Form/Respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Added burden proportion [2]
Clients						
Adolescents	3,900	4	15,600	.5	7,800	.34
Adults						
General (non ATR or SBIRT)	28,000	3	84,000	.5	42,000	.34
ATR	53,333	3	159,999	.5	80,000	.34

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]—CSAT GPRA CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS—Continued

Center/Form/Respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Added burden proportion [2]
SBIRT [4] Screening Only	150,618	1	150,618	.13	19,580	0
SBIRT Brief Intervention	27,679	3	83,037	.20	16,607	0
SBIRT Brief Tx & Refer to Tx	9,200	3	27,600	.5	13,800	.34
Client Subtotal	272,730		520,854		179,787	
Data Extract [5] and Upload						
Adolescent Records	44 grants	44 × 4	176	.18	32	
Adult Records						
General (non ATR or SBIRT)	528 grants	70 × 3	210	.18	38	
ATR Data Extract	53,333	3	160,000	.16	25,600	
ATR Upload [6]	24 grants	3	160,000	1 hr. per 6,000 records.	27	
SBIRT Screening Only Data Extract	9 grants	21,517 × 1	21,517	.07	1,506	
SBIRT Brief Intervention Data Extract.	9 grants	3,954 × 3	11,862	.10	1,186	
SBIRT Brief Tx & Refer to Tx Data Extract.	9 grants	1,314 × 3	3,942	.18	710	
SBIRT Upload [7]	7 grants		171,639	1 hr. per 6,000 records.	29	
Data Extract and Upload Subtotal	53,856		529,382		29,134	
TOTAL	326,586		1,050,236		208,921	

Notes :

[1] This table represents the maximum additional burden if adult respondents, for the discretionary services programs including ATR, provide three sets of responses/data and if CSAT adolescent respondents, provide four sets of responses/data.

[2] Added burden proportion is an adjustment reflecting customary and usual business practices programs engage in (e.g., they already collect the data items).

[3] Estimate based on 2010 hourly wave of $19.97 for U.S. workforce eligible from the Bureau of Labor Statistics.

[4] Screening, Brief Intervention, Treatment and Referral (SBIRT) grant program:

* 27,679 Brief Intervention (BI) respondents complete sections A & B of the GPRA instrument, all of these items are asked during a customary and usual intake process resulting in zero burden; and

* 9,200 Brief Treatment (BT) & Referral to Treatment (RT) respondents complete all sections of the GPRA instrument.

[5] Data Extract by Grants: Grant burden for capturing customary and usual data.

[6] Upload: all 24 ATR grants upload data.

[7] Upload: 7 of the 9 SBIRT grants upload data; the other 2 grants conduct direct data entry.

Based on current funding and planned fiscal year 2010 notice of funding announcements (NOFA), the CSAT programs that will use these measures in fiscal years 2010 through 2012 include: The Access to Recovery 2 (ATR2), ATR3, Addictions Treatment for Homeless; Adult Criminal Justice Treatment; Assertive Adolescent Family Treatment; HIV/AIDS Outreach; Office of Juvenile Justice and Delinquency Prevention—Brief Intervention and Referral to Treatment (OJJDP–BIRT); OJJDP-Juvenile Drug Court (OJJDP–JDC); Offender Re-entry Program; Pregnant and Postpartum Women; Recovery Community Services Program—Services; Recovery Oriented Systems of Care; Screening and Brief Intervention and Referral to Treatment (SBIRT), Targeted Capacity Expansion (TCE); TCE/HIV; Treatment Drug Court; and the Youth Offender Reentry Program. SAMHSA uses the performance measures to report on the performance of its discretionary services grant programs. The performance measures information is used by individuals at three different levels: The SAMHSA administrator and staff, the Center administrators and government project officers, and grantees.

SAMHSA and its Centers will use the data for annual reporting required by GPRA and for NOMs comparing baseline with discharge and follow-up data. GPRA requires that SAMHSA's report for each fiscal year include actual results of performance monitoring for the three preceding fiscal years. The additional information collected through this process will allow SAMHSA to report on the results of these performance outcomes as well as be consistent with the specific performance domains that SAMHSA is implementing as the NOMs, to assess the accountability and performance of its discretionary and formula grant programs.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, 1 Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Summer King,

Statistician.

[FR Doc. 2012–30385 Filed 12–17–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama: Baldwin (FEMA Docket No.: B–1249).	City of Gulf Shores (12–04–0183P).	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547.	Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547.	June 4, 2012	015005
Arizona:					
Coconino (FEMA Docket No.: B–1249).	City of Flagstaff (11–09–3783P).	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	City Hall Stormwater Management Section, 211 West Aspen Avenue, Flagstaff, AZ 86001.	May 15, 2012	040020
Coconino (FEMA Docket No.: B–1249).	City of Flagstaff (11–09–3785P).	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	City Hall Stormwater Management Section, 211 West Aspen Avenue, Flagstaff, AZ 86001.	May 15, 2012	040020
Coconino (FEMA Docket No.: B–1249).	City of Flagstaff (11–09–3787P).	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	City Hall Stormwater Management Section, 211 West Aspen Avenue, Flagstaff, AZ 86001.	May 9, 2012	040020
Coconino (FEMA Docket No.: B–1249).	Unincorporated areas of Coconino County (11–09–3785P).	The Honorable Lena Fowler, Chair, Coconino County Board of Supervisors, P.O. Box 948, Tuba City, AZ 86045.	2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.	May 15, 2012	040019
California:					
Placer (FEMA Docket No.: B–1249).	Unincorporated areas of Placer County (12–09–0102P).	The Honorable Jennifer Montgomery, Chair, Placer County Board of Supervisors, 175 Fulweiler Avenue, Auburn, CA 95603.	Department of Public Works, 11444 B Avenue, Auburn, CA 95603.	June 4, 2012	060239
Tulare (FEMA Docket No.: B–1245).	Unincorporated areas of Tulare County (11–09–3490P).	The Honorable Mike Ennis, Chairman, Tulare County Board of Supervisors, 2800 West Burrell Avenue, Visalia, CA 93291.	Tulare County Resource Management Agency, 5961 South Mooney Boulevard, Visalia, CA 93227.	April 24, 2012	065066
Colorado:					
Boulder (FEMA Docket No.: B–1249).	City of Lafayette (11–08–0913P).	The Honorable Carolyn Cutler, Mayor, City of Lafayette, 1290 South Public Road, Lafayette, CO 80026.	Planning Department, 1290 South Public Road, Lafayette, CO 80026.	April 27, 2012	080026
Boulder (FEMA Docket No.: B–1249).	City of Louisville (11–08–0913P).	The Honorable Bob Muckle, Mayor, City of Louisville, 749 Main Street, Louisville, CO 80027.	Community Development, 749 Main Street, Louisville, CO 80027.	April 27, 2012	085076
Boulder (FEMA Docket No.: B–1249).	Town of Erie (11–08–0866P).	The Honorable Joe Wilson, Mayor, Town of Erie, P.O. Box 750, Erie, CO 80516.	1739 Broadway, Suite 300, Boulder, CO 80306.	May 15, 2012	080181

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Boulder (FEMA Docket No.: B–1249).	Unincorporated areas of Boulder County (11–08–0866P).	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	1739 Broadway, Suite 300, Boulder, CO 80306.	May 15, 2012	080023
Jefferson (FEMA Docket No.: B–1249).	City of Lakewood (12–08–0106P).	The Honorable Bob Murphy, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	Civic Center North—Engineering, 480 South Allison Parkway, Lakewood, CO 80226.	June 8, 2012	085075
Florida:					
Charlotte (FEMA Docket No.: B–1249).	Unincorporated areas of Charlotte County (12–04–0206P).	The Honorable Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	18500 Murdock Circle, Port Charlotte, FL 33948.	June 1, 2012	120061
Leon (FEMA Docket No.: B–1249).	Unincorporated areas of Leon County (11–04–5515P).	The Honorable John E. Dailey, Chairman, Leon County Board of Commissioners, 301 South Monroe Street, 5th Floor, Tallahassee, FL 32301.	Leon County Courthouse, 301 South Monroe Street, Tallahassee, FL 32301.	May 21, 2012	120143
Monroe (FEMA Docket No.: B–1249).	Unincorporated areas of Monroe County (12–04–0072P).	The Honorable Kim Wigington, Mayor Pro Tem, Monroe County, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	May 31, 2012	125129
Monroe (FEMA Docket No.: B–1249).	Unincorporated areas of Monroe County (12–04–0205P).	The Honorable Kim Wigington, Mayor Pro Tem, Monroe County, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	May 7, 2012	125129
Orange (FEMA Docket No.: B–1249).	City of Orlando (11–04–8127P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32808.	Permitting Services, 400 South Orange Avenue, Orlando, FL 32801.	May 9, 2012	120186
Polk (FEMA Docket No.: B–1249).	Unincorporated areas of Polk County (11–04–6001P).	The Honorable Sam Johnson, Chairman, Polk County Board of Commissioners, Drawer BC01, P.O. Box 9005, Bartow, FL 33831.	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33830.	June 7, 2012	120261
Kansas:					
Johnson (FEMA Docket No.: B–1249).	City of Leawood, (12–07–0114X).	The Honorable Peggy J. Dunn, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, KS 66211.	4800 Town Center Drive, Leawood, KS 66211.	May 23, 2012	200167
Nevada:					
Clark (FEMA Docket No.: B–1249).	City of North Las Vegas (11–09–2931P).	The Honorable Shari L. Buck, Mayor, City of North Las Vegas, 2250 Las Vegas Boulevard North, North Las Vegas, NV 89030.	Public Works Department, 2200 Civic Center Drive, North Las Vegas, NV 89030.	June 4, 2012	320007
Clark (FEMA Docket No.: B–1249).	Unincorporated areas of Clark County (11–09–2931P).	The Honorable Susan Brager, Chair, Clark County Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Office of the Director of Public Works, 500 Grand Central Parkway, Las Vegas, NV 89155.	June 4, 2012	320003
South Carolina:					
Charleston (FEMA Docket No.: B–1249).	City of Charleston (11–04–0520P).	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	Engineering Department, 75 Calhoun Street, Division 301, Charleston, SC 29401.	May 9, 2012	455412
Charleston (FEMA Docket No.: B–1249).	Unincorporated areas of Charleston County (11–04–0520P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, Lonnie Hamilton, III Public Services Building, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Services, 4045 Bridge View Drive, North Charleston, SC 29405.	May 9, 2012	455413
Greenville (FEMA Docket No.: B–1249).	City of Greenville (11–04–4629P).	The Honorable Knox White, Mayor, City of Greenville, 206 South Main Street, Greenville, SC 29601.	City Hall, 206 South Main Street, Greenville, SC 29601.	May 21, 2012	450091
South Dakota:					
Lake (FEMA Docket No.: B–1249).	City of Madison (11–08–0817P).	The Honorable Gene Hexom, Mayor, City of Madison, 116 West Center Street, Madison, SD 57042.	116 East Center Street, Madison, SD 57042.	May 15, 2012	460044
Lake (FEMA Docket No.: B–1249).	Unincorporated areas of Lake County (11–08–0817P).	The Honorable Scott Pedersen, Chairman, Lake County Board of Commissioners, 200 East Center Street, Madison, SD 57042.	200 West Center Street, Madison, SD 57042.	May 15, 2012	460276
Tennessee:					
Hamilton (FEMA Docket No.: B–1245).	City of Chattanooga (11–04–2368P).	The Honorable Ron Littlefield, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	Planning Department, 1250 Market Street, Chattanooga, TN 37402.	April 24, 2012	470072
Utah:					
Davis (FEMA Docket No.: B–1249).	City of Kaysville (11–08–0022P).	The Honorable Steve A. Hiatt, Mayor, City of Kaysville, 697 North 240 East, Kaysville, UT 84037.	23 East Center, Kaysville, UT 84037 ...	June 4, 2012	490046

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

Dated: November 28, 2012.

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, epartment of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–30374 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1276]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 18, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1276, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

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

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

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
La Paz County, Arizona, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/Arizona.aspx?choState=Arizona*	
Unincorporated Areas of La Paz County	La Paz County Planning and Zoning Department, 1112 Joshua Avenue, Suite 202, Parker, AZ 85344.
Clay County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/florida/clay/*	
City of Green Cove Springs	City Hall, 321 Walnut Street, Green Cove Springs, FL 32043.

Community	Community map repository address
City of Keystone Heights	City Hall, 555 South Lawrence Boulevard, Keystone Heights, FL 32656.
Town of Orange Park	Town Hall, Economic and Community Development Department, 2042 Park Avenue, Orange Park, FL 32073.
Town of Penney Farms	Town Hall, 4100 Clark Avenue, Penney Farms, FL 32079.
Unincorporated Areas of Clay County	Clay County Public Works Department, 5 Esplande Avenue, Green Cove Springs, FL 32043.
Carroll County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6401.htm*	
City of Delphi	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Town of Burlington	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Town of Camden	Town Office, 153 West Main Street, Camden, IN 46917.
Town of Flora	Town Hall, 27 West Main Street, Flora, IN 46929.
Unincorporated Areas of Carroll County	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Hancock County, Indiana, and Incorporated Area	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7339.htm*	
Town of Cumberland	Municipal Building, 11501 East Washington Street, Cumberland, IN 46229.
Town of Fortville	Municipal Building, 714 East Broadway, Fortville, IN 46040.
Unincorporated Areas of Hancock County	Hancock County Annex, 111 South American Legion Place, Greenfield, IN 46140.
Jasper County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6602.htm*	
City of Rensselaer	City Hall, Building Department, 124 South Van Rensselaer Street, Rensselaer, IN 47978.
Town of DeMotte	Town Hall, 112 Carnation Street SE., DeMotte, IN 46310.
Town of Remington	Town Hall, 24 South Indiana Street, Remington, IN 47977.
Town of Wheatfield	Town Hall, 170 South Grace Street, Wheatfield, IN 46392.
Unincorporated Areas of Jasper County	Jasper County Planning and Development, Jasper County Courthouse, 115 West Washington Street, Suite 109, Rensselaer, IN 47978.
Brazos County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=270&sid=5*	
City of Bryan	City Hall, 300 South Texas Avenue, Bryan, TX 77803.
City of College Station	City Hall, 1101 Texas Avenue, College Station, TX 77840.
Unincorporated Areas of Brazos County	Brazos County Road and Bridge Department, 2617 Highway 21 West, Bryan, TX 77803.
Dallas County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=306&sid=5*	
City of Dallas	Department of Public Works, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.
City of Grand Prairie	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.
Sheridan County, Wyoming, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/wyoming/sheridan-3/*	
Town of Dayton	Public Works Office, 608 Broadway, Dayton, WY 82836.
Town of Ranchester	145 Coffeen Street, Ranchester, WY 82839.

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

Dated: November 28, 2012.

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–30262 Filed 12–17–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0017]

Agency Information Collection Activities: Application for Advance Permission To Enter as Nonimmigrant, Form I–192; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 19, 2013.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0017 in the subject box, the agency name and Docket ID USCIS–2008–0009. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2008–0009;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;* or

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant [Pursuant to Section 212(d)(3)(A(ii) of the INA].

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–192; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,448 responses at 0.5 hours (30 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,224 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: December 13, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–30474 Filed 12–17–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0027]

Agency Information Collection Activities: Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status, Form I–566; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the

categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 19, 2013.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0027 in the subject box, the agency name and Docket ID USCIS–2007–0041. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.Regulations.gov* under e-Docket ID number USCIS–2007–0041;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; and/or

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and/or

(3) Enhance the quality, utility, and clarity of the information to be collected; and/or

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by U.S. Citizenship and Immigration Services, and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 with an estimated hour burden per response of .25 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,450.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: December 12, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–30412 Filed 12–17–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–92]

OneCPD Technical Assistance and Capacity Building Needs Assessment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The OneCPD Needs Assessment will enhance a grantee's awareness of their functional capacity to effectively and efficiently administer and manage programs funded by CPD and enable HUD and the TA provider to better understand the scope of assistance needed by each grantee and to target appropriate TA resources to grantees. It will also enable HUD to identify trends in TA needs across grantees and assist in prioritizing the development of tools, products and group learning activities to benefit CPD grantees and subrecipients. Members of the affected public: Grantees and subrecipient organizations receiving funding to operate and manage programs administered by the Office of Community Planning and Development (CPD).

DATES: *Comments Due Date:* January 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at

Colette.Pollard@hud.gov. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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.

This notice also lists the following information:

Title of Proposed: OneCPD Technical Assistance and Capacity Building Needs Assessment.

OMB Approval Number: 2506–New.

Form Numbers: None.

Description of the need for the information and proposed use:

The OneCPD Needs Assessment will enhance a grantee's awareness of their functional capacity to effectively and efficiently administer and manage programs funded by CPD and enable HUD and the TA provider to better understand the scope of assistance needed by each grantee and to target appropriate TA resources to grantees. It will also enable HUD to identify trends in TA needs across grantees and assist in prioritizing the development of tools, products and group learning activities to benefit CPD grantees and subrecipients. Members of the affected public: Grantees and subrecipient organizations receiving funding to operate and manage programs administered by the Office of Community Planning and Development (CPD).

Development (CPD). *Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 180 respondents × 176.4 average hours per response = 31,752 hours annually.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–30475 Filed 12–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–91]

Public Housing Operating Budget, Supporting and Related Forms

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The operating budget and related form are submitted by PHAs for the low-income housing program. The operating budget provides a summary of proposed budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The related form provides a record of PHA Board approval of how the amounts shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to ensure that sound management practices will be followed in the operation of the development. A small number of PHAs (200) are still required to submit their operating budget packages to HUD, namely those that are troubled, those that are recently out of troubled status or at risk of becoming troubled, or those that are at risk of fiscal insolvency. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

DATES: *Comments Due Date:* January 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0026) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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.

This notice also lists the following information:

Title of Proposed: Public Housing Operating Budget, Supporting and Related Forms.

OMB Approval Number: 2577–0026.

Form Numbers: HUD–52574.

Description of the need for the information and proposed use: The operating budget and related form are submitted by PHAs for the low-income housing program. The operating budget provides a summary of proposed budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The

related form provides a record of PHA Board approval of how the amounts shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to ensure that sound management practices will be followed in the operation of the development. A small number of PHAs (200) are still required to submit their operating budget packages to HUD, namely those that are troubled, those that are recently out of troubled status or at risk of becoming troubled, or those that are at risk of fiscal insolvency. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	3,141	1		7.651	24,034

Total estimated burden hours: 24,034.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–30479 Filed 12–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–EA–2012–N288; FF09D00000–FXGO1664091HCC0–134]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Meeting:* Tuesday February 5, 2013, from 8:30 a.m. to 4:30 p.m., and Wednesday February 6, 2013, from 8:30 a.m. to 4:30 p.m. (Eastern standard time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held in the Room 104A at the USDA Whitten Building, 12th Street and Jefferson Drive SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, by U.S. mail at 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; by telephone at (703) 358–2639; by fax at (703) 358–2548; or by email at *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;
2. Encourage partnership among the public, the sporting conservation organizations, the states, Native American tribes, and the Federal Government;
3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Wildlife Restoration Program;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to consider:

1. The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Wildlife health and wildlife disease; and
3. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

PUBLIC INPUT

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	January 25, 2013.
Submit written information or questions before the meeting for the council to consider during the meeting	January 25, 2013.
Give an oral presentation during the meeting	January 25, 2013.

Attendance

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Stephen Guertin,

Deputy Director.

[FR Doc. 2012–30384 Filed 12–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO3100 L51010000 ER0000 LVRWF12F8740.241A; 13–08807; MO# 450004530; TAS: 14X5017]

Notice of Availability of the Final Environmental Impact Statement for the Searchlight Wind Energy Project, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Searchlight Wind Energy Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the Environmental Protection Agency publishes its notice in the **Federal Register**.

ADDRESSES: Printed or electronic copies of the Final EIS are available on request from the BLM Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, phone 702–515–5173, or email to: *BLM_NV_SNDO_SearchlightWindEnergyEIS@blm.gov*. Interested persons may also review the Final EIS on the Internet at *http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/searchlight_wind_energy.html*. Copies of the Final EIS are available for public inspection at the BLM Southern Nevada District Office.

FOR FURTHER INFORMATION CONTACT: Gregory Helseth, Renewable Energy Project Manager, telephone 702–515–5173; address 4701 N. Torrey Pines Drive, Las Vegas, NV 89130; email *ghelseth@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Searchlight Wind Energy, LLC (SWE), a wholly-owned subsidiary of Duke Energy, applied to the BLM for a right-of-way (ROW) grant on public lands to develop a 200-megawatt (MW) wind energy facility. The ROW application area encompasses approximately 18,790 acres of BLM-administered public lands adjacent to Searchlight, Nevada, about 60 miles southeast of Las Vegas, in Clark County, Nevada. In connection with the SWE proposal, the Western Area Power Administration (Western) has submitted a ROW application to the BLM for construction and operation of an electrical interconnection facility/switchyard adjacent to the existing Davis-Mead transmission line. The Western application is also analyzed as part of the EIS. The proposed project is in conformance with the 1998 Las Vegas Resource Management Plan and Record of Decision.

The proposed wind turbines located on the SWE project would be up to 262-feet tall from the ground to the hub with blades extending an additional 153 feet, for a total turbine height of up to 415 feet. In addition to the wind turbines, the proposed project would require the construction of pad mounted transformers at the base of each turbine, underground collection lines, new access roads, two electrical substations, an overhead transmission line

connecting the two substations, an electrical interconnection facility/switchyard owned and operated by Western, an operations and maintenance building, and temporary and long-term laydown areas. Three meteorological towers would remain on the site to measure the wind speed and direction across the site over the life of the project.

The applicant (SWE) has requested to interconnect its proposed project to the electrical transmission grid via Western's Davis-Mead 230-kilovolt transmission line. Western, a Federal agency, is participating in the EIS process as a cooperating agency and may use the EIS to support its decision to approve or deny the SWE interconnection request.

Three alternatives are analyzed in the Final EIS—a 96 wind turbine layout, an 87 wind turbine layout, and a no-action alternative. The 87 wind turbine alternative is the BLM's preferred alternative. In identifying the preferred alternative, the BLM considered all information that has been received consistent with its environmental review and ROW permitting responsibilities. The Final EIS describes and analyzes the project's site-specific impacts on air quality, biological resources, cultural resources, environmental justice, geological resources, health and human safety, hazardous materials, lands and realty, noise, noxious weeds, paleontological resources, recreation, socioeconomic resources, transportation, visual resources and water resources. On January 20, 2012, the BLM published the Notice of Availability for the Draft EIS for this proposal in the **Federal Register** (77 FR 2999). The BLM accepted public comments at three public meetings in Searchlight, Laughlin, and Boulder City, Nevada and by email, mail, and fax during a 90-day comment period. Seventy nine comment submissions were received from individuals, organizations, and agencies. Comments primarily pertained to the NEPA process, project alternatives, project description, project need, air quality, biological resources (desert tortoise, birds, and plants), cultural resources, cumulative impacts, geology, health and human safety, land use, noise, mitigation measures, recreation, transportation, socioeconomics, visual resources, and water. The BLM also received statements in support of, or opposition to, the proposal.

Comments on the Draft EIS received from the public and internal BLM review were considered and addressed as appropriate in the Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change the proposed alternatives.

Vanessa Hice,

Assistant Field Manager, Division of Lands.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

[FR Doc. 2012–30537 Filed 12–14–12; 4:15 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11793; 2200–1100–665]

Notice of Intent To Repatriate Cultural Items: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The New York State Museum, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of sacred objects and objects of cultural patrimony and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the New York State Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the New York State Museum at the address below by January 17, 2013.

ADDRESSES: Lisa Anderson, NAGPRA Coordinator, New York State Museum, 3122 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the New York State Museum that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The cultural items are eight wampum belts. Seven of the wampum belts are on loan to the Seneca National Museum in Salamanca, NY, and one wampum belt is housed at the New York State Museum in Albany, NY.

The Five Nations Alliance Belt, also known as the Mary Jamison Belt, is composed of seven rows of dark purple beads with three open white diamonds. The belt measures 16¼ inches long and two inches wide. It is a portion of an original belt that measured two feet long and contained five diamonds representing the Five Iroquois Nations. The New York State Museum acquired the wampum belt in 1899 from Harriet Maxwell Converse (E–37424). Museum records indicate that Mrs. Converse purchased the Five Nations Alliance Belt from descendants of Mary Jemison on the Cattaraugus Reservation in New York. Mary Jemison was adopted by the Seneca as a child and chose to live her life as a Seneca. At the time of collection, the Five Nations Alliance Belt was described as a ransom belt but Mrs. Converse later reported it as a council belt. Consultation with the Tonawanda Band of Seneca identifies the Five Nations Alliance Belt as both a sacred object and an object of cultural patrimony as it relates to the civil functions of a Council.

The Cornplanter Condolence Belt, also known as the Red Jacket Belt, is composed of seven rows of purple beads with five areas of loss that originally may have contained white beads. It measures 35½ inches long and 1¾ inches wide. The New York State Museum acquired the wampum belt in 1899 from Harriet Maxwell Converse (E–37426). In correspondence from the Cornplanter Reservation in Pennsylvania, dated June 26, 1899, Mrs. Converse listed the Cornplanter Condolence Belt with three other belts that she had recently purchased. At the time of collection, Mrs. Converse reported that the wampum belt was associated with the Seneca chief, Red Jacket, but later reported it as condolence wampum that had belonged to the Seneca chief Cornplanter. Consultation with the Tonawanda Band of Seneca identifies the Cornplanter Condolence Belt as both a sacred object and an object of cultural patrimony as it relates to the condolence of a leader and installation of a successor.

The Nomination Belt is composed of nine rows of white beads with six purple figures joined by extended arms and a purple square that may represent a council fire between the two central

figures. It measures 24 inches long and three inches wide. The New York State Museum acquired the wampum belt in the late nineteenth century from Harriet Maxwell Converse (E–37427). Museum records indicate that Mrs. Converse obtained the belt in either 1882 or 1885 from Martha Hemlock, a Seneca elder on the Cattaraugus Reservation in New York. At the time of collection, the wampum belt was recorded as a women's nominating belt used to announce the naming of a new chief. Consultation with the Tonawanda Band of Seneca identifies the belt as both a sacred object and an object of cultural patrimony as it relates to the civil functions of a Council.

The Huron Alliance Belt is composed of ten rows of white beads with three diagonal rows of three open purple squares. It measures 31½ inches long and 3½ inches wide. The New York State Museum acquired the wampum belt in the late nineteenth century from Harriet Maxwell Converse (E–37430). Museum records indicate that Mrs. Converse purchased the wampum belt in 1885 from Chief John Buck on the Grand River Reservation in Ontario, Canada. At the time of collection, Mrs. Converse reported the belt was exchanged during the wars between the Huron and Seneca Nations. According to Chief Buck it originally belonged to the Seneca people of New York prior to the American Revolution. Rev. William M. Beauchamp questioned the reported age and attribution of the belt writing, ''The belt, if Huron, may be assigned to their later days.'' Consultation with the Tonawanda Band of Seneca identifies the Huron Alliance Belt as both a sacred object and an object of cultural patrimony as it relates to the civil functions of a Council.

The Seneca Condolence Belt is composed of seven rows of purple beads with two white diamonds and a horizontal v-shape near one end. It measures 40 inches long and 2⅛ inches wide. The New York State Museum acquired the wampum belt in 1897 from Harriet Maxwell Converse (E–37431). Museum records indicate that Mrs. Converse obtained the Seneca Condolence Belt through ''Salamanca Seneca Indians'' in New York. At the time of collection, Mrs. Converse reported that the belt was a condolence belt interpreted to her ''by the late Dan'l Two-Guns, an aged Seneca who had memorized it during his childhood.'' The wampum belt was reportedly last owned by the Seneca chief Governor Blacksnake of the Allegany Reservation in New York. Consultation with the Tonawanda Band of Seneca identifies the Seneca Condolence Belt as both a sacred object and an object of cultural patrimony as it relates to the condolence of a leader and installation of a successor.

The Gyantwaka Treaty Belt is a fragment of a belt composed of ten rows of purple beads and measures 7¼ inches long and 2¾ inches wide. The New York State Museum acquired the wampum belt in 1899 from Harriet Maxwell Converse (E–37432). Museum records indicate that Mrs. Converse obtained the wampum belt on the Cornplanter Reservation in Pennsylvania. The belt is said to be a portion of the original which was divided among Cornplanter's heirs at the time of his death. At the time of collection, it was reported that the Gyantwaka Treaty Belt was a record of the treaty affirming the Cornplanter Reservation. A copy of the signed treaty was originally attached to the wampum belt. Consultation with the Tonawanda Band of Seneca identifies the Gyantwaka Treaty Belt as both a sacred object and an object of cultural patrimony.

The Ely S. Parker Belt, also known as the Five Fires Belt, or Death Belt, is composed of seven rows of purple beads with five white open hexagons, representing the Five Iroquois Nations, and three short white stripes at each end. It measures 37½ inches long and two inches wide and has traces of red pigment on some of the beads. The New York State Museum acquired the wampum belt in 1899 from Harriet Maxwell Converse who purchased it from the widow of her long-time friend General Ely S. Parker (E–37434). At the time of collection, Mrs. Converse reported the Ely S. Parker belt was a war belt and a national belt of the Seneca people. The belt was handed down to Ely S. Parker with the title Donehogawah or Keeper of the Western Door. Consultation with the Tonawanda Band of Seneca identifies the Ely S. Parker Belt as both a sacred object and an object of cultural patrimony as it relates to the civil functions of a Council.

The Blacksnake Mourning Belt is composed of nine rows of purple beads and measures 6¼ inches long. The New York State Museum acquired the wampum belt in 1933 from Willard A. Gibson (E–37962). Museum records indicate that Mr. Gibson purchased the Blacksnake Mourning Belt with the assistance of his Seneca friend, Louis Plummer, from an elder on the Allegany Reservation in New York. At the time of collection, Mr. Plummer reported that the wampum belt was a mourning or condolence belt formerly in the possession of the Seneca chief Governor Blacksnake. Consultation with the Tonawanda Band of Seneca identifies the Blacksnake Mourning Belt as both a sacred object and an object of cultural patrimony as it relates to the condolence of a leader and installation of a successor.

Determinations Made by the New York State Museum

Officials of the New York State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the eight cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the eight cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony and the Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York).

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects and objects of cultural patrimony should contact Lisa Anderson, NAGPRA Coordinator, New York State Museum, 3122 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020 before January 17, 2013. Repatriation of the sacred objects and objects of cultural patrimony to the Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York) may proceed after that date if no additional claimants come forward.

The New York State Museum is responsible for notifying the Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York) that this notice has been published.

Dated: November 26, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–30455 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11741; 2200–1100–665]

Notice of Inventory Completion: Department of Anthropology, University of Massachusetts, Amherst, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Massachusetts Amherst, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Massachusetts Amherst, Department of Anthropology. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Massachusetts Amherst, Department of Anthropology at the address below by January 17, 2013.

ADDRESSES: Robert Paynter, Repatriation Committee Chair, telephone (413) 545–2221, or Rae Gould, Repatriation Coordinator, telephone (413) 545–2702, University of Massachusetts, Department of Anthropology, 201 Machmer Hall, 240 Hicks Way, Amherst, MA 01003.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Massachusetts Amherst, Department of Anthropology. The human remains were removed from Florida, most likely Brevard or Indian River counties.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and available documentation was made by the University of Massachusetts Amherst, Department of Anthropology professional staff in consultation with representatives of the Caddo Nation of Oklahoma; Catawba Indian Nation (aka Catawba Tribe of South Carolina); Cherokee Nation; Chickasaw Nation; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Modoc Tribe of Oklahoma; Quapaw Tribe of Indians; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Osage Nation (previously listed as the Osage Tribe); The Seminole Nation of Oklahoma; United Keetoowah Band of Cherokee Indians in Oklahoma; and the Wyandotte Nation (hereafter referred to as ''The Tribes''). Representatives of the University of Massachusetts Amherst, Department of Anthropology also contacted and attempted to consult with the Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); and the Tunica-Biloxi Indian Tribe.

History and Description of the Remains

In about 1925, human remains representing, at minimum, 64 individuals were excavated from either the area of Melbourne, in Brevard County, FL, or the area of Vero Beach, in Indian River County, FL, by F.B. Loomis, Professor of Geology at Amherst College. In the early 1980s, these remains were transferred from Amherst College to the University of Massachusetts Amherst, Department of Anthropology for permanent curation. Two additional individuals collected at the same time remained at Amherst College and are currently curated at the Beneski Museum of Natural History, Amherst College (formerly the Pratt Museum). These remains are the subject of a separate Notice of Inventory Completion.

Most crania are marked with a red number that corresponds to an entry in a ledger entitled ''Catalogue of Skeletal Material, Gilbert Museum of Indian Relics.'' Entries in that ledger read: ''Seminole from Melbourne Florida.'' Although museum records regarding the human remains are fragmentary, provenience information associated with the remains indicates the following proveniences: 56 individuals from the ''Grant Burial Heap'' or simply from ''Grant, Fla.''; five individuals from ''Grant Burial Heap Linx, Fla.''; one individual from ''Ballard Mound''; and two individuals from ''Micco, Fla.'' No known individuals were identified. No associated funerary objects are present with the human remains at the University of Massachusetts Amherst.

Many of the remains have black numbers that resemble the numbering system used by F.B. Loomis in the field. Loomis was engaged in excavating in Florida in 1923 and 1925, at least. No field notes from Loomis's excavations remain, but newspaper reports at the time indicate Loomis collected from ''burial mounds'' (Melbourne Florida Times, December 5, 1923). The Boston Globe on November 1, 1925, reported Loomis and his coworkers excavated ''in Melbourne and on the east coast of Florida'' for five weeks and ''at Vero Beach'' for two, obtaining ''50 skulls and about one dozen skeletons.'' This article also associates these mounds with Native Americans from southern rather than western Florida, based on the absence of pottery or tools in the mounds. No doubt, this conclusion derived from an interview with Loomis himself. Similarly, the Globe reported, ''[t]he skeletons lay in formation around the mound, and when one layer was completed, earth was piled on and another layer begun. In this way the growth of the mound was effected.''

On March 17, 1869, human remains representing, at minimum, one individual were removed from the area of ''Haul Over Canal,'' in Brevard County, FL, by unknown collectors. In or around 1939, the remains were donated to Amherst College, and, in the early 1980s, the remains were transferred to the University of Massachusetts Amherst, Department of Anthropology. The remains bear the collection number 20137 in black ink, which corresponds to an entry in the ''Catalogue of the Gilbert Museum of Indian Relics in Amherst College, Volume V'' (presently maintained in the Amherst College Archives). The entry states the remains were collected ''* * * from a mound near 'Haul Over Canal' between Indian River and Mosquito Lagoon, East Florida March 17th, 1869.'' No known individuals were identified. No associated funerary objects are present with the human remains at the University of Massachusetts Amherst.

Multiple lines of evidence—guided by tribal consultations—including geographic, oral tradition, archaeological, linguistic, historical, and

aboriginal land claims, demonstrate a shared group identity between these human remains and the modern-day tribes of the Muscogee (Creek) Nation, Oklahoma; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Determinations Made by the University of Massachusetts Amherst, Department of Anthropology

Officials of the University of Massachusetts Amherst, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 65 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Muscogee (Creek) Nation, Oklahoma; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Robert Paynter, Repatriation Committee Chair, telephone (413) 545–2221, or Rae Gould, Repatriation Coordinator, telephone (413) 545–2702, University of Massachusetts, Department of Anthropology, 201 Machmer Hall, 240 Hicks Way, Amherst, MA 01003, before January 17, 2013. Repatriation of the human remains to the Muscogee (Creek) Nation, Oklahoma; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The University of Massachusetts Amherst, Department of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: November 20, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–30448 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11637; 2200–1100–665]

Notice of Inventory Completion: Southern Oregon Historical Society, Medford, OR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Southern Oregon Historical Society has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on August 24, 2012. This notice corrects the list of tribes consulted and the tribes eligible to receive disposition of the human remains and associated funerary objects listed in the earlier notice. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Southern Oregon Historical Society. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Southern Oregon Historical Society at the address below by January 17, 2013.

ADDRESSES: Tina Reuwsaat, Southern Oregon Historical Society, 106 N. Central Ave., Medford, OR 97501, telephone (541) 858–1724 ext. 1001.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects in the possession of the Southern Oregon Historical Society, Medford, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the list of tribes consulted and the tribes eligible to receive disposition of the human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (77 FR 51565–51566, August 24, 2012). Following publication, an additional tribe came forward requesting to be added to the notice.

Correction

In the **Federal Register** (77 FR 51565–51566, August 24, 2012), paragraph six is corrected by substituting the following paragraph:

A detailed assessment of the human remains was made by the Southern Oregon Historical Society professional staff in consultation with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon; the Cow Creek Band of Umpqua Indians of Oregon; and the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation). The following tribes were contacted without response: Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon; Coquille Tribe of Oregon; and the Quartz Valley Indian Community of the Quartz Valley Reservation of California.

In the **Federal Register** (77 FR 51565–51566, August 24, 2012), paragraph eight, bullets three and six are corrected by replacing ''the Confederated Tribes of the Grand Ronde Community of Oregon'' with ''the Confederate Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation).''

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Tina Reuwsaat at the Southern Oregon Historical Society, 106 N. Central Avenue, Medford, OR 97520, telephone (541) 858–1724 ext. 1001, before January 17, 2013. Disposition of the human remains and associated funerary objects to the Grand Ronde Community of Oregon and the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) may proceed after that date if no additional requestors come forward.

The Southern Oregon Historical Society is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon; the Cow Creek Band of Umpqua Indians of Oregon; and the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) that this notice has been published.

Dated: October 29, 2012.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–30464 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11728; 2200–1100–665]

Notice of Inventory Completion: U.S. Department of Defense, Army, Fort Sill Museum, Fort Sill, OK, and Museum of the Great Plains, Lawton, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Defense, Army, Fort Sill Museum, and the Museum of the Great Plains have completed an inventory of human remains, in consultation with the appropriate Indian tribes, and have determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representative of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Fort Sill Museum. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Fort Sill Museum at the address below by January 17, 2013.

ADDRESSES: Scott A. Neel, Ph.D., Director, Fort Sill National Historic Landmark and Museum, U.S. Army Fires Center of Excellence, Fort Sill, OK 73503, telephone (580) 442–6570.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Fort Sill Museum and in the possession of the Museum of the Great Plains. The human remains were removed from Fort Sill, Comanche County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fort Sill Museum and the Museum of the Great Plains professional staffs in consultation with representatives the Apache Tribe of Oklahoma; Caddo Nation of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chickasaw Nation; Comanche Nation, Oklahoma; Delaware Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

History and Description of the Remains

In March 1977, human remains representing, at minimum, two individuals were removed from site 34CM323 in Comanche County, OK. Staff of the Museum of the Great Plains found the human remains during a reconnaissance survey on Federal property in Fort Sill. The burials were exposed by natural elements on the bank of Crater Creek, were excavated by staff of the Museum of the Great Plains, and were sent to the Osteology Laboratory of the Institute of Applied Sciences at North Texas State University. The burials remained at North Texas State University until January 27, 2012, when, at the request of the Fort Sill Museum, they were returned to the Museum of the Great Plains. The Museum of the Great Plains physically inventoried the remains for NAGPRA purposes and stabilized the remains according to 36 CFR 79 standards. No known individuals were identified. No associated funerary objects are present.

Barbara H. Butler, Ph.D., of North Texas State University, analyzed the remains in 1977, and concluded that the remains from this site represented two individuals. Human remains from Burial 2, with only a few small occipital pieces, represented one adult. Human remains from Burial 1 consisted of fragmentary remains of a nine-year-old child, based upon dental analysis. The dental remains from Burial 1 were moderately shovel-shaped, and Butler concluded the remains were probably Native American. The human remains were shallowly buried in alluvium deposits, and no pit profile could be detected during excavations. The body positions suggested that the burials were placed in a pit excavated into the alluvium deposits, and are therefore younger than those deposits. A 1978 geologic inspection of the site estimates the age of the alluvium deposits as ''late Holocene to early historic.'' The lack of soil development, as well as the preservation of bones in acidic soils, suggest but do not confirm a late prehistoric to historic age for the burials.

Prehistorically and historically, Native Americans have inhabited the area near Fort Sill in southwest Oklahoma, based on evidence of archaeology, geology, and historical accounts. The people of the Wichita, Comanche, Kiowa, Apache, Cheyenne, and Arapaho tribes are well documented in the area, and their presence was the reason Fort Sill was established.

Determinations Made by the U.S. Department of Defense, Army, Fort Sill Museum and the Museum of the Great Plains

Officials of the Fort Sill Museum and the Museum of the Great Plains have determined that:

- Based on physical characteristics of the dental analysis, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the Apache Tribe of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chickasaw Nation; Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, are aboriginal to the area from which the human remains were removed.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Apache Tribe of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chickasaw Nation; Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Scott A. Neel, Ph.D., Director, Fort Sill National Historic Landmark and Museum, U.S. Army Fires Center of Excellence, Fort Sill, OK 73503, telephone (580) 442–

6570. Disposition of the human remains to the Apache Tribe of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chickasaw Nation; Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, may proceed after that date if no additional requestors come forward.

The Fort Sill Museum is responsible for notifying the Apache Tribe of Oklahoma; Caddo Nation of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chickasaw Nation; Comanche Nation, Oklahoma; Delaware Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma, that this notice has been published.

Dated: November 13, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–30438 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11730; 2200–1100–665]

Notice of Inventory Completion: The Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Museum of Anthropology at Washington State University. Repatriation of the human remains associated funerary items to the tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Museum of Anthropology at Washington State University at the address below by January 17, 2013.

ADDRESSES: Mary Collins, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 335–4314.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Anthropology at Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Stevens County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains associate funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation.

History and Description of the Remains

In 1979, human remains representing, at minimum, four individuals were removed from site 45CH235, the ''Olds Station Site'' located in Stevens County, WA. The remains were disturbed by the excavation of a water line for the city of Wenatchee. The remains came from a single excavator bucket load of sediment. The remains were thought to have come from very near the ground surface and were thought to be less than 100 years old and possibly to represent a single mass interment. The 11 associated funerary objects include one hammerstone, two edge ground cobbles, one net sinker, one stone core, one wooden coffin fragment, one biface, three flakes, and one maul.

The remains were identified by archaeologists from Washington State University who were monitoring the water line excavation work (Galm 1980). At some unknown time after 1980, the remains were transferred to the University of Idaho. In 2000, the remains were returned to the Museum of Anthropology at Washington State University.

The site is within the traditional territory of Wenatchee Band of the Confederated Tribes of the Colville Reservation. Historical, archaeological, ethnographic, and linguistic information links this group of people to the area, represented by the present-day Confederated Tribes of the Colville Reservation. Archaeological evidence recorded at the site suggests the burials may be as recent as the late 19th century.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 11 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, Museum of Anthropology at Washington State University Pullman, WA 99164–4910, telephone (509) 335–4314, before January 17, 2013. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation may proceed after that date if no additional claimants come forward.

The Museum of Anthropology at Washington State University is responsible for notifying the Confederated Tribes of the Colville Reservation that this notice has been published.

Dated: November 13, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–30460 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11742; 2200–1100–665]

Notice of Inventory Completion: Beneski Museum of Natural History, Amherst College, Amherst, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Beneski Museum of Natural History, Amherst College (formerly the Pratt Museum of Natural History) has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Beneski Museum of Natural History, Amherst College. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Beneski Museum of Natural History, Amherst College at the address below by January 17, 2013.

ADDRESSES: Tekla A. Harms, NAGPRA Coordinator, Beneski Museum of Natural History, Amherst College, Amherst, MA 01002; telephone (413) 542–2233.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Beneski Museum of Natural History, Amherst College. The human remains were removed from Florida, most likely Brevard or Indian River counties.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the NAGPRA Coordinator and museum staff of the Beneski Museum of Natural History, Amherst College, and their agents, in consultation with representatives of the Caddo Nation of Oklahoma; Catawba Indian Nation (aka Catawba Tribe of South Carolina); Cherokee Nation; Chickasaw Nation; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Modoc Tribe of Oklahoma; Quapaw Tribe of Indians; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Osage Nation (previously listed as the Osage Tribe); The Seminole Nation of Oklahoma; United Keetoowah Band of Cherokee Indians in Oklahoma; and the Wyandotte Nation (hereafter referred to as ''The Tribes''). Representatives of the Beneski Museum also contacted and attempted to consult with the Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); and the Tunica-Biloxi Indian Tribe.

History and Description of the Remains

In about 1925, human remains representing, at minimum, two individuals were removed from either the area of Melbourne, in Brevard County, FL, or the area of Vero Beach, in Indian River County, FL, by F.B. Loomis, Professor of Geology at Amherst College. In the early 1980s, other remains collected at the same time were transferred from Amherst College to the University of Massachusetts Amherst, Department of Anthropology for permanent curation. These remains are the subject of a separate Notice of Inventory Completion.

Museum records regarding these human remains are fragmentary and only indirectly constrain their provenience. The skull of one individual is marked with a number that corresponds to an entry in the ledger entitled ''Catalogue of Skeletal Material, Gilbert Museum of Indian Relics.'' The ''Gilbert Museum'' is an old, informal name for the Gilbert Collection, which is presently housed in the Beneski Museum of Natural History, Amherst College. In its entirety, that entry reads: ''Seminole from Melbourne Florida. Complete.'' No known individuals have been identified. No associated funerary objects are present.

Both individuals are marked with numbers that resemble the numbering system used by F.B. Loomis in the field. Loomis was engaged in excavating in Florida in 1923 and 1925, at least. No field notes from Loomis's excavations remain, but newspaper reports at the time indicate Loomis collected from ''burial mounds'' (Melbourne Florida Times, December 5, 1923). The Boston Globe on November 1, 1925, reported Loomis and his coworkers excavated ''in Melbourne and on the east coast of Florida'' for five weeks and ''at Vero Beach'' for two, obtaining ''50 skulls and about one dozen skeletons.'' This article also associates these mounds with Native Americans from southern rather than western Florida, based on the absence of pottery or tools in the mounds. No doubt, this conclusion derived from an interview with Loomis himself. Similarly, the Globe reported, ''[t]he skeletons lay in formation around the mound, and when one layer was completed, earth was piled on and another layer begun. In this way the growth of the mound was effected.''

Multiple lines of evidence—guided by tribal consultations—including geographic, oral tradition, archaeological, linguistic, historical, and aboriginal land claims, demonstrate a shared group identity between these human remains and the modern-day tribes of the Muscogee (Creek) Nation, Oklahoma; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Determinations Made by the Beneski Museum of Natural History, Amherst College

Officials of the Beneski Museum of Natural History, Amherst College have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Muscogee (Creek) Nation, Oklahoma; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact the NAGPRA Coordinator, Beneski Museum of Natural History, Amherst College, Amherst, MA 01002; telephone (413) 542–2233, before January 17, 2013. Repatriation of the human remains to the Muscogee (Creek) Nation, Oklahoma; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Beneski Museum of Natural History, Amherst College is responsible for notifying The Tribes that this notice has been published.

Dated: November 20, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–30451 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11463; 2200–1100–665]

Notice of Inventory Completion: University of Montana, Missoula, MT; Museum of the Rockies at Montana State University, Bozeman, MT; and University of Wyoming, Department of Anthropology, Laramie, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Montana, the Museum of the Rockies at Montana State University, and the University of Wyoming, Department of Anthropology, have completed an inventory of human remains, in consultation with the appropriate Indian tribe, and have determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Montana, which is acting on its own behalf and for the Museum of the Rockies and the University of Wyoming. Disposition of the human remains to the Indian tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Montana at the address below by January 17, 2013.

ADDRESSES: Dr. Sally Thompson, Department of Anthropology, University of Montana, Missoula, MT 59812, telephone (406) 243–5525.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Montana, the Museum of the Rockies at Montana State University, and the University of Wyoming, Department of Anthropology. The human remains were removed from Yellowstone County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museums, institutions, or Federal agencies that have control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Montana (Campbell & McKeown 2010), the Museum of the Rockies, and the University of Wyoming professional staffs in consultation with representatives of the Crow Tribe of Montana.

History and Description of the Remains

Between 1937 and 1941, human remains representing, at minimum, 18 individuals were removed from a complex of sites known as the Pictograph Cave and its Terrace area (24YL1) and the Ghost Cave (24YL2), in Yellowstone County, MT, through an excavation project by the Works Project Administration. Nine burials were reported to have been excavated from the Pictograph Cave, while only five human bones and one tooth were reported from the Ghost Cave (Snodgrasse 1958). These remains from an excavated context are attributed to the Late Prehistoric occupation of the caves, dating between A.D. 500 and 1750 (Mulloy 1958 and Snodgrasse 1958).

The University of Wyoming, Department of Anthropology, acquired human remains from the Pictograph Cave representing, at minimum, three individuals, all sub-adults, sometime in the late 1940s. In 1991, the Museum of the Rockies acquired human teeth from the Pictograph Cave, its Terrace area, and the Ghost Cave representing, at minimum, four individuals, as part of a large donation of unrelated material. The University of Montana acquired human remains representing, at minimum, 11 individuals at an unknown date from the Pictograph Cave, its Terrace area, and the Ghost Cave. Some of the individuals held by the different institutions may be duplicative, in which case the minimum number would be lower. The human remains in the possession of the University of Montana were found in the faunal collections from these locations, and include fifteen elements from the Pictograph Cave (a left distal femur epiphysis of a sub-adult, a right 4th premolar, two right metatarsals, a right 3rd cuneiform, a left clavicle, a cervical vertebra, two proximal phalanges, a right parietal fragment, a left mandibular canine, a right talus, a right calcaneus, a left calcaneus, and a right cuboid), two elements from the Terrace area (a partial femur and a partial os coxae), and a single element from the Ghost Cave (a fragmentary rib). No known individuals were identified. No associated funerary objects are present.

Determinations Made by the University of Montana, the Museum of the Rockies, and the University of Wyoming

Officials of the University of Montana, the Museum of the Rockies, and the University of Wyoming have determined that:

- Based on the date of the site, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of the Crow Tribe of Montana.
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human were removed is the aboriginal land of the Crow Tribe of Montana.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Crow Tribe of Montana.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Dr. Sally Thompson, Department of Anthropology, University of Montana, Missoula, MT 59812, telephone (406) 243–5525 before January 17, 2013. Disposition of the human remains to the Crow Tribe of Montana may proceed after that date if no additional requestors come forward.

The University of Montana is responsible for notifying the Crow Tribe that this notice has been published.

Dated: November 2, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–30463 Filed 12–17–12; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11848; 2200–1100–665]

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a telephonic meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). This meeting will be open to the public. The agenda for the meeting will be limited to finalization of the Review Committee Report to Congress for 2012, the appointment of the subcommittee to draft the Review Committee's Report to the Congress for 2013, and discussion of the scope of the Report.

DATES: The Review Committee will meet on January 10, 2013, from 1 p.m. to approximately 3 p.m. EST. The agenda and materials for this meeting will be posted on or before December 24, 2012.

ADDRESSES: Those who desire to attend the meeting should contact *NAGPRA@rap.midco.net,* between January 2 and 8, 2013, to be provided the telephone access number for the meeting.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a telephonic meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). This meeting will be open to the public. The agenda for the meeting will be limited to finalization of the Review Committee Report to Congress for 2012, the appointment of the subcommittee to draft the Review Committee's Report to the Congress for 2013, and discussion of the scope of the Report. The agenda and materials for this meeting will be posted on or before December 24, 2012, on the National NAGPRA Program Web site: *http://www.nps.gov/nagpra.* A transcript and minutes of the meeting will also appear on the National NAGPRA Program Web site after the meeting has occurred.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available on the National NAGPRA Program Web site. For the Review Committee's meeting procedures, click on ''Review Committee,'' then click on ''Procedures.'' Meeting minutes may be accessed by going to the Web site; then clicking on ''Review Committee;'' and then clicking on ''Meeting Minutes.'' Approximately fourteen weeks after each Review Committee meeting, the meeting transcript is posted for a limited time on the National NAGPRA Program Web site.

The Review Committee was established in Section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3006. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is carried out during the course of meetings that are open to the public.

Dated: December 4, 2012.

Sherry Hutt,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2012–30440 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–ACAD–11845: 1700–SZM]

Notice of February 4, 2013, Meeting for Acadia National Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets the date of February 4, 2013, meeting of the Acadia National Park Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Monday, February 4, 2013, at 1:00 p.m. (EASTERN).

LOCATION: The meeting will be held at Headquarters, Acadia National Park, Bar Harbor, Maine 04609.

Agenda

The February 4, 2013, Commission meeting will consist of the following:

1. Committee reports:
   —Land Conservation
   —Park Use
   —Science and Education
   —Historic
2. Old Business
3. Superintendent's Report
4. Chairman's Report
5. Public Comments

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Sheridan Steele, Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288–3338.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. 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: December 11, 2012.

Len Bobinchock,

Deputy Superintendent, Acadia National Park.

[FR Doc. 2012–30435 Filed 12–17–12; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11687; 2200–1100–665]

Native American Graves Protection and Repatriation Review Committee Findings Related to the Identity and Return of Cultural Items in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee: Findings.

This notice is published as part of the National Park Service's administrative responsibilities pursuant to the Native American Graves Protection and Repatriation Act (25 U.S.C. 3006(g)). The recommendations, findings and actions of the Review Committee associated with this dispute are advisory only and not binding on any person. These advisory findings and recommendations do not necessarily represent the views of the National Park Service or Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

SUMMARY: The Native American Graves Protection and Repatriation Review Committee (Review Committee) was established by Section 8 of the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3006), and is an advisory body governed by the Federal Advisory Committee Act (5 App. U.S.C. 1–16). At its November 17–19, 2010 public meeting in Washington, DC, and acting pursuant to its statutory responsibility to convene the parties to a dispute relating to the identity and return of cultural items, and to facilitate the resolution of such a dispute, the Review Committee heard a dispute between the Hoonah Indian Association, joined by the Huna Totem Corporation, and the University of Pennsylvania Museum of Archaeology and Anthropology. The issues before the Review Committee were (1) whether, in their request for the repatriation of 38 catalogued objects deriving from the Snail House and one catalogued object deriving from the Eagle's Nest House that are in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, the requestors proved that all the requested objects are both ''sacred objects'' and objects of ''cultural patrimony,'' as these terms are defined in NAGPRA; and (2) whether, in response to the request for the repatriation of the 39 catalogued objects, the University of Pennsylvania Museum of Archaeology and Anthropology presented evidence proving that the Museum has a ''right of possession'' to any of the objects, as this term is defined in the NAGPRA regulations. The Review Committee found that all of the requested objects are both sacred objects and objects of cultural patrimony, and that the University of Pennsylvania Museum of Archaeology and Anthropology does not have a right of possession to any of those cultural items. The Review Committee meeting transcript containing the dispute proceedings and Review Committee deliberation and findings is available from the National NAGPRA Program upon request (*NAGPRA_Info@nps.gov*).

SUPPLEMENTARY INFORMATION: Since 1924, thirty-eight cataloged objects deriving from the *Tá*x̲ *´ Hit,* or Snail House (Snail House), of the T'ak̲deintaan Clan of Tlingit Indians from Hoonah, Alaska have been in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology. The Snail House is also known as *Tsal*x̲*áan Hit,* or the Mt. Fairweather House. In addition, since 1918, a *Shakee.át,* or Marmot Frontlet (Frontlet) deriving from the Eagle's Nest House of the T'ak̲deintaan Clan of Tlingit Indians also has been in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology. Between 1995 and 2006, the Huna Totem Corporation and (since 2000) Hoonah Indian Association, an Alaska Native village, provided information to the University of Pennsylvania Museum of Archaeology and Anthropology that, taken together, constituted a joint request for the repatriation of the 39 cataloged objects in question. The request identified each of the objects in question as a ''sacred object'' and an object of ''cultural patrimony,'' as these terms are defined in NAGPRA (25 U.S.C. 3001(3)(C) and (D)). In its June 19, 2009 response to this request, the University of Pennsylvania Museum of Archaeology and Anthropology acknowledged that one of the objects is a sacred object and an object of cultural patrimony; six of the objects are sacred objects, but are not objects of cultural patrimony; and one of the objects is an object of cultural patrimony, but is not a sacred object. The University of Pennsylvania Museum of Archaeology and Anthropology also stated that, while it had a ''right of possession'' to these eight cultural items, as defined in the NAGPRA regulations (43 CFR 10.10(a)(2)), nonetheless, it would elect not to assert its right of possession. The June 19, 2009 response also stated that the other 31 cataloged objects ''do not meet the specific NAGPRA definitions for cultural patrimony or sacred objects'' and, additionally, asserted the University of Pennsylvania Museum of Archaeology and Anthropology's right of possession to those 31 objects.

Disputing the University of Pennsylvania Museum of Archaeology and Anthropology's determination that only one of the 39 catalogued objects was both a sacred object and an object of cultural patrimony, as well as the Museum's claim of right of possession to the 39 cataloged objects and assertion of that right with respect to 31 of the objects, the Hoonah Indian Association and the Huna Totem Corporation joined in asking the Review Committee to facilitate the resolution of the dispute between themselves and the University of Pennsylvania Museum of Archaeology and Anthropology. The Designated Federal Official for the Review Committee agreed to the request.

At its November 17–19, 2010 meeting, the Review Committee considered the dispute. The issues before the Review Committee were (1) whether, in their request for the repatriation of the 39 catalogued objects in question, the requestors proved by a preponderance of the evidence that all the objects are ''sacred objects'' and objects of ''cultural patrimony,'' as these terms are defined in NAGPRA; and (2) whether, in response to the request for repatriation, the University of Pennsylvania Museum of Archaeology and Anthropology presented evidence proving, by a preponderance of the evidence, that the Museum has a ''right of possession'' to the objects. As defined in the NAGPRA regulations, '' 'right of possession' means possession obtained with the voluntary consent of an individual or group that had authority of alienation.''

Findings of Fact: Six Review Committee members participated in the fact finding. One member was self-recused. By a vote of six to zero, the Review Committee found that all 39 of the requested cataloged objects are both sacred objects and objects of cultural patrimony, and that the University of Pennsylvania Museum of Archaeology and Anthropology does not have a right of possession to any of the requested cultural items.

Dated: November 7, 2012.

Mervin Wright, Jr.,

Acting Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2012–30443 Filed 12–17–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0026]

Agency Information Collection Activities; Existing Collection, Comments Requested; Federal Firearms Licensee (FFL) Enrollment/ National Instant Criminal Background Check System (NICS) E-Check Enrollment Form, Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities Under the NICS Form

ACTION: 30 Day notice.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 199, page 62534, on October 15, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 17, 2013. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), Section 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to the OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* Approval of an Existing Collection

(2) *Title of the Forms:* Federal Firearms Licensee (FFL) Enrollment/ National Instant Criminal Background Check System (NICS) E-Check Enrollment Form Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities under the National Instant Criminal Background Check System (NICS) Form.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:* Form Number: 1110–0026. Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any Federal Firearms Licensee (FFL) or State Point of Contact (POC) requesting access to conduct National Instant Criminal Background Check System (NICS) checks telephonically or by the Internet through the NICS E-Check.

Brief Abstract: The Brady Handgun Violence Prevention Act of 1993 required the United States Attorney General to establish a national instant criminal background check system that any FFL may contact, by telephone or by other electronic means for information to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate state or federal law. Information pertaining to licensees who may contact the NICS is being collected to manage and control access to the NICS and to the NICS E-Check, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information. *http://www.fbi.gov/programs/nics/index.htm.*

(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 250 FFLs enroll with the NICS per month for a total of 3,000 enrollments per year. The average response time for reading the directions for the Federal Bureau of Investigation National Instant Criminal Background Check System (NICS) Federal Firearms Licensee (FFL) Enrollment/NICS E-Check Enrollment Form is estimated to be two minutes; time to complete the form is estimated to be three minutes; and the time it takes to assemble, mail, or fax the form to the FBI is estimated to be three minutes, for a total of eight minutes. The average hour burden for this specific form is $3{,}000 \times 8$ minutes/60 = 400 hours.

The Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities Under the National Instant Criminal Background Check System (NICS) Form takes approximately three minutes to read the responsibilities and two minutes to complete the form, for a total of five minutes. The average hour burden for this specific form is $3{,}000 \times 5$ minutes/60 = 250 hours.

The letter mailed to each new FFL takes an additional two minutes to read which would be $3{,}000 \times 2$ minutes/60 = 100 hours.

The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be $3{,}000 \times 15/60 = 750$ hours.

An estimate of the total public burden (in hours) associated with the collection: The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be $3{,}000 \times 15/60 = 750$ hours.

If additional information is required, contact: Mrs. Lynn Murray, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: December 13, 2012.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2012–30372 Filed 12–17–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cable Television Laboratories, Inc.

Notice is hereby given that, on November 13, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lyons Communications, LLC, Lyons, CO; and Harron Communications, L.P., d/b/a MetroCast Communications, Frazer, PA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on November 4, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 2010 (75 FR 79025).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–30410 Filed 12–17–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0009]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Revision of a Currently Approved Collection; Law Enforcement Officers Killed and Assaulted Program, Analysis of Officers; Feloniously Killed and Assaulted; and Law Enforcement Officers Killed and Assaulted Program, Analysis of Officers Accidentally Killed

ACTION: 30-Day notice.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Issue 199, pages 62533, on October 15, 2012.

The purpose of this notice is to allow for an additional 30 days for public comment until January 17, 2013.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Feloniously Killed and Assaulted and Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Accidentally Killed

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–701 and 1–701a; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. These forms will gather specific incident data obtained from law enforcement agencies in which an officer was accidentally killed, feloniously killed or assaulted with injury from a firearm or knife or other cutting instrument in the line of duty. Data are published annually in the publication Law Enforcement Officers Killed and Assaulted.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 243 law enforcement agency respondents; calculated estimates indicate 1 hour per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 243 hours, annual burden, associated with this information 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: December 12, 2012.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2012–30371 Filed 12–17–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission of the United States

Privacy Act of 1974; System of Records

AGENCY: Foreign Claims Settlement Commission of the United States, Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Foreign Claims Settlement Commission (Commission), Department of Justice, proposes to establish a new system of records to enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to the Commission against Iraq (''Claims Against Iraq System''). The Claims Against Iraq System will include documentation provided by the claimants as well as background material that will assist the Commission in the processing of their claims. The system will also include the final decision of the Commission regarding the claim.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Accordingly, please submit any comments by January 22, 2013. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Foreign Claims Settlement Commission of the United States, 600 E Street NW., Suite 6002, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT: The Administrative Office, Foreign Claims Settlement Commission, U.S. Department of Justice, 600 E Street NW., Suite 6002, Washington, DC 20579, or by telephone at (202) 616–6975.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the new system of records.

Timothy J. Feighery,
Chairman.

JUSTICE/FCSC–30

SYSTEM NAME:

Iraq, Claims Against.

SYSTEM LOCATION:

Offices of the Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with claims against Iraq covered by the September 2, 2010, Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq and referred by the Department of State to the Foreign Claims Settlement Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature of claim; description of loss or injury including medical records; and other evidence establishing entitlement to compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority to establish and maintain this system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101, which authorize the Chairman of the Commission to create and maintain federal records of agency activities, and is further described in 22 U.S.C. 1622e, which vests all non-adjudicatory functions, powers and duties in the Chairman of the Commission.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of certain claims of U.S. nationals against Iraq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records will be disclosed by the Commission under the following circumstances:

a. To the Department of State and the Department of the Treasury in connection with the negotiation, adjudication, settlement and payment of claims;

b. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish a Commission function related to this system of records;

c. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

d. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

e. In an appropriate proceeding before the Commission, or before a court, grand jury, or administrative or adjudicative body, when the Department of Justice and/or the Commission determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

f. To a former employee of the Commission for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Commission regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Commission requires information and/or consultation from the former employee regarding a matter within that person's former area of responsibility;

g. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

STORAGE:

Paper records maintained in file folders at the Commission's office and electronic records located on the Commission's Server.

RETRIEVABILITY:

Information from this system of records will be retrieved by claim number and/or decision number. An alphabetical index may be used by the Commission for identification of a claim by claimants' name.

SAFEGUARDS:

Paper records are under security safeguards at the Commission's office. The electronic records are safeguarded by the DOJ JCON security procedures. Access to the Commission's data requires a password and is limited to Commission employees and contractors with appropriate security clearances.

RETENTION AND DISPOSAL:

Records are maintained under 5 U.S.C. 301. Disposal of records will be in accordance with the determination by the National Archives and Records Administration with regard to the Commission's request for Records Disposition Authority dated November 26, 2008.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975. Fax: (202) 616–6993.

NOTIFICATION PROCEDURE:

The Administrative Officer will inform any person or other agency about any correction or notation of dispute made in accordance with title 45 CFR Sec. 503.7 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

RECORD ACCESS PROCEDURE:

(a) Upon request in person or by mail, any individual will be informed whether or not a system of records maintained by the Commission contains a record or information pertaining to that individual. (b) Any individual requesting access to a record or information on himself or herself must appear in person at the offices of the Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC, between the hours of 9 a.m. and 5:00 p.m., Monday through Friday, and (1) Provide information sufficient to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.; (2) Provide identification sufficient to verify the individual's identity, e.g., driver's license, Medicare card, or other government issued identification; and (3) Any individual requesting access to records or information pertaining to himself or herself may be accompanied by a person of the individual's own choosing while reviewing the records or information. If an individual elects to be so accompanied, advance notification of the election will be required along with a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted. (c) Any individual making a request for access to records or information pertaining to himself or herself by mail must address the request to the Privacy Officer, Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579, and must provide information acceptable to the Administrative Officer to verify the individual's identity. (d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within that period, an acknowledgment will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

CONTESTING RECORD PROCEDURES:

(a) Any individual may request amendment of a record pertaining to himself or herself according to the procedure in paragraph (b) of this section, except in the case of records described under paragraph (d) of this section. (b) After inspection by an individual of a record pertaining to himself or herself, the individual may file a written request, presented in person or by mail, with the Administrative Officer, for an amendment to a record. The request must specify the particular portions of the record to be amended, the desired amendments and the reasons therefor. (c) Not later than ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Administrative Officer will: (1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or (2) Inform the individual, by certified mail return receipt requested, of the refusal to amend the record, setting forth the reasons therefor, and notify the individual of the right to appeal that determination as provided under 45 CFR Sec. 503.8. (d) The provisions for amending records do not apply to evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the Commission pursuant to statutory time limitations.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

[FR Doc. 2012–30425 Filed 12–17–12; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Explosive Materials and Blasting Units in Metal and Nonmetal Underground Gassy Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Explosive Materials and Blasting Units in Metal and Nonmetal Underground Gassy Mines,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 17, 2013.

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–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Under Regulations 30 CFR parts 7 and 15, the MSHA evaluates and approves explosive materials and blasting units as permissible for use in the mining industry; however, since there are no permissible explosives or blasting units available that have adequate blasting capacity for some metal and nonmetal gassy mines, 30 CFR 57.22606(a) outlines the procedures for a mine operator to follow when using non-approved explosive materials and blasting units. The standard requires the mine operator of a Class III metal or nonmetal mine (gassy mine) to notify the MSHA in writing prior to the use of any non-approved explosive materials and blasting units. The MSHA then evaluates the non-approved explosive materials and determines whether they are safe for use in a potentially gassy environment.

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 that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0051. The current approval is scheduled to expire on February 28, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 19, 2012 (77 FR 58173).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0051. 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–MSHA.

Title of Collection: Explosive Materials and Blasting Units in Metal and Nonmetal Underground Gassy Mines.

OMB Control Number: 1219–0051.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Burden Hours: 1.

Total Estimated Annual Other Costs Burden: $6.

Dated: December 11, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–30399 Filed 12–17–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reemployment Demonstration Grants and Projects

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Reemployment Demonstration Grants and Projects,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 17, 2013.

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: The Middle Class Tax Relief and Job Creation Act of 2012 provides States with the opportunity to pilot new and innovative strategies to help connect unemployed Americans with work. Extended Benefits, Reemployment, and Program Integrity Improvement Act section 2102 has enacted a new Social Security Act section 305 to allow the Secretary of Labor to enter into agreements with up to 10 States that submit an application for approval to conduct a demonstration project to test and evaluate measures to expedite reemployment of certain individuals found eligible for unemployment compensation or to improve the effectiveness of a State in carrying out its State law with respect to reemployment.

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 that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0492. The current approval is scheduled to expire on January 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month

extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 18, 2012 (77 FR 57593).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0492. 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: Reemployment Demonstration Grants and Projects.

OMB Control Number: 1205–0492.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 50.

Total Estimated Annual Burden Hours: 5,600.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 10, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–30403 Filed 12–17–12; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Medical Reimbursement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Claim for Medical Reimbursement,'' 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 January 17, 2013.

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–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Beneficiaries file a Claim for Medical Reimbursement, Form OWCP–915, to obtain reimbursement for out-of-pocket covered medical expenses paid by a beneficiary. Required billing data elements (prepared by the medical provider) and proof of payment by the beneficiary must accompany the claims form. While not expected to change respondent burden, this ICR has been characterized as a revision because the agency has reformatted elements of Form OWCP–915 (e.g., replaced an obsolete logo with the DOL Seal, provided an additional notice on the rights of respondents with disabilities, and removed references to the no longer existent Employment Standards Administration).

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 that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0007. The current approval is scheduled to expire on December 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 17, 2012 (77 FR 57161).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0007. 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–OWCP.

Title of Collection: Claim for Medical Reimbursement.

OMB Control Number: 1240–0007.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 8,309.

Total Estimated Number of Responses: 24,872.

Total Estimated Annual Burden Hours: 4,294.

Total Estimated Annual Other Costs Burden: $42,689.

Dated: December 11, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–30401 Filed 12–17–12; 8:45 am]

BILLING CODE 4510–CR–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–498 and 50–499; NRC–2010–0375]

STP Nuclear Operating Company, South Texas Project; Notice of Availability of Draft Supplement 48 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for the License Renewal of South Texas Project

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a draft plant-specific supplement 48 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–76 and NPF–80 for an additional 20 years of operation for South Texas Project (STP), Units 1 and 2. STP is located in Bay City, Texas. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by February 22, 2013. The NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2010–0375. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0375. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

All comments received by the NRC, including those made by Federal, State, and local agencies; Native American Tribes; or other interested persons, will be made available electronically at the NRC's PDR in Rockville, Maryland, and through ADAMS. Comments received after the due date will be considered only if it is practical to do so.

The NRC staff will hold public meetings prior to the close of the public comment period to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. Two meetings will be held at the Bay City Civic Center, 201 Seventh Street, Bay City, Texas 77414, on Tuesday, January 15, 2013. The first session will convene at 2:00 p.m. and will continue until 5:00 p.m., as necessary. The second session will convene at 7:00 p.m. and will continue until 10:00 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Tam Tran, the NRC Environmental Project Manager, at 1–800–368–5642, extension 3617, or by email at *tam.tran@nrc.gov* no later than Friday, January 4, 2013. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Tran's attention no later than Friday, January 4, 2013, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Tam Tran, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3617; or email to *tam.tran@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2010–0375 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0375.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

In addition, a copy of the draft supplement to the GEIS is available to local residents near the site at the 1100 7th Street, Bay City, TX 77414.

B. Submitting Comments

Please include Docket ID NRC–2010–0375 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission.

The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Dated at Rockville, Maryland, this 5th day of December 2012.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–30478 Filed 12–17–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0256]

Aging Management of Stainless Steel Structures and Components in Treated Borated Water; Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; revision.

SUMMARY: This document corrects License Renewal Interim Staff Guidance, LR–ISG–2011–01, ''Aging Management of Stainless Steel Structures and Components in Treated Borated Water,'' which was announced in the **Federal Register** on May 11, 2012 (77 FR 27815). Revision 1 of this document corrects the identification numbers for aging management review (AMR) items in the revised guidance for the Generic Aging Lessons Learned (GALL) Report and the Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (SRP–LR), so that the AMR identification numbers are consistent with the GALL Report numbering convention.

ADDRESSES: Please refer to Docket ID NRC–2011–0256 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0256. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The original LR–ISG–2011–01 is available under ADAMS Accession No. ML12034A047 and LR–ISG–2011–01, Revision 1 is available under ADAMS Accession No. ML12286A275.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Interim Staff Guidance Web Site: LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

FOR FURTHER INFORMATION CONTACT: Dr. John Wise, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8489, or email: *John.Wise@nrc.gov,* or Ms. Evelyn Gettys, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–415–4029, or email: *Evelyn.Gettys@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The NRC announced the issuance of License Renewal Interim Staff Guidance LR–ISG–2011–01, ''Aging Management of Stainless Steel Structures and Components in Treated Borated Water,'' in the **Federal Register** on May 11, 2012 (77 FR 27815). As issued, LR–ISG–2011–01 contained identification numbers for three AMR items which were inconsistent with the GALL Report numbering convention. To ensure consistency, the NRC is issuing Revision 1 to LR–ISG–2011–01 to correct three AMR identification numbers, as follows:

1. GALL Report Item V.A.EP–74 was corrected to read ''V.A.E–20''
2. GALL Report Item VII.E1.AP–79 was corrected to read ''VII.E1.A–88''
3. GALL Report Item VII.E1.A–102 was corrected to read ''VII.E1.AP–79''

This revision is editorial; it does not affect the technical content of the interim staff guidance.

Backfitting and Issue Finality

Issuance of this corrected LR–ISG does not constitute backfitting as defined in section 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR), (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' No substantive changes are being made in this revision. The only changes are the corrections to the identification numbers for three AMRs, which are being made to ensure consistency with the GALL Report's numbering convention.

Dated at Rockville, Maryland, this 7th day of December, 2012.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–30476 Filed 12–17–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2012–0002].

DATE: Weeks of December 17, 24, 31, 2012, January 7, 14, 21, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 17, 2012

There are no meetings scheduled for the week of December 17, 2012.

Week of December 24, 2012—Tentative

There are no meetings scheduled for the week of December 24, 2012.

Week of December 31, 2012—Tentative

There are no meetings scheduled for the week of December 31, 2012.

Week of January 7, 2013—Tentative

Tuesday, January 8, 2013

9:00 a.m. Briefing on Fort Calhoun (Public Meeting) (Contact: Michael Hay, 817–200–1527)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, January 9, 2013

9:00 a.m. Briefing on Venting Systems for Mark I and Mark II Containments (Public Meeting) (Contact: William Reckley, 301–415–7490)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of January 14, 2013—Tentative

There are no meetings scheduled for the week of January 14, 2013.

Week of January 21, 2013—Tentative

There are no meetings scheduled for the week of January 21, 2013.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: December 13, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–30527 Filed 12–14–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30302; 812–13959]

Cambria Investment Management, L.P. and Cambria ETF Trust; Notice of Application

December 12, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Cambria Investment Management, L.P. (''Cambria'') and Cambria ETF Trust (the ''Trust'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on September 12, 2011, and amended on February 29, 2012, July 9, 2012, November 13, 2012, and December 12, 2012.[1]

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 3, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 2321 Rosecrans Avenue, Suite 3225, El Segundo, CA 92045.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990 or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust will initially offer an actively-managed series, Cambria Shareholder Yield ETF (the ''Initial Fund''). The investment objective of the Initial Fund will be to seek to preserve and grow capital by investing in domestic equity securities and in particular in companies that will generate investment returns through the payment of dividends and through the appreciation of their share price.

2. Cambria, a California limited partnership, will be the investment adviser to the Initial Fund. Cambria is and any other Adviser (as defined below) is or will be registered as an ''investment adviser'' under section 203 of the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with investment advisers to act as sub-advisers with respect to the Funds (each, a ''Subadviser''). Any Subadviser will be registered under the Advisers Act or not subject to such registration. A registered broker-dealer under the

[1] A notice for this application was issued on November 30, 2012 (Investment Company Act Rel. No. 30286). The application has been amended to revise certain representations with respect to the Funds' investments in derivatives and we are therefore issuing a revised notice for the application.

Securities Exchange Act of 1934 (''Exchange Act''), which may be an affiliate of the Adviser, will act as the distributor and principal underwriter of the Funds (''Distributor'').

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of other existing or future open-end management companies that may utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by Cambria or an entity controlling, controlled by, or under common control with Cambria (each such entity and any successor thereto included in the term ''Adviser'') [2], and (b) comply with the terms and conditions of the application.[3] The Initial Fund and Future Funds together are the ''Funds''. Each Fund will operate as an exchange-traded fund (''ETF''). In addition to the instruments described above, each Fund reserves the right to invest in other instruments, including short sales (''Short Positions''). Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. or in non-U.S. markets, assets, and other positions (''Portfolio Instruments''). To the extent consistent with other investment limitations, the Funds may invest in ETFs as well as shares of certain exchange-traded products that are not registered investment companies,[4] cash and cash equivalents, mortgage- or asset-backed securities, including ''to-be-announced transactions'' (''TBA Transactions'') [5], and may engage in forward commitment transactions,[6] forward foreign currency contracts, options contracts, futures contracts or swap agreements.[7] Funds may also invest in ''Depositary Receipts''.[8] A Fund will not invest in any Depositary Receipts that the Adviser, or Subadviser as applicable, deems to be illiquid or for which pricing information is not readily available. The Funds might include one or more ETFs which invest in other open-end and/or closed-end investment companies and/or ETFs.[9]

4. Applicants also request that any exemptions under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (1) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Fund and any Brokers selling Shares of a Fund to an Investing Fund, as defined below; and (2) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds, and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as ''Investing Management Companies,'' such unit investment trusts are referred to herein as, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together are referred to herein as ''Investing Funds'').[10] Investing Funds do not include the Funds.

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party (''Authorized Participant'') that has entered into a participant agreement with the Distributor and the transfer agent of the Trust with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A broker or dealer registered under the Exchange Act (''Broker'') or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''); or (b) a participant in the DTC (such participant, ''DTC Participant''). Shares of the Funds will be purchased and redeemed in Creation Units and generally on an ''in-kind'' basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[11] On any given Business Day[12], the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''In-kind Basket.'' In addition, the In-kind Basket will correspond *pro rata* to the positions in the Fund's portfolio (including cash positions),[13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[14] or (c) TBA

[2] For purposes of the requested order, a ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[4] The Funds may invest in exchange-traded products that invest primarily in commodities or currency but otherwise operate in a manner similar to ETFs. The Funds may also invest in exchange-traded notes.

[5] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[6] In a forward commitment transaction, the buyer/seller enters into a contract to purchase/sell, for example, specific securities for a fixed price at a future date beyond normal settlement time.

[7] If a Fund invests in derivatives: (a) The Board periodically will review and approve (i) the Fund's use of derivatives and (ii) how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives; and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[8] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants, any Adviser, Subadviser or the Funds will serve as the depositary bank for any Depositary Receipts held by a Fund.

[9] In no case, however, will such a Fund rely on the exemption from Section 12(d)(1) being requested in the application.

[10] Applicants anticipate that there may be Investing Funds that are not part of the same group of investment companies as the Funds, but are subadvised by an Adviser.

[11] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[12] ''Business Day'' is defined to include any day that the Trust is open for business as required by Section 22(e) of the Act.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

Transactions, Short Positions[15] or other positions that cannot be transferred in kind[16] will be excluded from the In-kind Basket.[17] If there is a difference between the net asset value attributable to a Creation Unit and the aggregate market value of the In-kind Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made *entirely in cash;* (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made *entirely in cash;*[18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers, or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

7. Each Business Day, before the open of trading on the national securities exchange as defined in section 2(a)(26) of the Act (''Stock Exchange'') upon which its Shares are listed and traded, the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the In-kind Basket, as well as the estimated Balancing Amount (if any), for that day. The published In-kind Basket will apply until a new In-kind Basket is announced on the following Business Day, and there will be no intra-day changes to the In-kind Basket, except to correct errors in the published In-kind Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

8. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[20] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on the Stock Exchange and traded in the secondary market. Applicants expect that the Stock Exchange specialists (''Specialists'') or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[21] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[22] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their net asset value per common Share (''NAV'') should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

11. Shares may be redeemed only if tendered in Creation Units. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' Any

[15] To the extent required by section 18(f) of the Act, Portfolio Instruments and/or cash held in a Fund's portfolio will be segregated to cover Short Positions in such portfolio. *See,* Securities Trading Practices of Registered Investment companies, Investment company Act Rel. No. 10666 (Apr. 18, 1979).

[16] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[17] Because these instruments will be excluded from the In-kind Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[20] Where a Fund, as described in section I.E.1.a, permits an in-kind purchaser or redeemer to deposit or receive cash in lieu of one or more Deposit or Redemption Instruments, the purchaser or redeemer may be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying or selling those particular Deposit or Redemption Instruments.

[21] Applicants state that unlike other Stock Exchanges where a Specialist may oversee trading in Shares, on NASDAQ, numerous Market Makers buy and sell Shares for their own accounts. If Shares are listed on NASDAQ, no Specialist will be contractually obligated to make a market in Shares. Rather, under NASDAQ's listing requirements, two or more Market Makers will be registered in Shares and required to make a continuous, two-sided market or face regulatory sanctions. No Market Maker or Specialist will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within Section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

[22] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

13. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[23]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities or transactions from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and any Fund to register as an open-end management investment company and redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions, to permit Shares to trade at negotiated prices.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from Brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the differences between the market price of Shares and their NAV remain immaterial.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery

[23] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit. With respect to Future Funds that are Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.[24]

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days will not lead to unreasonable, undisclosed or unforeseen delays in the redemption process and would not be inconsistent with the spirit and intent of section 22(e). Applicants state the statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days, up to 14 calendar days, needed to deliver the proceeds for each affected Global Fund. Except as disclosed in the SAI for a Fund, deliveries of redemption proceeds for Global Funds are expected to be made within seven days. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds (as defined below) to acquire Shares in excess of the limits in section 12(d)(l)(A) of the Act and to permit the Funds, their principal underwriters and any Brokers to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief are designed to address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address the concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Advisor''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Subadviser''), any person controlling, controlled by, or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Investing Fund's Subadvisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate[25] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor or Investing Fund Subadviser, employee or Sponsor is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to the Fund is covered by section 10(f) of the Act.

13. Applicants propose several conditions to address the concerns regarding layering of fees and expenses. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an Investing Fund Advisor, trustee of an Investing Trust (''Trustee'') or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, Trustee or Sponsor or its affiliated person by a Fund, in connection with

[24] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[25] An ''Investing Fund Affiliate'' is defined as the Investing Fund Advisor, Investing Fund Subadviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

the investment by the Investing Fund in the Fund. Applicants also propose a condition to prevent any sales charges or service fees on shares of an Investing Fund from exceeding the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[26]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that the Investing Funds understand and comply with the terms and conditions of the requested order, any Investing Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into a participation agreement (''FOF Participation Agreement'') with the Fund. The FOF Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[27] Applicants also request an exemption in order to permit a Fund to sell its Shares to, and purchase its Shares from, an Investing Fund and to engage in any accompanying in-kind transactions with certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliates.[28]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. Absent the circumstances discussed in section I.E.1.a of the application, on each Business Day the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. Applicants state that the method of valuing Portfolio Instruments held by a Fund is the same as that used for calculating the value of in-kind purchases or redemptions and therefore, creates no opportunity for affiliated persons or the Applicants to effect a transaction detrimental to other holders of Shares of that Fund. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund (including for any affiliated person and including any Investing Fund) will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[29] Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively-Managed Exchange-Traded Fund Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on

[26] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by FINRA.

[27] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[28] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is also intended to cover any in-kind transactions that may accompany such sales and redemptions.

[29] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Subadviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadviser or a person controlling, controlled by or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Advisor and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of the Fund (''Board''), including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will

execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30380 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68419; File No. TP 13–05]

Order Granting Exemptions From Certain Rules of Regulation SHO Related to Hurricane Sandy

December 12, 2012.

I. Introduction

Hurricane Sandy made landfall along the mid-Atlantic Coast on October 29, 2012. The Depository Trust & Clearing Corporation (''DTCC'') reported that its headquarters location in lower Manhattan sustained significant water damage as a result of storm flooding. In particular, DTCC reported that significant flooding and water damage occurred throughout DTCC's vault at 55 Water Street (the ''Vault''), used as part of DTCC's Custody Service for the safekeeping of physical certificates. DTCC has stated that restoration of the physical certificates will take some time, possibly months. As a result, the physical certificates are considered inaccessible.[1] However, DTCC and The Securities Transfer Association, Inc. (''STA'') have recently announced an agreement on a protocol for the replacement and transfer of shares represented by the currently inaccessible physical certificates that were held in the Vault at the time Hurricane Sandy made landfall, facilitating DTCC's ability to continue physical processing.[2] Sales of owned securities, represented by physical certificates that were located in the Vault at the time Hurricane Sandy made landfall, whose settlement is dependent on the delivery of such physical certificates (or documentation with equivalent effect) (sales of ''Vault Securities''), may experience settlement delays as a result of the inaccessibility of such physical certificates.[3] Such settlement delays have implications for compliance with Regulation SHO under the Securities Exchange Act of 1934 (the ''Exchange Act'').[4] SIFMA has requested relief from certain provisions of Regulation SHO in connection with the inaccessible physical certificates that were in the Vault at the time Hurricane Sandy made landfall.[5]

The Commission is providing certain exemptions from the ''locate,'' short sale price test, and close-out requirements of Regulation SHO for sales of Vault Securities. Absent further action by the Commission, these exemptions will expire on February 1, 2013.

II. Regulation SHO

A. Marking, ''Locate,'' and Short Sale Price Test Requirements Under Rules 200, 203, and 201 of Regulation SHO

Rule 200(g) of Regulation SHO[6] provides that broker-dealers must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.'' Under Rule 200(g)(1), a broker-dealer may mark an order to sell ''long'' only if the seller is deemed to own the security being sold pursuant to paragraphs (a) through (f) of Rule 200 and either: (1) The security to be delivered is in the physical possession or control of the broker-dealer; or (2) it

[1] *See* ''DTCC Statement on Condition of Securities Vault,'' DTCC Press Release (Nov. 14, 2012) at *http://www.dtcc.com/news/press/releases/2012/statement_vault.php.*

[2] *See* ''DTCC and STA Agree on Protocol for Presentment of Physical Securities,'' DTCC Press Release (Nov. 20, 2012) at *http://www.dtcc.com/news/press/releases/2012/sta_statement.php.*

[3] As a result of Hurricane Sandy, DTCC did not receive any courier or mail shipments after October 26, 2012, and, as of November 1, 2012, made arrangements for all receipted packages to be routed to DTCC's recovery facility in Brooklyn, New York. In addition, processing of physical certificates was suspended between October 30, 2012, and November 2, 2012. Accordingly, the term ''Vault Securities'' does not include physical certificates submitted to DTCC for custody on or after October 29, 2012, because the settlement of sales of such securities is not dependent on the delivery of physical certificates that were located in the Vault at the time Hurricane Sandy made landfall. *See* ''DTCC Client Update on Superstorm Sandy—Current and Ongoing Operations as Markets Re-Open; Physical Certificates,'' Important Notice to All DTC, FICC and NSCC Participants (Oct. 30, 2012) at *http://www.dtcc.com/downloads/legal/imp_notices/2012/dtcc/z0033.pdf;* ''DTCC Client Update on Superstorm Sandy—Physical Processing and Custody Services,'' Important Notice to All DTC and NSCC Participants (Nov. 1, 2012) at *http://www.dtcc.com/downloads/legal/imp_notices/2012/dtcc/z0035.pdf;* ''DTCC Client Update on Superstorm Sandy,'' Important Notice to All DTC, FICC and NSCC Participants (Nov. 2, 2012) at *http://www.dtcc.com/downloads/legal/imp_notices/2012/dtcc/z0036.pdf.*

[4] 17 CFR 242.200 *et seq.*

[5] *See* letter from Ira Hammerman, General Counsel, Securities Industry and Financial Markets Association, dated Dec. 12, 2012. In its letter, SIFMA requests relief from the close-out requirement of Rule 204 of Regulation SHO and seeks ''clarification'' with respect to order marking under Rule 200 and the short sale price test restriction under Rule 201. Further, the letter from SIFMA seeks ''confirmation'' that a short sale order of a Vault Security that a person is deemed to own would qualify for ''short exempt'' marking under Rule 201(d)(1) and would meet the terms of the exception to the ''locate'' requirement in Rule 203(b)(2)(ii). However, as discussed in this Exemptive Order, absent relief, a sale of a Vault Security would not necessarily qualify for ''short exempt'' marking under Rule 201(d)(1) or for the exception to the ''locate'' requirement under Rule 203(b)(2)(ii). *See infra* notes 12 to 15 and accompanying text. Thus, we are treating SIFMA's request for ''confirmation'' as a request for relief from the ''locate'' requirement under Rule 203(b), the ''short exempt'' marking requirement under Rule 200(g)(2), and the close-out requirement under Rule 204.

[6] 17 CFR 242.200(g).

is reasonably expected that the security will be in the physical possession or control of the broker-dealer no later than the settlement of the transaction.

Pursuant to Rule 203(b) of Regulation SHO,[7] a broker-dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker-dealer has: (1) Borrowed the security, or entered into a *bona fide* arrangement to borrow the security; or (2) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due. This ''locate'' requirement must be met and documented prior to effecting a short sale.[8]

Rule 201 of Regulation SHO[9] establishes a short sale-related circuit breaker that, if triggered, imposes a restriction on the price at which a covered security[10] may be sold short (''short sale price test''). Paragraphs (c) and (d) of Rule 201 permit broker-dealers to mark certain short sale orders as ''short exempt,'' and trading centers' policies and procedures must be reasonably designed to permit the execution or display of orders marked ''short exempt'' without regard to whether the order is at a permissible price under the short sale price test.[11]

Certain types of Vault Security sales necessarily involve processing delays, notwithstanding the current inaccessibility of physical certificates that were held in the Vault at the time Hurricane Sandy made landfall. For example, this could include the sale of formerly restricted securities pursuant to Rule 144 of the Securities Act of 1933, where the security may not be capable of being delivered on the settlement date due to processing delays to remove the restricted legend. Further, processing delays could arise where a convertible security, option, or warrant has been tendered for conversion or exchange, such that the underlying security is not reasonably expected to be received by settlement date. Under these circumstances, a broker-dealer generally would not have a reasonable expectation that the securities would be in its physical possession or control by the settlement date. These types of sell orders cannot be marked ''long'' and must be marked ''short'' or ''short exempt.''[12] The Commission has provided specific exceptions from the ''locate'' requirement and the short sale price test requirement of Regulation SHO for sales of securities that the person is deemed to own pursuant to Rule 200 of Regulation SHO, provided that the person intends to deliver the securities as soon as all restrictions on delivery have been removed.[13] In providing such exceptions, the Commission emphasized that these sales are treated as short sales solely because the seller is unable to deliver the security that it owns to its broker-dealer prior to settlement, based on circumstances outside the seller's control and through no fault of the seller or the broker-dealer.[14]

In addition, due to the inaccessibility of physical certificates in the Vault as a result of flooding from Hurricane Sandy, other sell orders for Vault Securities also may not qualify for ''long'' marking under Rule 200(g)(1).[15] In particular, a broker-dealer may not have a reasonable expectation that these Vault Securities will be in the physical possession or control of the broker-dealer by the settlement date. Absent relief, solely because the seller is unable to deliver the owned security to its broker-dealer prior to settlement due to the unusual circumstances of Hurricane Sandy that resulted in the current inaccessibility of physical certificates in the Vault, sales of these owned securities must be marked ''short'' or ''short exempt'' and may be subject to the ''locate'' and short sale price test requirements. As a result, we believe that the relief from the ''locate'' and short sale price test requirements of Regulation SHO provided by this Exemptive Order is appropriate in the public interest and consistent with the protection of investors.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[16] that a broker-dealer is exempt from the ''locate'' requirement of Rule 203(b), including the delivery requirement of Rule 203(b)(2)(ii),[17] with respect to a short sale order in a Vault Security, and is exempt from Rule 200(g)(2) with respect to such order, and thus may mark such order ''short exempt'' for purposes of the short sale price test of Rule 201 without meeting the requirements of Rule 201(c) or (d),[18] subject to the following conditions:

(a) The broker-dealer determines, prior to accepting such short sale order from another person, or effecting such short sale for its own account, that the sale is a sale of a Vault Security[19] that the seller is deemed to own pursuant to Rule 200 of Regulation SHO;[20] and

[7] 17 CFR 242.203(b).

[8] There are certain exceptions to the ''locate'' requirement in Rule 203(b)(2). *See* 17 CFR 242.203(b)(2).

[9] 17 CFR 242.201.

[10] The term ''covered security'' is defined as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS. *See* 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47).

[11] *See* 17 CFR 242.201(c), (d), (b)(1)(iii)(B). Under Rule 200(g)(2), a sale order shall be marked ''short exempt'' only if the provisions of Rule 201(c) or (d) are met. *See* 17 CFR 242.200(g)(2).

[12] *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48012, 48015 (Aug. 6, 2004) (''Regulation SHO Adopting Release'').

[13] *See* 17 CFR 242.203(b)(2)(ii); 242.201(d)(1); Regulation SHO Adopting Release, 69 FR at 48015; Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232, 11266 (Mar. 10, 2010) (''Rule 201 Adopting Release''). Under Rule 201(d)(1), a broker-dealer may mark a short sale order ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is by a person that is deemed to own the covered security pursuant to Rule 200 of Regulation SHO, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed. *See* 17 CFR 242.201(d)(1).

[14] *See* Regulation SHO Adopting Release, 69 FR at 48015; Rule 201 Adopting Release, 75 FR at 11266.

[15] Depending on the circumstances, certain sell orders of Vault Security may be marked ''long.'' Consistent with Rule 200(g)(1) of Regulation SHO, a broker-dealer may mark a sell order of a Vault Security ''long'' if the broker-dealer has a reasonable expectation that the Vault Securities will be in the physical possession or control of the broker-dealer by the settlement date.

[16] Section 36 of the Exchange Act authorizes the Commission, by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm(a).

[17] The exception to the ''locate'' requirement in Rule 203(b)(2)(ii) provides that if the seller has not delivered the security that it is deemed to own pursuant to Rule 200 of Regulation SHO within 35 days after the trade date, the broker-dealer that effected the sale must borrow securities or close out the short position by purchasing securities of like kind and quantity. *See* 17 CFR 242.203(b)(2)(ii). As discussed above, certain sell orders of Vault Securities may qualify for the exception from the ''locate'' requirement under Rule 203(b)(2)(ii). *See supra* notes 12 to 14 and accompanying text.

[18] We remind broker-dealers that, as a general matter, the ''short exempt'' marking provided by Rule 200(g)(2) is used to represent a short sale order that qualifies for an exception to the short sale price test requirement in Rule 201(d) or that meets the terms of the broker-dealer provision in Rule 201(c). The ''short exempt'' marking may not be used to represent that an exception to the ''locate'' requirement applies to the short sale order, unless the order can be marked ''short exempt'' pursuant to Rule 200(g)(2). *See* Rule 201 Adopting Release, 75 FR at 11266 n.472 (''To the extent that an exception to Regulation SHO's 'locate' requirement applies to a short sale order, such order must be marked 'short' in accordance with Rule 200(g) of Regulation SHO unless the order can be marked 'short exempt' pursuant to Rule 200(g)(2) of Regulation SHO.'').

[19] A Vault Security sale would include situations where the security to be sold, a security convertible into or exchangeable for it, or a right or warrant to subscribe to it, is represented by a physical certificate that was held in the Vault at the time Hurricane Sandy made landfall. Such determination could be based, for example, on records indicating that the sale involves a physical certificate custodied at DTCC and that the physical certificate was submitted to DTCC for custody on or before October 26, 2012. *See supra* note 3.

[20] 17 CFR 242.200.

(b) The broker-dealer documents the determination made pursuant to condition (a) above.

B. Close-Out Requirements Under Rule 204 of Regulation SHO

Rule 204(a) of Regulation SHO [21] generally requires that participants of a registered clearing agency (''Participants'') close out fail to deliver positions at a registered clearing agency [22] in any equity security for a sale transaction in that equity security by no later than the beginning of trading on the next settlement day after a fail to deliver resulting from a short sale (generally T+4), and no later than the beginning of trading on the third settlement day after a fail to deliver resulting from a long sale or a sale resulting from *bona fide* market making activities at the time of the sale (generally T+6). A close out is effected by purchasing or borrowing shares of like kind and quantity.

Rule 204(a)(2) provides an extended close-out timeframe (T+35) for fail to deliver positions at a registered clearing agency in any equity security resulting from a sale of a security that a person is deemed to own,[23] similar to the exceptions to the ''locate'' requirement and short sale price test requirement discussed above.[24] Thus, fails to deliver resulting from certain sales of Vault Securities would currently be eligible for the extended close-out timeframe provided by Rule 204(a)(2).[25]

Pursuant to Rule 204(b) of Regulation SHO,[26] a Participant that has not closed out a fail to deliver position in an equity security in accordance with Rule 204(a), and any broker-dealer from which the Participant receives trades for clearance and settlement, may not accept a short sale order in the equity security from another person or effect a short sale in the equity security for its own account, without first borrowing the security or entering into a *bona fide* arrangement to borrow the security, until the Participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency (the ''Penalty Box'').

SIFMA has stated that there may be situations where, in connection with the inaccessibility of the physical certificates that were located in the Vault following flooding from Hurricane Sandy, Vault Security sales may result in a CNS fail to deliver, such that Participants would be required to close out the fail to deliver position pursuant to Rule 204(a) [27] and, if they did not, would be subject to the Penalty Box.

Rule 204 is intended to help reduce fails to deliver and address potentially abusive ''naked'' short selling.[28] In providing an extended close-out timeframe for sales of deemed to own securities, the Commission stated that additional time is warranted for these sales and such additional time would not undermine the goal of reducing fails to deliver because ''these are sales of owned securities that cannot be delivered by settlement date due solely to processing delays outside the seller's or broker-dealer's control. Moreover, delivery will be made on such sales as soon as all restrictions on delivery have been removed.'' [29] We believe that, due to the inaccessibility of physical certificates that were held in the Vault at the time Hurricane Sandy made landfall, sales of Vault Securities raise similar policy considerations at this time. We do not believe that the fails to deliver that may occur as a result of Vault Security sales, due to the unusual and exigent circumstances of Hurricane Sandy, raise the concerns that Rule 204 was designed to address. Thus, we believe that the relief from the close-out requirement of Regulation SHO provided by this Exemptive Order is appropriate in the public interest and consistent with the protection of investors.

Accordingly, *it is further ordered,* pursuant to Section 36 of the Exchange Act,[30] that a Participant is exempt from the close-out requirement of Rule 204(a) [31] and the Penalty Box of Rule 204(b) [32] of Regulation SHO with respect to a fail to deliver position resulting from the sale of a Vault Security,[33] subject to the following conditions:

(a) The Participant must determine and document that the fail to deliver resulted from a sale of a Vault Security [34] that a person is deemed to own pursuant to Rule 200 of Regulation SHO; [35]

(b) The Participant must check DTCC systems on a daily basis to determine when a Vault Security, the sale of which resulted in a fail to deliver position, is available for settlement; [36]

(c) The Participant must deliver the Vault Security as soon as possible, and

[21] 17 CFR 242.204(a).

[22] The term ''registered clearing agency'' means a clearing agency, as defined in Section 3(a)(23)(A) of the Exchange Act, that is registered as such pursuant to Section 17A of the Exchange Act. *See* 15 U.S.C. 78c(a)(23)(A); 15 U.S.C. 78q–1. The majority of equity trades in the United States are cleared and settled through systems administered by clearing agencies registered with the Commission. The National Securities Clearing Corporation (''NSCC'') clears and settles the majority of equity securities trades conducted on the exchanges and in the over-the-counter market. NSCC clears and settles trades through the Continuous Net Settlement (''CNS'') system, which nets the securities delivery and payment obligations of all of its members. *See* Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266, 38268 n.35 (July 31, 2009) (''Rule 204 Adopting Release'').

[23] *See* 17 CFR 242.204(a)(2); *see also* Rule 204 Adopting Release, 74 FR at 38277 n.141. Under Rule 204(a)(2), a Participant that has a fail to deliver position resulting from a sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed must, by no later than the beginning of regular trading hours on the thirty-fifth consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity. *See* 17 CFR 242.204(a)(2).

[24] *See supra* notes 12 to 14 and accompanying text.

[25] *See* Rule 204 Adopting Release, 74 FR at 38277–38278.

[26] 17 CFR 242.204(b).

[27] 17 CFR 242.204(a).

[28] *See* Rule 204 Adopting Release, 74 FR at 38267–38269.

[29] *Id.*

[30] *See supra* note 16.

[31] 17 CFR 242.204(a).

[32] 17 CFR 242.204(b).

[33] Rule 203(b)(3) of Regulation SHO provides that if a Participant has a fail to deliver position at a registered clearing agency in a threshold security, as defined by Rule 203(c)(6), for thirteen consecutive settlement days, the Participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity. If the sale of a Vault Security resulted in a fail to deliver position in a threshold security and that fail to deliver position persisted for thirteen consecutive settlement days because the close-out date applicable under this Exemptive Order had not yet arrived, Rule 203(b)(3) would nonetheless require the Participant to close out the fail to deliver position. Accordingly, Participants are exempt from the close-out requirements of Rule 203(b)(3) with respect to fail to deliver positions in threshold securities resulting from Vault Security sales, provided that the Participants close out the fail to deliver positions in compliance with this Exemptive Order. *See* 17 CFR 242.203(b)(3).

[34] A Vault Security sale would include situations where the security sold, a security convertible into or exchangeable for it, or a right or warrant to subscribe to it, is represented by a physical certificate that was held in the Vault at the time Hurricane Sandy made landfall. Such determination could be based, for example, on records indicating that the sale involves a physical certificate custodied at DTCC and that the physical certificate was submitted to DTCC for custody on or before October 26, 2012. *See supra* note 3.

[35] 17 CFR 242.200.

[36] We understand that DTCC systems (including the Participant Browser System and the Participant Terminal System) enable Participants to verify their positions in Vault Securities and issue withdrawal instructions. We understand that these systems permit Participants, in conjunction with the Participant's own books and records, to track when Vault Securities have been debited (withdrawn) and sent to the transfer agent and when the Vault Securities are available for settlement after they have been returned to DTCC and are available for Participant pickup, are mailed directly to the customer, or are set up as a Direct Registration System account, and that Participants check these systems for completed status of physical certificate processing on a daily basis.

in any event must deliver the Vault Security or close out the fail to deliver position resulting from the Vault Security sale by purchasing or borrowing securities of like kind and quantity by no later than the beginning of regular trading hours on the fourth settlement day following the date on which the Participant determines, in accordance with condition (b) above, that the Vault Security, the sale of which resulted in the fail to deliver position, is available for settlement; [37] and

(d) The Participant's books and records must reflect that it made delivery of the Vault Security or closed out the fail to deliver position resulting from the Vault Security sale within the applicable time period, consistent with this Exemptive Order.

III. Modification, Revocation, and Expiration of Exemptions

The exemptions granted herein are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act, and, absent further action by the Commission, will expire on February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30427 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

[37] For example, a Participant submitted a sale on October 16, 2012, for clearance and settlement with an original expected settlement date of October 19, 2012. The security sold was a restricted Vault Security under Rule 144 whose physical certificate was located in the Vault. The Participant determines, as a result of the daily check of DTCC systems for status of the Vault Securities, that the Vault Security is available for settlement on December 12, 2012. Normally Rule 204(a)(2) would apply and the Participant would be required to close out the resulting fail to deliver position thirty-five calendar days after trade date, on November 20, 2012. Because the Vault Security was not available due to Hurricane Sandy on November 20th, the Participant would be able to avail itself of the adjusted close-out timeframe provided in condition (c) above. In this limited instance, pursuant to this Exemptive Order, the Participant would be required to deliver the Vault Security as soon as possible, and in any event must deliver the Vault Security or close out the fail to deliver position by no later than the beginning of regular trading hours on December 18, 2012.

[38] *See* 17 CFR 200.30–3(a)(11).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 20, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Adjudicatory matters;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 13, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–30552 Filed 12–14–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68417; File No. SR–CBOE–2012–119]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

December 12, 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 December 6, 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 the Fees Schedule for its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*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 Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to increase the Initial Regulatory Review Fee from $3,000 to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

$5,000 and the Monthly Regulatory Fee from $3,000 to $5,000. These fees both apply to CBSX Trading Permit Holders (''CBSX TPHs'') (CBSX Traders that are not CBOE Trading Permit Holders (''CBOE TPHs'') but are granted access to CBSX via a trading permit) who either apply for CBOE to act as their designated examining authority (''DEA'') or for whom CBOE acts as a DEA (CBOE handles all regulatory functions for CBSX, and CBSX pays CBOE for such services). The Initial Regulatory Review Fee is charged to any CBSX TPH applicant that applies for a CBSX Trading Permit that, if approved, would result in CBOE serving as the CBSX TPH's DEA. The Monthly Regulatory Fee is charged to any CBSX TPH for whom CBOE acts as the CBSX TPH's DEA.

Processing the applications for CBOE to act as the DEA and acting as the DEA for these CBSX TPHs are costly and time-intensive, and the Initial Regulatory Review Fee and the Monthly Regulatory Fee only partly offset these costs. In the past year, CBOE's CBSX-related regulatory costs have increased, and the Exchange anticipates such spending to continue to increase in 2013 due to heightened regulatory review. As such, the Exchange proposes to increase the amounts of the Initial Regulatory Review Fee and the Monthly Regulatory Fee in order to partly offset the regulatory cost increases associated with the initial regulatory review and acting as a CBSX TPH's DEA.

The proposed changes are to take effect on January 1, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Increasing the amounts of the Initial Regulatory Review Fee and the Monthly Regulatory Fee is reasonable because such increases are necessary to help offset the increased regulatory costs associated with the processing of an application by a CBSX TPH for CBOE to act as that CBSX TPH's DEA and with the ongoing regulatory review and monitoring that must be undertaken in order for CBOE to act as a CBSX TPH's DEA. These increases are equitable and not unfairly discriminatory because they will apply to all CBSX TPHs to whom the Initial Regulatory Review Fee and the Monthly Regulatory Fee apply.

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)[5] of the Act and paragraph (f) of Rule 19b–4[6] 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–2012–119 *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–2012–119. 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–2012–119 and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30406 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68314; File No. SR–ISE–2012–75]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Available a New Market Data Offering

November 28, 2012.

Correction

In notice document 2012–29218 appearing on pages 71850 through 71852 in the issue of Tuesday, December 4, 2012, make the following correction:

On page 71850, in the first column, the release number should read as set forth above.

[FR Doc. C1–2012–29218 Filed 12–17–12; 8:45 am]

BILLING CODE 1501–05–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68414; File No. SR–FINRA–2012–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Require Members To Report the Factor to TRACE in Asset-Backed Security Transactions (Except an Asset-Backed Security Traded TBA), in the Limited Instances When Members Effect Such Transactions as Agent and Charge a Commission

December 12, 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 29, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6730(d)(2) to require a member to report to Trade Reporting and Compliance Engine (TRACE) the Factor used to determine the size (volume) of each transaction in an Asset-Backed Security (except an Asset-Backed Security traded To Be Announced), in the limited instances when members effect such transactions as agent and charge a commission.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

In general, Asset-Backed Securities (''ABS'') [3] are traded on a principal basis and only a small number of ABS transactions are traded on an agency basis and charge a commission.[4] In the limited instances when a member executes an ABS transaction (except an ABS traded To Be Announced (a ''TBA transaction'')) in an agency capacity and charges a commission, FINRA proposes to require members to report the Factor [5] as discussed below.

Currently, under FINRA Rule 6730(c)(2) and Rule 6730(d)(2), a member is required to report the size of TRACE-Eligible Securities,[6] including certain ABS, by reporting the total par or principal value of the debt securities traded. However, in a transaction in an ABS that is backed by mortgages or other assets that amortize over the life of the security (an ''amortizing ABS''), instead of reporting the total par or principal value, a member reports two items from which the size is calculable: (1) The original face value of the ABS, which is the size at issuance; and (2) the Factor, but only if the Factor used to execute the transaction is not the most current Factor that is publicly available at the time of execution of such transaction (a ''non-conforming Factor'').[7]

A Factor is the decimal value that represents the proportion of (1) the principal value (or face value) of the pool of assets underlying an amortizing ABS remaining at the time of the execution of a transaction (typically referred to as ''remaining principal balance'' or ''RPB'') to (2) the original face value of the ABS. Such Factors are published monthly by federal agencies or government-sponsored enterprises for ABS that are issued or guaranteed by them. Factors for other ABS generally are consolidated by certain commercial vendors that obtain them from servicers.

FINRA proposes to amend FINRA Rule 6730(d)(2) to require a member to report the Factor to TRACE for every transaction in an ABS (except TBA transactions) in the limited instances when the member effects that transaction as agent and charges a commission. The amendment is proposed to prepare for the dissemination of Specified Pool Transactions, and transactions in additional ABS market segments, if such transactions subsequently are disseminated under Rule 6750 in the future.[8] The proposed rule change is necessary to ensure the accuracy of the disseminated price of an ABS transaction, which, if traded on an agency basis and subject to a commission charge, is calculated using the Factor, the price and other information reported by a member that is a party to the transaction.

Though very few ABS transactions are executed in an agency capacity with a commission charged, when done so the TRACE system must calculate the disseminated price (or all-in price) based on the reported price, which is reported as a percentage of the RPB (*e.g.,* 97), and *add* the proportionate amount of commission. However, the commission is reported as the total gross dollar amount (*e.g.,* $3,000.00).[9] To account for the commission impact on

[3] *See* FINRA Rule 6710(m) for the definition of Asset-Backed Security.

[4] From May 2011, when TRACE began receiving reports on ABS, to the present, whether measured by par value or number of transactions, transactions, in ABS that are executed in an agency capacity and subject to a commission represent only approximately one percent of all ABS transactions.

[5] *See* FINRA Rule 6710(w) for the definition of FACTOR.

[6] *See* FINRA Rule 6710(w) for the definition of TRACE-Eligible Security.

[7] When a member uses the most current Factor that is publicly available at the time of execution of the transaction, the member is not required to report the Factor. Instead, the TRACE system incorporates the most current Factor publicly available at the Time of Execution of the transaction. FINRA receives such information from commercial data vendors.

[8] FINRA proposes the dissemination of certain Specified Pool Transactions in SR–FINRA–2012–042, which was approved recently by the SEC but is not yet effective. *See* Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (SEC Order Approving File No. SR–FINRA–2012–042 regarding a proposal to disseminate Agency Pass-Through Mortgage-Backed Securities traded in Specified Pool Transactions and SBA-Backed ABS traded TBA and in Specified Pool Transactions). The effective date of the amendments in SR–FINRA–2012–042 will be announced in a Regulatory Notice.

[9] FINRA Rules 6730(c)(3) and 6730(d)(1) require members to report the price, which must exclude the commission, and separately report the total dollar amount of the commission.

the total price paid or received by the customer, the TRACE system calculates the amount of commission in relation to RPB, which takes the Factor into account.[10]

Currently, all components of the formula that would be used to calculate a disseminated price in an ABS transaction executed as agent, except the Factor, are reported by a member effecting the transaction. The proposed amendments to Rule 6730(d)(2) would ensure the accuracy of the disseminated price data by relying exclusively upon information, including the Factor, that would be reported by the members that are parties to a transaction. Accordingly, FINRA proposes in FINRA Rule 6730(d)(2)(B)(iv) that a member report the Factor in the limited instances when an ABS transaction is executed in an agency capacity with a commission charged (except for TBA transactions), regardless of whether such Factor is the most current Factor publicly available at execution or is a non-conforming Factor. In addition, FINRA proposes supplementary material to clarify that the requirement to report the Factor will apply to every ABS transaction executed in an agency capacity with a commission charged, including the very small number of transactions in non-amortizing ABS.[11]

FINRA also proposes to reorganize, with technical amendments, the current requirements to report size in FINRA Rule 6730(d)(2). First, the requirement to report size for transactions in securities other than ABS would be set forth in proposed Rule 6730(d)(2)(A) and would continue to require members to report the total par value or principal value of the security. Second, proposed FINRA Rule 6730(d)(2)(B)(i), (ii) and (iii) would restate current requirements regarding reporting size of other transactions in ABS as follows: in (B)(i), for a TBA transaction, a member would be required to report the original face value of the security; in (B)(ii), for a transaction in an amortizing ABS, other than a TBA transaction, a member would be required to report the original face value of the security and, if a member used a Factor to execute the transaction that was not the most current Factor publicly available at the Time of Execution, to report the Factor used, except if executed in an agency capacity and subject to the requirements of proposed FINRA Rule 6730(d)(2)(B)(iv) as described above; and in (B)(iii), for a transaction in a non-amortizing ABS, a member would be required to report the original face value of the security, except if executed in an agency capacity and subject to the requirements of proposed FINRA Rule 6730(d)(2)(B)(iv) as described above.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 270 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will ensure the accuracy of the price transparency provided by TRACE by requiring members that are party to an ABS transaction (except a TBA transaction) to report the Factor in the limited instances when the transaction is executed in agency capacity with a commission charged. FINRA believes the tailored reporting requirement is appropriate given that only approximately one percent of all ABS transactions are executed in agency capacity with a commission charged. FINRA believes that the price transparency provided by TRACE assists all market participants in determining the quality of their executions and member firms in complying with their regulatory obligations, including best execution obligations. In addition, accurate price transparency may have a positive impact on the quality of pricing for valuation purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change will ensure the accuracy of the price transparency provided by TRACE by requiring members that are party to an ABS transaction (except a TBA transaction) to report the Factor in the limited instances when a transaction is executed in agency capacity with a commission charged. FINRA believes the reporting requirement is appropriately tailored to minimize the burden and cost of complying with the rule in that the proposed requirement will apply only to approximately one percent of all ABS transactions. In addition, the proposed reporting requirement applies equally to any member that executes such transactions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–052 on the subject line.

[10] The portion of the commission is calculated by dividing the dollar amount of the commission by the total size (which is the product of the original face value multiplied by the Factor). The resulting number is multiplied by 100.

[11] FINRA recognizes that in non-amortizing ABS, such as ABS backed by credit card receivables, amortization does not occur, and thus, a Factor is not generally referenced to indicate the size of a transaction. However, since so few transactions are executed in agency capacity with commission charged, proposed FINRA Rule 6730(d)(2)(B)(iv) would not distinguish between amortizing ABS and non-amortizing ABS, and would require a member to report a Factor in every ABS transaction (except TBA transactions) executed in agency capacity with a commission charged. For any such transactions in a non-amortizing ABS, a member would report 1.0 as the Factor.

[12] 15 U.S.C. 78*o*–3(b)(6).

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–FINRA–2012–052. 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 FINRA. 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–FINRA–2012–052 and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30378 Filed 12–17–12; 8:45 a.m.]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68413; File No. SR–ISE–2012–91]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 12, 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 December 3, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange 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 proposes 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 the 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 155 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 purpose of this proposed rule change is to amend the list of Select Symbols. Specifically, the Exchange proposes to add the following 35 symbols to the list of Select Symbols: American Capital Ltd. (''ACAS''), Adobe Systems Inc. (''ADBE''), AK Steel Holding Corp. (''AKS''), Applied Materials Inc. (''AMAT''), Brocade Communications Systems (''BRCD''), Boston Scientific Corp. (''BSX''), CSX Corp. (''CSX''), Delcath Systems Inc. (''DCTH''), iShares Japan Index ETF (''EWJ''), iShares MSCI Taiwan Index Fund (''EWT''), iShares MSCI South Korea Index Fund (''EWY''), Fidelity National Information Services Inc. (''FIS''), General Mills Inc. (''GIS''), Genworth Financial Inc. (''GNW''), Garmin Ltd. (''GRMN''), Huntington Bancshares Inc. (''HBAN''), Honeywell International Inc. (''HON''), Hershey Co. (''HSY''), Lowe's Companies Inc. (''LOW''), MetLife Inc. (''MET''), Nabors Industries Ltd. (''NBR''), ProShares Ultra QQQ (''QLD''), Regions Financial Corp. (''RF''), Rambus Inc. (''RMBS''), RadioShack Corp. (''RSH''), Savient Pharmaceuticals Inc. (''SVNT''), Teck Resources Limited (''TCK''), TiVo Inc. (''TIVO''), Trina Solar Ltd. (''TSL''), Tesoro Corp. (''TSO''), Texas Instruments Inc. (''TXN''), PowerShares DB US Dollar Bullish Fund (''UUP''), MEMC Electronic Materials (''WFR''), Whirlpool Corp. (''WHR'') and Health Care Select Sector SPDR Fund (''XLV'') (''Additional Select Symbols'').

[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).

With the addition of the Additional Select Symbols to Select Symbols, the fees currently applicable to regular and complex orders in the Select Symbols will now be applied to regular and complex orders in the Additional Select Symbols.

Regular Order Fees and Rebates

The Exchange currently applies transaction fees to regular orders in the Additional Select Symbols, as follows: [6]

➢ For Market Maker [7] orders, a fee of $0.18 per contract; [8]

➢ For Market Maker (for orders sent by Electronic Access Members), Firm Proprietary/Broker-Dealer and Professional Customer [9] orders, a fee of $0.20 per contract;

➢ For Non-ISE Market Maker [10] orders, a fee of $0.45 per contract;

➢ For Priority Customer [11] orders, a fee of $0.00 per contract.

The Exchange currently charges a fee of $0.20 per contract to all market participants (except for Market Makers, this fee is currently $0.18 per contract,[12] and for Priority Customers, this fee is $0.00 per contract) for regular Crossing Orders in the Non-Select Penny Pilot Symbols (this fee currently applies to the Additional Select Symbols as they are a subset of Non-Select Penny Pilot Symbols). The Exchange also currently charges a fee of $0.20 per contract to all market participants (except for Non-ISE Market Makers, this fee is currently $0.45 per contract, and for Market Makers, this fee is $0.18 per contract [13]) for regular Responses to Crossing Orders in the Non-Select Penny Pilot Symbols (this fee currently applies to the Additional Select Symbols as they are a subset of Non-Select Penny Pilot Symbols).

With this proposed rule change, the Additional Select Symbols will now be subject to the maker/taker fees and rebates applicable to Regular orders in the Select Symbols.[14] The Exchange currently charges the following maker fees and rebates for Select Symbols: (i) For Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.10 per contract; (ii) for Priority Customer orders, $0.00 per contract; and (iii) for Market Maker Plus [15] orders, a rebate of $0.10 per contract. The Exchange also currently charges the following taker fees for Select Symbols: (i) For Market Maker and Market Maker Plus orders, $0.32 per contract; (ii) for Non-ISE Market Maker orders, $0.36 per contract; (iii) for Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.33 per contract; and (iv) 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 regular Crossing Orders in the Select Symbols, and a fee of $0.40 per contract to all market participants for regular Responses to Crossing Orders in the Select Symbols. With this proposed rule change, the fee for regular Crossing Orders in the Additional Select Symbols will remain at $0.20 per contract for most market participants. For Priority Customers, this fee will remain at $0.00 per contract, and for Market Makers, this fee will increase, from $0.18 per contract [16] to $0.20 per contract. With this proposed rule change, the fee for regular Responses to Crossing Orders will increase for most market participants, from $0.20 per contract to $0.40 per contract, with the exception of Non-ISE Market Makers who will now pay a lower fee of $0.40 per contract as opposed to $0.45 per contract.

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 in the Select Symbols, 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 in the Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. With this proposed rule change, market participants trading in the Additional Select Symbols will now be eligible for rebates that were not previously available for this group of symbols. Specifically, market participants will now receive 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 in the Additional Select Symbols. Further, market participants will now also receive 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 in the Additional Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks.

Further, the Exchange currently charges Primary Market Makers (PMMs) a transaction fee of $0.18 per contract [17] in the Additional Select Symbols when they trade report a Priority Customer or Professional Customer order in accordance with their obligation to provide away market price protection. PMMs in Select Symbols do not receive a maker rebate nor pay a taker fee when trading reporting.[18] With this proposed rule change, PMMs in the Additional Select Symbols will also not receive a maker rebate nor pay a taker fee when trade reporting.

[6] Additional Select Symbols are currently subject to the standard transaction fee listed in the table titled Non-Select Symbols. *See* Schedule of Fees, Section I, Regular Order Fees and Rebates.

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[8] The Exchange provides a volume-based discount to fees to ISE Market Maker contracts for regular orders in Non-Select Symbols. *See* Schedule of Fees, Section IV, C. ISE Market Maker Discount Tiers.

[9] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[10] 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.

[11] 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).

[12] The volume-based discount to fees to ISE Market Maker contracts also applies to regular Crossing Orders. *See* supra, note 8.

[13] The volume-based discount to fees to ISE Market Maker contracts also applies to regular Responses to Crossing Orders. *See* supra, note 8.

[14] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates.

[15] 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.

[16] The volume-based discount to fees to ISE Market Maker contracts also applies. *See* supra, note 8.

[17] The volume-based discount to fees to ISE Market Maker contracts also applies. *See* supra, note 8.

[18] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates, footnote 9.

Complex Order Fees and Rebates

With this proposed rule change, the maker fee for complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges the same maker fee for complex orders in Select Symbols and Penny Pilot Symbols.[19] Specifically, for Select Symbols and Penny Pilot Symbols, the Exchange currently charges a complex order maker fee of: (i) $0.10 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; (ii) $0.20 per contract for Non-ISE Market Maker orders; and (iii) $0.00 per contract for Priority Customer orders.

With this proposed rule change, the maker fee for complex orders in the Additional Select Symbols when trading against Priority Customers will also remain unchanged because, once again, the Exchange currently charges the same maker fee for complex orders in Select Symbols when trading against Priority Customers (excluding SPY) and Non-Select Penny Pilot Symbols when trading against Priority Customers.[20] Specifically, for complex orders in Select Symbols when trading against Priority Customer (excluding SPY) and Non-Select Penny Pilot Symbols when trading against Priority Customers complex orders, the Exchange currently charges a maker fee of: (i) $0.37 per contract for Market Maker orders; (ii) $0.39 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders.

With this proposed rule change, the taker fee for complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges the same taker fee for complex orders in Select Symbols and Non-Select Penny Pilot Symbols.[21] Specifically, for complex orders in Select Symbols (excluding SPY) and Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: i) $0.37 per contract for Market Maker orders; ii) $0.39 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and iii) $0.00 per contract for Priority Customer orders.

With this proposed rule change, the Fee for Crossing Orders when trading complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges $0.20 per contract (for largest leg only) for complex Crossing Orders in all symbols, except for Priority Customers who are currently charged $0.00 per contract. Further, the Fee for Responses to Crossing Orders when trading complex orders will also remain unchanged because the Exchange currently charges $0.40 per contract for Responses to Crossing Orders when trading complex orders in Select Symbols and Penny Pilot Symbols.[22]

With this proposed rule change, the rebate levels payable for Priority Customer complex orders in the Additional Select Symbols will increase because the rebate levels payable for Priority Customer complex orders in the Select Symbols are higher than the rebate levels currently payable for Priority Customer complex orders in Non-Select Penny Pilot Symbols, as described below.

For the Additional Select Symbols, the Exchange currently provides a base rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book.[23] Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.34 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.36 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

For Select Symbols (excluding SPY), the Exchange currently provides a base rebate of $0.34 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.36 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.39 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. With this proposed rule change, the increased rebate levels currently payable for Priority Customer complex orders in Select Symbols will now apply to Priority Customer complex orders in the Additional Select Symbols.

Additionally, the Exchange currently 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, among other symbols, Select Symbols and Non-Select Penny Pilot Symbols. The Additional Select Symbols are currently a part of the Non-Select Penny Pilot Symbols and therefore the two-cent discount currently applies to these symbols and will continue to apply to these symbols when they become Select Symbols.

Further, the Exchange currently provides a $0.20 per contract fee credit to PMMs for execution of Priority Customer orders in the 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

[19] Additional Select Symbols are currently subject to the fee listed in the column titled Maker Fee for Select Symbols and Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[20] Additional Select Symbols are currently subject to the fee listed in the column titled Maker Fee for Non-Select Penny Pilot Symbols when trading against Priority Customer. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[21] Additional Select Symbols are currently subject to the fee listed in the column titled Taker Fee for Non-Select Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[22] Additional Select Symbols are currently subject to the fee listed in the column titled Fee for Responses to Crossing Orders for Select Symbols and Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[23] Additional Select Symbols are currently subject to the rebate listed in the column titled Rebate for non-Select Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

by a destination market. For PMMs in the Select Symbols, this credit is equal to the fee charged by the destination market. With this proposed rule change, PMMs in the Additional Select Symbols will now be provided with a credit that is equal to the fee charged by the destination market.

The Exchange also currently provides a $0.20 per contract credit for responses to flash orders in the Non-Select Penny Pilot Symbols when trading against Professional Customers. For Select Symbols, the per contract fee credit for responses to flash orders is (i) $0.10 per contract when trading against Priority Customers; (ii) $0.12 per contract when trading against Preferenced Priority Customers; and (iii) $0.10 per contract when trading against Professional Customers. Market participants trading in the Additional Select Symbols will now be provided the rebate at levels that are currently in place for Select Symbols, as described above.

With this proposed rule change, the Exchange expects to attract additional order flow of regular and complex orders in the Additional Select Symbols. The Exchange's maker/taker fees and rebates have been effective in attracting order flow of regular and complex orders in the Select Symbols and increasing its market share in these symbols. The Exchange believes that applying its maker/taker fees and rebates to the Additional Select Symbols will result in the Exchange increasing its market share for regular and complex orders in these symbols.

With this proposed rule change, the taker fees and Response to Crossing Order fees charged to all market participants for regular orders in the Additional Select Symbols will increase, except for Non-ISE Market Makers whose fee will decrease, while the maker fees for regular orders in the Additional Select Symbols will decrease, except for Priority Customer maker fees, which will remain the same at $0.00 per contract. Market Makers will now also be eligible for the Market Maker Plus rebate, which was previously not applicable to the Additional Select Symbols. This proposed rule change does not proposed any change to the maker and taker fees for complex orders in the Additional Select Symbols as those fees remain unchanged. The rebate levels payable for Priority Customer complex orders in the Additional Select Symbols will, however, increase compared to the current rebate levels for this group of symbols.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(4) of the Act [25] 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 add the Additional Select Symbols to the current list of Select Symbols. The Exchange believes that applying the fees and rebates applicable to Select Symbols to the Additional Select Symbols will attract additional order flow to the Exchange. Select Symbol pricing has proven beneficial for the Exchange and its participants and the Exchange believes that moving the Additional Select Symbols to Select Symbols pricing would enhance liquidity and participation in those symbols.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Additional Select Symbols because the fees and rebates for Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade options in the Select Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

The Exchange believes the proposed rule change is reasonable and equitable because it lowers the maker fees applicable to market participants and believes that the lower maker fees will attract additional maker liquidity and size to the Exchange in the Additional Select Symbols. Additionally, while this proposed rule change proposes to increase the taker fees applicable to market participants, the Exchange believes the benefits of better market quality will outweigh the taker fee increases based on the Exchange's experience with trading in the Select Symbols.

Further, the Exchange believes this proposed rule change is reasonable and equitable because it will result in market participants receiving higher rebates for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book as the current rebate payable for these orders in Select Symbols is higher than the current rebate payable for these orders in Additional Select Symbols. The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these rebates, and is now merely proposing to increase the rebate amounts applicable to the Additional Select Symbols. With this proposed rule change, Market Makers will also now be eligible to receive the Market Maker Plus rebate which was not previously applicable to the Additional Select Symbols. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes that it is reasonable and equitable to provide a two-cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. ISE notes that with this proposed rule change, the Exchange will continue to maintain a two cent differential that was previously in place for Additional Select Symbols.

The Exchange believes that the proposed changes are non-discriminatory because the proposal simply moves the Additional Select Symbols from one category of fees into another category thereby applying fees currently in effect. Further, the Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Additional Select 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.

Further, the complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change. The Exchange believes that the proposed fees and rebates are fair, equitable and not unfairly

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

discriminatory because they are consistent with price differentiation and fee structures that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee and rebate levels at a particular exchange to be too low or too high, as the case may be. With this proposed rule change, the Exchange believes it remains an attractive venue for market participants to trade regular and complex orders in the Select Symbols and the Additional Select Symbols.

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 [26] and subparagraph (f)(2) of Rule 19b–4 thereunder,[27] because it establishes a due, fee, or other charge imposed by ISE.

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.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

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–2012–91 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–2012–91. 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 20549–1090, 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 ISE's principal office. 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–2012–91, and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30377 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68412; File No. SR–BOX–2012–022]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Market Maker Pre-Opening Obligations on BOX

December 12, 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 December 4, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. 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

BOX Options Exchange LLC (the ''Exchange'') proposes to amend Rule 8050 (Market Maker Quotations) to eliminate market maker pre-opening obligations on its options trading facility BOX Market LLC (''BOX''). The Exchange also proposes to amend Rule 7070 (Opening the Market) and Rule 8040 (Obligations of Market Makers) to conform them to the change proposed to Rule 8050. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 8050 (Market Maker Quotations) to eliminate pre-opening obligations imposed on market makers (''Market Makers'') on BOX Market LLC (''BOX''),[4] that they participate in the pre-opening phase in terms of continuous quotes. The Exchange also proposes to amend Rule 7070 (Opening the Market) and Rule 8040 (Obligations of Market Makers) to conform them to the change proposed to Rule 8050.[5] This is done to put BOX Market Makers on par with the market makers on other options Exchanges that do not have pre-market continuous quoting obligations.[6]

Currently, Exchange Rule 8050 requires that a Market Maker must enter continuous bids and offers in options classes in which the Market Maker is appointed on BOX, an all-electronic market. Specifically, Rule 8050(e) requires that on a daily basis, a Market Maker must: (1) Participate in the pre-opening phase; and (2) thereafter make markets consistent with the applicable quoting requirements specified in the Exchange rules, such that a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes to which the Market Maker is appointed are open for trading. The Exchange does not propose to change any of the continuous quoting requirements applicable to a Market Maker (e.g. continuous quoting 60% of the time in the Market Maker's appointed classes)[7] other than to eliminate the requirement to participate in the pre-opening phase in Rule 8050(e) noted above.

Subsequent to this proposal, a Market Maker will continue to have all of the other quoting obligations that the Market Maker now has pursuant to Rule 8050, and pursuant to Rule 8050(e), during regular market hours will be responsible to post valid quotes on a continuous basis at least sixty percent (60%) of the time that the classes in which the Market Maker is appointed are open for trading. The change that the Exchange is proposing to Rule 8050(e) is removal of the Market Maker pre-opening quoting obligation and the insertion of text clarifying that the quoting obligation applies during regular market hours. As a result of the Exchange's proposed rule filing, the continuous quoting requirement for BOX Market Makers will not have a pre-opening quoting obligation, just as other options exchanges (e.g., NOM, Phlx and ISE) do not impose a pre-opening obligation on their electronic market makers.

NOM, Phlx and ISE have a continuous quoting obligation during their regular market hours, which are similar to the BOX market hours.[8] However, NOM, Phlx and ISE do not have an obligation for their market makers to participate in a pre-opening phase. On Phlx, for example, a Remote Streaming Quote Trader (''RSQT''),[9] which is similar in nature to a BOX Market Maker, has an obligation during trading hours to quote markets in not less than 60% of the series in which such RSQT is assigned (this is akin to BOX Market Maker appointment in a series). Unlike a BOX Market Maker, which currently has a pre- opening obligation, a Phlx RSQT does not have a pre-opening market maker obligation.[10] As a second example, there is a quoting requirement for an ISE market maker. However, just like Phlx, and unlike BOX, ISE does not have a pre-opening market maker obligation.[11] This proposed rule change establishes that BOX Market Makers, like Phlx and ISE market makers, will not have a pre-opening quoting obligation prior to market open.[12]

BOX Market Makers have noted that unlike BOX, other options exchanges do not have a pre-opening quoting obligation for their market makers, and have requested BOX to eliminate the pre-opening obligation so that the Exchange rules for trading on BOX are similar to those of other options exchanges such as, for example, Phlx. The Exchange believes this proposed rule change levels the playing field in respect of pre-opening obligations while leaving all other BOX quoting requirements intact.[13]

Moreover, the Exchange believes that its proposal to put BOX Market Makers in the same position as market makers on other exchanges will not have a negative effect on BOX market participants and investors. In particular, the Exchange believes the removal of pre-opening market maker obligations on BOX will have no impact on the functioning of the BOX opening process and in turn will not negatively impact BOX market participants.[14]

The Exchange believes further that the proposed rule change eliminating pre-opening obligations should be pro-competitive in that it will attract more Market Makers, and additional liquidity, onto BOX. This should be advantageous

[4] BOX operates as an options trading facility of the Exchange.

[5] Exchange Rule 100(a)(30) defines ''Market Maker'' to mean an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in the Rule 8000 Series regarding Market Makers. All Market Makers are designated as specialists on the Exchange for all purposes under the Exchange Act or Rules thereunder.

[6] NASDAQ Options Market (''NOM''), NASDAQ OMX Phlx (''Phlx''), and International Securities Exchange, LLC (''ISE'') have market pre-opening phases. However, NOM, Phlx and ISE do not, as discussed in the proposal, impose pre-opening obligations on their respective options market makers; none of the exchanges require continuous quoting prior to the regular options trading market. The regular trading market opens on these exchanges at 9:30 Eastern Time.

[7] The BOX trading day, which represents the regular market hours, is 9:30 a.m. to 4:00 p.m. Eastern Time, except for option contracts on Exchange-Traded Fund Shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time. *See* Exchange Rule 7020.

[8] *Id.*

[9] A Phlx RSQT is a Registered Options Trader that is a member or member organization with no physical trading floor presence that may generate and submit option quotations electronically in assigned options. *See* Phlx Rule 1014(b)(ii)(B). While the designation of RSQT does not exist on BOX, a BOX Market Maker enters quotes electronically on BOX just as an RSQT does on Phlx pursuant to specific quoting obligations. *See* Exchange Rule 8050(e), and Phlx Rule 1014(b)(ii)(D).

[10] For the Phlx continuous quoting rule, *see* Phlx Rule 1014(b)(ii)(D)(1).

[11] ISE rule 804(e)(2)(iii) states, in relevant part, that a Competitive Market Maker must maintain continuous quotations in an options class to which it is appointed and at least 60% of the series of the options class listed on the Exchange until the close of trading that day.

[12] The two-sided quote obligation is noted also in Exchange Rule 8040(a)(1), which states that during trading hours a Market Maker must maintain a two-sided market, pursuant to Rule 8050(c)(1), in those options in which the Market Maker is appointed, in a manner that enhances the depth, liquidity and competitiveness of the market.

Recognizing the requirement to maintain a two-sided market during trading hours per Rule 8040(a)(1), the Exchange is removing reference in Rule 8040(a)(2) to a Market Maker having to enter two-sided quotes before market open by participating in opening the market. This is done for purposes of conforming Rule 8040(a)(2) with proposed Rule 8050(e), which eliminates quoting obligations in the pre-opening phase before the market opens.

[13] Exchange Rule 8050(e).

[14] The BOX process for Opening the Market is described within Rule 7070. Note that Rule 7070(d) currently specifies that during the pre-opening phase, BOX Market Makers holding an assignment on a given options class are obliged, as part of their obligations to ensure a fair and orderly market, to provide continuous two-sided quotes according to the BOX minimum standards at the opening of the market for the underlying security. In conformance with the proposed change to Rule 8050(e), the Exchange is removing this reference to BOX Market Makers pre-opening quoting obligation.

to traders and investors executing trading and hedging strategies on BOX. In addition, orders and quotes executed during the opening process on BOX will continue to be protected by the National Best Bid or Offer (''NBBO''). As such, the Exchange believes that BOX participants will continue to have a similar experience and quality of execution on the opening on BOX as they do today.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices. Therefore, the Exchange believes the proposal promotes just and equitable principles of trade and serves to protect investors and the public interest.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of ten U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, the Market Maker will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the pre-open phase obligation creates an additional obligation and burden on BOX Market Makers that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the pre-open trading practice that exists on BOX today compels this proposal. It will allow Market Makers on BOX to follow rules that are similar to the rules of other options exchanges that do not impose pre-opening obligations on their market makers, and will allow Market Makers to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange proposal to eliminate the pre-opening obligation on BOX Market Makers is consistent with the market maker obligations on other options exchanges, which do not impose pre-opening obligations on market makers. The Exchange believes that its proposal is pro-competitive and should serve to attract market making activity and increase liquidity on BOX which will benefit all BOX market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 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[17] and Rule 19b–4(f)(6)(iii) thereunder.[18] 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 Number SR–BOX–2012–022 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–BOX–2012–022. 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–BOX–2012–022 and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30376 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68415; File No. SR–MIAX–2012–01]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the MIAX Options Fee Schedule

December 12, 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 December 7, 2012, Miami International Securities Exchange LLC (''Exchange'' or ''MIAX'') 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 Exchange is filing a proposal to adopt the MIAX Options Fee Schedule (the ''Fee Schedule''). Specifically, the Fee Schedule would establish select transaction and regulatory fees applicable to Members trading options on and using services provided by MIAX.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX'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, 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.

[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

The purpose of the proposed rule change is to establish select transaction and regulatory fees applicable to Members trading options on and using services provided by the MIAX.

Marketing Fee

MIAX will assess a Marketing Fee to all MIAX Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Priority Customer. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX will, on a monthly basis, disburse collected Marketing Fees to specific Electronic Exchange Members in accordance with instructions received from the applicable Primary Lead Market Maker ''PLMM'' or Lead Market Maker ''LMM'' in the option class. The PLMM will provide instructions regarding the disbursement of Marketing Fees collected in those option classes in which he is the appointed PLMM on transactions resulting from orders that have been directed to him and from non-directed orders in that option class. The LMM will provide instructions regarding the disbursement of Marketing Fees collected on transactions resulting from orders that have been directed to him.

Undispersed Marketing Fees will be reimbursed to Market Makers based upon their pro-rata portion of the entire amount of Marketing Fees collected on a three month rolling schedule. In order to provide PLMMs and LMMs flexibility in the timing of their disbursements to Electronic Exchange Members, PLMMs and LMMs may choose to disburse the Market Fees collected in one month over a three month period. Reimbursement of undispersed Marketing Fees will take this into consideration.

The amount of the Marketing Fee would depend upon whether the affected option class is included in the option Penny Pilot Program. A Marketing Fee of $0.25 per contract will be assessed to Market Makers for transactions in option classes that are included in the Penny Pilot Program. A Marketing Fee of $0.70 per contract will be assessed to Market Makers for transactions in option classes that are not in the Penny Pilot Program. A list of option classes included in the Penny Pilot Program is available on the MIAX Web site. MIAX's Marketing Fees are the same as CBOE, ISE, NYSE Amex and PHLX for transactions in option classes in the Penny Pilot Program. For option classes not in the Penny Pilot Program, MIAX's Marketing Fees are the same as PHLX ($0.70) and higher than CBOE, ISE and NYSE Amex ($0.65 each respectively).

Routing Fees

MIAX will assess Routing Fees in order to recoup costs incurred by MIAX when routing to various away markets. MIAX will also pay to its Member any rebate it receives on transactions routed to an away market where there is such a rebate paid. To establish the appropriate Routing Fee for a particular order that is routed to, and executed on, an away market, MIAX will assess the transaction fee that is being assessed by the away market, plus a specified fixed fee, which represents the costs incurred by the Exchange for routing an order to an away market. The transaction fee portion of the routing fee will be the actual charge assessed by the away market at the time that the order was entered into the MIAX Trading System. This transaction fee will be calculated on an order-by-order basis since different away markets charge different amounts.[3] In the case where there is no transaction fee assessed by the away market, the Routing Fee assessed by MIAX will be only the fixed rate surcharge described below.

MIAX will assess a routing fee surcharge at a fixed rate of $0.10 per contract for Public Customer orders that are routed to and executed on away markets.[4] The routing fee surcharge represents the cost to MIAX for routing the order to the away market. In analyzing its costs, the Exchange took into account clearing costs,[5] administrative, regulatory and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services

[3] This is similar to the methodologies utilized by the NASDAQ OMX PHLX LLC (''PHLX'') and the International Securities Exchange, LLC (''ISE'') in assessing Routing Fees. *See* PHLX's Pricing Schedule and ISE's Fee Schedule.

[4] The Commission notes that, under the MIAX routing rules, orders other than Public Customer orders are not routed to away markets. *See* Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065, at 73086 (December 7, 2012).

[5] The Options Clearing Corporation (''OCC'') recently amended its clearing fee from $0.03 per contract side to $0.01 per contract side. *See* Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

are included in the fixed fee surcharge. The Exchange analyzed its potential costs in determining to assess a fixed fee surcharge of $0.10 per contract to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market. The routing fee surcharge of $0.10 is the same as the fixed fee charged by PHLX for orders routed to exchanges other than NASDAQ OMX BX, Inc. (''BX'') and NASDAQ Options Market (''NOM'').[6]

MIAX is also proposing to pay a market participant any rebate offered by an away market where there is such a rebate paid. Any rebate paid would be netted against the fixed fee surcharge assessed by MIAX. For example, if a Public Customer order is routed to BOX Options Exchange, LLC (''BOX''), and BOX offers a customer rebate of $0.20 per contract, MIAX would deduct its fixed fee surcharge of $0.10 per contract from the rebate and pay the $0.10 per contract rebate to the market participant for the customer order that was routed.

Regulatory Fees

A. Sales Value Fee

The Sales Value Fee[7] is assessed by the Exchange to each Member for sales on the Exchange with respect to which the Exchange is obligated to pay a fee to the Commission pursuant to Section 31 of the Exchange Act. The Sales Value Fee is equal to the Section 31 fee rate multiplied by the Member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. To the extent there may be any excess monies collected under this rule, the Exchange may retain those monies to help fund general operating expenses. The sales transactions to which the fee applies are sales of options (other than options on a security index) and the sales of securities resulting from the exercise of physical-delivery options. The fee is collected indirectly from Members through their clearing firms by The Options Clearing Corporation on behalf of MIAX with respect to option sales and options exercises.

B. Web CRD[8] Fees

Financial Industry Regulatory Authority (''FINRA''), through the Web CRD℠ registration system for the registration of associated persons of Electronic Exchange Member and Market Maker organizations that are not also FINRA members, collects from those MIAX Members general registration fees and fingerprint processing fees. The MIAX Options Fee Schedule sets forth both the Web CRD Fees FINRA is currently charging and the new Web CRD Fees it will begin charging January 2, 2013.

2. Statutory Basis

The Exchange believes that its proposal to adopt its Fee Schedule for select transaction and regulatory fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] 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 the fees proposed for transactions on MIAX are reasonable. MIAX will operate within a highly competitive market in which market participants can readily send order flow to any of ten other competing venues if they deem fees at a particular venue to be excessive. The proposed fee structure is intended to attract order flow to MIAX by offering market participants incentives to submit their orders to MIAX.

MIAX notes that the U.S. options markets are highly competitive, and the Marketing Fee is intended to provide an incentive for PLLMs and LMMs to enter into marketing agreements with Electronic Exchange Members so that they will provide order flow to MIAX. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. MIAX believes that its program of Marketing Fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges,[11] will enhance the MIAX's competitive position and will result in increased liquidity on the MIAX, thereby providing more of an opportunity for customers to receive best executions on MIAX. MIAX believes that its Marketing Fee is reasonable since the amount of MIAX's Marketing Fee is the same as other exchanges for options classes in the Penny Pilot Program and slightly higher than some of the other exchanges and the same as two of the exchanges for options classes not in the Penny Pilot Program.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Public Customer orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative, regulatory and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Public Customer orders by the away market. The Exchange believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. Also, market participants whose orders routed to away markets will be entitled to receive rebates offered by the away markets, which rebates will net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate will reduce Routing Fees.

MIAX also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. MIAX would pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The proposed Sales Value Fee allows the Exchange to offset the cost it incurs in payment to the Commission of a transaction fee that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. The amount of the fee is the same amount assessed to

[6] *See* Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR–PHLX–2012–129).

[7] *See* Exchange Rule 1207.

[8] FINRA operates the Web Central Registration Depository (CRD®), the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See e.g.,* Securities Exchange Act Release Nos. 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR–CBOE–2006–53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); and 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006). *See* also, Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006–33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006–47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006–56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007–05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx- 2007–12).

the Exchange pursuant to Section 31 of the Exchange Act. The Exchange believes it is reasonable to recover the actual costs associated with the payment of Section 31 fees.

Finally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory for the FINRA fees to be included on the Fee Schedule because these fees are not being assessed or set by MIAX, but by FINRA, and will be assessed to broker-dealers that register associated persons through FINRA's WebCRD system.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed MIAX Options Fee Schedule for select transaction and regulatory fees appropriately reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2012–01 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–MIAX–2012–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–MIAX–2012–01 and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30379 Filed 12–17–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13365 and #13366]

New York Disaster Number NY–00130

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

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 through 11/08/2012.

Effective Date: 12/10/2012.

Physical Loan Application Deadline Date: 01/28/2013.

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 President's major disaster declaration for the State of New York, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/28/2013.

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. 2012–30417 Filed 12–17–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13415 and #13416]

District of Columbia Disaster #DC–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the District of Columbia (FEMA–4096–DR), dated 12/05/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 10/31/2012.

Effective Date: 12/05/2012.

Physical Loan Application Deadline Date: 02/04/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 09/05/2013.

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: Notice is hereby given that as a result of the President's major disaster declaration on 12/05/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: District of Columbia.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 134158 and for economic injury is 134168.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–30418 Filed 12–17–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13413 and #13414]

Virginia Disaster #VA–00051

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia dated 12/07/2012.

Incident: Tidal Surge, Rain and Wind from Hurricane Sandy.

Incident Period: 10/28/2012.

Effective Date: 12/07/2012.

Physical Loan Application Deadline Date: 02/05/2013.

Economic Injury (Eidl) Loan Application Deadline Date: 09/09/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Accomack.

Contiguous Counties:

Virginia: Northampton.

Maryland: Somerset, Worcester.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13413 8 and for economic injury is 13414 0.

The States which received an EIDL Declaration # are Virginia; Maryland.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

December 7, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–30414 Filed 12–17–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13394 and #13395]

Maryland Disaster Number MD–00025

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 MARYLAND (FEMA–4091–DR), dated 11/20/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/04/2012.

Effective Date: 12/03/2012.

Physical Loan Application Deadline Date: 01/21/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/20/2013.

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 MARYLAND, dated 11/20/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anne Arundel; Cecil; Prince Georges.

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. 2012–30416 Filed 12–17–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies—Early Stage SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Call for early stage fund managers.

SUMMARY: This Call invites experienced early stage fund managers to submit the preliminary materials discussed in Section II, in the form of the Small Business Investment Company (''SBIC'')

Management Assessment Questionnaire (''MAQ''), for consideration by the Small Business Administration (''SBA'') to be licensed as Early Stage Small Business Investment Companies. Licensed Early Stage SBICs may receive SBA-guaranteed debenture leverage of up to 100 percent of their Regulatory Capital, up to a maximum of $50 million. Early Stage SBICs must invest at least 50% of their investment dollars in early stage small businesses. For the purposes of this initiative, an ''early stage'' business is one that has never achieved positive cash flow from operations in any fiscal year. By licensing and providing SBA guaranteed leverage to Early Stage SBICs, SBA seeks to expand entrepreneurs' access to capital and encourage innovation as part of President Obama's Start-Up America Initiative launched on January 31, 2011. More information on the Early Stage SBIC Initiative and the regulations governing these SBICs may be found at *www.sba.gov/inv/earlystage.*

In order to expedite licensing of qualified applicants that have already raised the required capital, SBA has established two ''tracks'' for the Early Stage SBIC Licensing Process as follows:

► Track 1—Applicants with Capital: This includes all applicants that have signed commitments for at least $15 million in Regulatory Capital and the remaining capital needed to achieve the minimum $20 million in Regulatory Capital for Early Stage SBICs ''soft-circled.'' (This may include drop-down funds.) Track 1 applicants that receive a Green Light letter will need signed commitments of at least $20 million in Regulatory Capital when they file their Licensing Application on or before June 7, 2013. SBA will accept a commitment that is conditioned upon issuance of an Early Stage SBIC license and/or approval of the applicant's organizational documents, but will not accept a commitment that is subject to any other conditions.

► Track 2—All Other Applicants.

DATES: The following table provides the key milestones for the Early Stage SBIC Initiative.

Milestone	Track 1—due dates	Track 2—due dates
Initial Review Period:		
• Management Assessment Questionnaires (''MAQs'') Due	5 p.m. EST, March 1, 2013	5 p.m. EST, March 30, 2013.
• Interview Period	March 25, 2013–March 29, 2013	June 3, 2013–June 14, 2013.
• Anticipated Green Light Decision	April 30, 2013	September 27, 2013.
Licensing Period:		
• For those Licensing Applicants with at least $20 million in Regulatory Capital and desiring to be licensed by September 30, 2013.	5 p.m. ET June 7, 2013	
• All other Applicants with Green Light Letters		No later than one year from issuance of Green Light Letter.

Notes:

- *SBA reserves the right to extend its interview, due diligence, committee, and approval timelines as appropriate. SBA will update its Web site at www.sba.gov/inv/earlystage should these dates change. Applicants will be notified by email should these dates change.*
- *SBA expects to issue additional calls for Early Stage SBICs on an annual basis.*
- *SBA will announce these calls via a call notice in the* ***Federal Register.***

ADDRESSES: Email *MAQrequest@sba.gov* to obtain a copy of the Management Assessment Questionnaire (''MAQ'') for your proposal as discussed in Section II. MAQ documents may be submitted in two distinct ways: (1) MAQ documents may be submitted via express or next day delivery service to the following address: Scott Schaefer, Senior Investment Officer, Office of Investment, U.S. Small Business, Administration, 409 3rd St. SW., Suite #6300, Washington, DC 20416.

In this instance, MAQ documents must be contained on a CD–ROM and all files must be in either *MS Word or Excel formats (not pdf).* (2) Alternatively, MAQ documents may be submitted via email to *scott.schaefer@sba.gov.* In this instance as well, MAQ documents must be in *MS Word and Excel formats (not pdf).* In both instances, alternative (1) and alternative (2), original hard copy signature pages must be sent to the above-referenced physical address via express or next day delivery service.

The applicant bears responsibility for ensuring the timely delivery of the MAQ to the correct address.

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA invites early stage fund managers to submit the preliminary materials, as discussed in Section II, in the form of a Management Assessment Questionnaire (''MAQ'') for the formation and management of an Early Stage SBIC. In 2011, SBA introduced the Early Stage Initiative. Early Stage SBICs represent a new sub-category of SBICs that will focus on making investments in early stage small businesses. Go to *www.sba.gov/inv/earlystage* for information on the Early Stage Initiative and links to the Early Stage SBIC Final Rule (''Final Rule''). This initiative is part of President Obama's ''Start-Up America Initiative'' to promote American innovation and job creation by encouraging private sector investment in job-creating startups and small firms, accelerating research, and addressing barriers to success for entrepreneurs and small businesses.

II. Management Assessment Questionnaire/License Application Materials

The first required submission in the Early Stage Licensing process is SBA's MAQ. The MAQ consists of two forms that cover qualitative and quantitative information on the management team, the proposed strategy for the SBIC, the principals' investment track record, and the proposed fund structure and economics. The MAQ consists of SBA Form 2181 and the exhibits in SBA Form 2183.

If you are a Track 1 applicant and you are invited to be interviewed (see paragraph III.B.2), you will be required to bring to the interview a completed Exhibit N from SBA Form 2182, consisting of your financial forecast and a written narrative which identifies how you will manage SBA leverage as part of your business plan. Whether you choose discounted leverage or standard leverage with a 5 year interest reserve, each as described in the Final Rule, your plan must address how you will meet interest payments after 5 years from the date of debenture issue.

If SBA issues you a ''Green Light letter'' (described in paragraph III.B.5), you must submit the SBIC License Application, consisting of SBA Form 2181 (updated as needed) and SBA Form 2182, for the final licensing phase (paragraph III.D). Exhibit Q in SBA Form 2182 includes the fund's limited

partnership agreement (''LPA''). Applicants should review Section IV of this notice for special instructions associated with the LPA for Early Stage SBICs.

To obtain a copy of the most recent versions of these forms, please send an email to *MAQrequest@sba.gov.* Read only examples of these forms may be found at *www.sba.gov/content/application-forms.*

III. Early Stage Licensing Process

There are four stages in SBA's Early Stage Licensing Process: (A) Call Period; (B) Initial Review; (C) Applicant Fundraising and Document Preparation; and (D) Licensing. Each of these stages is discussed below.

A. *Call Period.* This notice signals the start of the Fiscal Year 2013 Early Stage SBIC call period. SBA intends to hold no more than one Early Stage SBIC call period for accepting MAQs per fiscal year and SBA will issue a new notice in the **Federal Register** for the next call period. Interested parties should request a MAQ from SBA by emailing *MAQrequest@sba.gov.* Please take time to read the instructions included with each form identified in Section II. You should also review the information at *www.sba.gov/inv/earlystage* which includes a list of frequently asked questions (''FAQs'') regarding the Early Stage Initiative. If you still have questions regarding the Early Stage process, please email your questions to *startupamerica@sba.gov.* SBA will endeavor to respond to your question within three business days, depending on volume. SBA may not be able to respond to fund specific questions or questions that require a legal opinion.

B. *Initial Review.* At the end of the Initial Review phase, SBA will issue Green Light letters to those applicants it believes preliminarily meet the evaluation criteria for an Early Stage SBIC, including the vintage year and geographic diversification criteria. Section V of this notice describes the criteria by which SBA will evaluate applicants. The process for SBA's Initial Review is as follows:

1. Submit MAQ. SBA must receive your completed MAQ no later than the date and time specified under the Dates section of this notice. SBA will send a confirmation that it has received your MAQ within 3 business days of your submission. If you have not fully completed all sections of the MAQ or provided sufficient information to allow SBA to evaluate your management team, you may be ineligible for this call period. If so, SBA will notify you by email.

2. Pre-Screen. SBA will review all MAQs against the evaluation criteria identified in Section V. SBA may engage a contractor to assist in evaluating MAQs received in response to this Call. The Investment Committee (composed of senior managers from the Office of Investment) will consider each MAQ, and if the Investment Committee concludes that the management team may be qualified for an Early Stage SBIC license, the entire team will be invited to SBA Headquarters in Washington, DC for an interview. Those applicants not invited for interviews will be notified. Upon request, SBA will provide feedback to applicants not selected for an interview.

3. Interview Period. SBA's invitation for an interview will identify a 1 hour time block during the Interview Period identified in the Dates Section. SBA will conduct interviews at SBA Headquarters, at 409 Third Street SW., Washington, DC. At the interview, Track 1 applicants must bring their financial forecast as described under Section II of this notice. Track 1 applicants are also encouraged to bring the following completed exhibits from SBA Form 2182 to the Interview:

a. Exhibit B—Fingerprint cards and

b. Exhibit C—Statements of Personal History.

If a Track 1 applicant receives a Green Light letter, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI. (Note: applicants may wait until the licensing stage to submit these documents. However, you will not be able to draw SBA leverage until your FBI checks are complete.)

4. Due Diligence. SBA will conduct due diligence on all applicants that successfully pass the Interview process. SBA may be assisted in this process by a contractor engaged by SBA.

5. Green Light Letter. Following the interview, the SBA will issue a Green Light letter to all applicants that preliminarily meet the criteria identified in Section V, as preliminarily determined by the Investment Committee. Applicants approved by the Investment Committee can expect to receive the Green Light letter via email within a few days of the Investment Committee's decision. The Green Light letter formally invites an applicant to submit its application for an SBIC License. The Green Light letter is only an invitation to proceed to the next stage in the process, not a guarantee that you will be issued an Early Stage SBIC license. Those applicants that do not receive a Green Light letter will also be notified by email within a few days of the Investment Committee's decision. SBA will provide feedback upon request to those applicants that do not receive a Green Light letter.

C. *Fundraising and Document Preparation.* If you receive a Green Light letter and desire to be licensed this fiscal year (ends September 30, 2013), you must submit your completed license application by June 7, 2013 and abide by all the conditions in Section IV of this notice. All other recipients of a Green Light letter must submit their completed application within one year from the date of the Green Light letter.

1. Raise Regulatory Capital. All Early Stage SBIC applicants must have signed capital commitments for the minimum Regulatory Capital needed to execute their strategy, but no less than $20 million in Regulatory Capital prior to filing their license application.

2. SBIC Education. All principals of an Early Stage SBIC applicant that has received a Green Light letter must attend a one-day SBIC Regulations training class. This training is normally held several times per year in Washington, DC. The purpose of this class is to familiarize SBIC principals with the SBIC rules, regulations and compliance procedures. Classes are normally limited in size. Although an applicant may receive a license before all principals have completed the training, a majority of principals must do so before licensing and all must do so before a licensed Early Stage SBIC will be permitted to draw leverage. Information concerning registration for classes can be obtained at *www.sbia.org.* Certain non-principals such as members of a board of directors may also be required to take the class. In addition, any employees or consultants whom you have assigned to handle regulatory matters or to interact with the Office of Investment should attend the class.

3. Finalize Documents & Perform Checklist. The following items must be completed and submitted in order to proceed to the Licensing phase:

Item
Updated SBA Form 2181 (See Section II for more information.)
SBA Form 2182 (See Section II for more information.)
At least $20 million in Regulatory Capital evidenced by signed Capital Certificate in Form 2182 (Exhibit M)
$25,000 Non-refundable licensing fee

D. *Licensing.* During this stage, SBA will review your completed application, perform further due diligence and analysis, and make the final licensing decision. If you filed under Track 1 and were issued a Green Light letter and

wish to be licensed in Fiscal Year 2013, SBA must receive your completed license application no later than 5 p.m. ET on June 7, 2013. All other applications must be filed within one year of receipt of the Green Light Letter. In addition, you must follow all guidance identified in Section IV. The process for Licensing is detailed below.

1. Submit License application. To proceed to the Licensing stage, applicants that have received a Green Light letter will need to submit all items listed in the Checklist above to the address indicated in your Green Light Letter. Upon receipt of the application, SBA will acknowledge receipt by email. Within three business days, SBA will determine whether the application is complete, meets the minimum capital requirements and satisfies management ownership diversity requirements. If so, SBA will formally accept the application. Submission of a complete application by the June 7, 2013 deadline does not guarantee that an applicant will be licensed by September 30, 2013. SBA's goal is to license all Track 1 applicants before September 30, 2013. However, applications that do not follow the guidance in Section IV may require extended processing time.

2. Background and Documentation Review. Once the application has been formally accepted, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI if the applicant did not previously submit such information during or after the Interview. Following a review of the application and legal documents, SBA will provide the applicant with a ''comment letter.'' Applicants must respond in writing to the comment letter, via mail, fax or email within 30 days after the date SBA sends the comment letter (or within one week in order to be licensed in Fiscal Year 2013). Applicants that do not address, to SBA's satisfaction, all of the comments contained in SBA's comment letter may experience a delay in their licensing cycle in order to provide SBA and the applicant with sufficient time to resolve outstanding issues. Through this process, SBA hopes to resolve all issues specified in SBA's comment letter as expeditiously as possible. Promptness and responsiveness in responding to SBA's comment letter are important.

3. Divisional Licensing Committee. Once the applicant has satisfactorily addressed all issues and SBA has completed its review and any due diligence, if necessary, and the Office of General Counsel has signed off on legal sufficiency of the application (including the final form of the organizational and other legal documents), the license application is presented to the Divisional Licensing Committee. This committee is composed of the senior managers of the Office of Investment. If approved by the Divisional Licensing Committee, the application is forwarded to the Agency Licensing Committee which is comprised of certain senior managers of the SBA. Prior to consideration by the Agency Licensing Committee, an applicant must provide a signed, up-to-date capital certificate showing that it has at least $2.5 million in Leverageable Capital, consisting of cash on deposit, approved pre-licensing investments as permitted by this Notice, and/or approved organizational and operational expenses paid out of partners' contributed capital, and at least $20 million in Regulatory Capital. The applicant's selected bank must certify that the requisite funds are in the applicant's account and unencumbered. An applicant must also submit a commitment request for the amount of leverage it is seeking.

4. Agency Licensing Committee and Administrator Approval. If the Agency Licensing Committee approves your license application, it will be forwarded to the SBA Administrator or her designee for final action as soon as you submit fully executed copies of all legal documents. (Please note that the executed documents must be identical to the ''final form'' of the documents approved by SBA.) If the Administrator or her designee approves your application, your Early Stage SBIC license is issued.

5. Leverage Commitments. SBA has allocated $200 million in Fiscal Year (''FY'') 2013 for Early Stage SBICs. SBA expects to allocate another $200 million in each of FY 2014 and FY 2015, and $250 million in FY 2016. If total leverage commitments requested for the FY 2013 licensing cycle exceed the amount available in FY 2013, SBA will allocate available leverage across all FY 2013 Early Stage SBICs on a pro rata basis. Early Stage SBICs licensed in FY 2013 will be eligible to request the remainder of their uncommitted leverage request in subsequent fiscal years and will be given priority consideration as a fund with prior year leverage commitments. SBA expects to be able to commit the full amount of leverage that an Early Stage SBIC requests. However, those commitments may be approved in multiple years, depending on availability in each year. Early Stage SBICs that raise additional private capital after licensing may request leverage commitments against that capital. However, such requests are subject to leverage availability and will not be considered until all other licensee requests are satisfied.

IV. Early Stage SBIC LPA and Organizational Instructions

A. *Early Stage SBIC Model LPA.* In order to expedite the review of Early Stage SBIC license applications, SBA has adopted a Model Early Stage SBIC Limited Partnership Agreement (''Model LPA'') that incorporates in Bold Arial type those provisions required by SBA. You must download the Model LPA at *www.sba.gov/content/earlystage-model-partnership-agreement.* Applicants must use the Model LPA as a template and follow the organizational structure of the Model LPA. Further, Applicants must include in their limited partnership agreements all of those provisions of the Model LPA that appear in Bold Arial type in the Model LPA. Additions, deletions and other changes or modifications to any of those provisions of the Model LPA that appear in Bold Arial type will not be accepted. Applicants are required to submit a copy of their limited partnership agreement black-lined against the Model LPA, with all of the provisions of the Model LPA in Bold Arial type retained in Bold Arial type, as explained in the instructions provided at the beginning of the Model LPA. Deviations from the guidance in this Section IV will add time to the licensing process. SBA provides the following further guidance on limited partnership agreements:

1. SBA encourages applicants to adhere to the Model LPA to the maximum extent possible. All deviations from those provisions of the Model LPA that do not appear in Bold Arial type must be accompanied by a narrative explanation for those deviations. Please note that any deviations must have a substantive basis and may be deemed unacceptable by SBA.

2. There must be no conditions or restrictions on the ability of the general partner to call private capital commitments except under the ''no fault termination of the investment period'' or ''key person'' provisions included in the Model LPA.

3. Withdrawal rights are limited to those permitted by the Model LPA.

4. Applicants must adhere to SBA's management fee policies available at *www.sba.gov/content/sbic-technotes-number-7a-revised-april-2008.* This policy sets a *maximum* allowable management fee only. The actual management fee will be set by negotiation between the management team and the limited partners and may be less than the maximum. Early Stage SBIC applicants should be aware that

the calculation of an SBIC's capital impairment percentage is affected by all fund expenses, including management fees. SBA will consider the management fee in its licensing evaluation criteria as part of fund economics. SBA believes that the primary incentive for fund managers should be carried interest rather than fees.

5. The designation of fund expenses and expenses to be paid out of the management fee must be consistent with SBIC program regulations (see 13 CFR § 107.520).

a. Organizational costs, expenses incurred in applying for a license and forming the SBIC and its entity general partner (but not its parent fund or any other affiliate), are considered a partnership expense. Organizational expenses typically include items such as the licensing fee, cost of legal and other professional and consulting services, travel and other fundraising expenses, costs of preparing, printing and distributing the private placement memorandum or other offering materials, and other related expenses such as telephone and supply costs. SBA strongly encourages applicants to include in the LP agreement a reasonable cap on the total organizational costs to be paid by the applicant. Costs deemed excessive can be paid by the general partner or management company or deducted from the applicant's Regulatory Capital prior to licensing.

b. Unreimbursed expenses on deals that do not close may be designated as a partnership expense but must be capped at a reasonable level.

6. Right of limited partners to remove general partner—Provisions allowing removal of the general partner without cause (''no-fault divorce'' provisions) are permitted only after the Early Stage SBIC has repaid all outstanding leverage and any other amounts payable to SBA and has surrendered its SBIC license.

7. SBA will not consider amendments to an Early Stage SBIC's LPA for a minimum of six months after licensing.

B. *Organization.* Early Stage SBIC applicants must adhere to the following rules regarding organizational structure:

1. Applicant cannot be a BDC or other public entity or a subsidiary of any such entity.

2. All provisions governing the operation of the SBIC should be included in the limited partnership agreement to the maximum extent possible. Side letters may materially delay your processing time.

3. Applicant must adopt SBA Model Valuation Guidelines.

4. Drop-down SBICs

a. The drop-down structure should be used only when it has a clear business purpose:

i. Example 1—Parent fund has already raised capital and begun operating and wants to commit a portion of its capital to an Early Stage SBIC.

ii. Example 2—Substantial capital will be retained for investment at the parent level. (Managers might also consider the alternative of structuring a non-SBIC fund side by side with the SBIC.)

b. Drop-down funds must have one parent fund only and the parent fund must be a U.S. entity.

c. Parent must qualify as a traditional investment company based on established SBA precedent.

d. Parent must disclose the identity of all of its investors.

e. All of the investors in the parent fund (the SBIC's ''Class A'' limited partner) must agree to be ''Class B'' limited partners of the SBIC with an obligation to fund the Early Stage SBIC capital calls if the Class A limited partner does not. The obligation of the Class B limited partners to the Early Stage SBIC is reduced dollar for dollar as the Parent Fund contributes capital to the SBIC. The Model LPA contains required provisions for drop-down funds.

f. The Class B limited partners' commitments to the SBIC applicant must be expressed as a specific dollar amount (not just as the ''proportionate share'' of parent fund's commitment).

g. The total dollar amount of Class B commitments must be equal to the Class A limited partner's unfunded commitment to the SBIC. SBA will not require Class B commitments if the SBIC's Regulatory Capital will not include any unfunded commitments from the Class A limited partner.

C. *Capitalization.* Applicants must raise the minimum $20 million in Regulatory Capital by the time the license application is submitted.

1. Capital commitments from limited partners must be made directly to the SBIC (and its parent fund, in the case of a drop-down) with no intermediaries involved.

2. The Early Stage SBIC applicant must have the unconditional ability to legally enforce collection of each capital commitment.

3. Capital Certificate. Capital commitments must be documented in the capital certificate (Section M of SBA Form 2182) and comply with the following:

a. A signed Capital Certificate must be submitted with the license application.

b. The only permitted conditions on private capital commitments are:

i. Receipt of Early Stage SBIC license.

ii. Approval of limited partnership agreement.

c. Individual investors must list primary residence address, not a business address.

d. Street addresses are required (no P.O. Box addresses).

4. A dual commitment may be obtained to back up the commitment of any direct investor in the SBIC who is not an Institutional Investor.

5. Capital commitments by the principals, general partner, or their affiliates must be payable in cash when called (cannot be satisfied with notes or management fee waivers).

D. General Partner

1. All principals must:

a. Hold direct ownership interests in and be the direct individual managers of the general partner, with no intervening entities.

b. Receive carried interest directly from the general partner; for drop-down SBICs, carried interest may be received from the parent fund's general partner.

2. A maximum of 25% of the carried interest may be allocated to non-principals.

3. Any provision to remove or terminate a principal must be spelled out within the general partner's organizational document and must not be tied to events occurring under other agreements (e.g., a principal's employment agreement with the management company).

E. *Investment Advisor (''Management Company'').* Ownership of the Management Company that is highly disproportionate to the ownership of the general partner (e.g., one principal is the 100% owner) is not viewed favorably by SBA, but may be acceptable if there are adequate checks and balances on the powers of the dominant owner. Areas that cannot be subject to unilateral decision-making include the following:

1. Power to remove or terminate other principals.

2. Power to change the composition of the Early Stage SBIC's investment committee.

V. Early Stage SBIC Licensing Evaluation Criteria

A. *General Criteria.* SBA will evaluate an Early Stage SBIC license applicant based on the submitted application materials, Investment Committee interview with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. SBA will evaluate an Early Stage SBIC license applicant based on

the same factors applicable to other license applicants, as set forth in 13 CFR § 107.305, with particular emphasis on managers' skills and experience in evaluating and investing in early stage companies. As discussed in the Final Rule, evaluation criteria fall into four areas: (A) Management Team; (B) Track Record; (C) Proposed Investment Strategy; and (D) Organizational Structure and Fund Economics. You should review these regulations prior to completing your MAQ.

B. *Managing SBA Leverage.* SBA will pay particular attention to how a team's investment strategy works with proposed SBA leverage. Early Stage Debenture leverage either requires a 5 year interest and annual charge reserve from the date of issue or is structured with an original issue discount that covers the interest and annual charges for the first 5 years. In either case, Early Stage SBICs must identify how quarterly interest payments beginning in the 6th year from Debenture issue will be met. Sources of liquidity to make interest payments may include (a) private capital; (b) realizations; or (c) current income. As part of your plan of operations, you should carefully consider how your investment strategy will work with SBA leverage and make appropriate suggestions to manage risk. Risk mitigation strategies might include making some investments in current pay instruments; taking down less than a full tier of leverage, (i.e., leverage less than 100% of Regulatory Capital); taking leverage down later in the fund's life; lowering management expenses; and reserving more private capital. The strategies you choose to employ should be appropriate for your management team's track record and investment strategy.

C. *SBA Diversification Rights.* Per 13 CFR 107.320, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to (i) the year in which they commence operations (''vintage year'') and (ii) geographic location.

1. Vintage Year Diversification. Vintage year has a major impact on the return expectations of a fund and excessive concentration in a single year could substantially increase program risk. Therefore, SBA reserves the right, when licensing Early Stage SBICs, to maintain diversification across vintage years. SBA believes that it will be able to manage vintage year diversification through its call process. For example, if SBA approves a significant number of applicants in FY 2013, it may not hold a call in FY 2014. This will also help facilitate the allocation of early stage debenture leverage. As such, potential applicants should not assume that SBA will hold calls for new MAQs each year. SBA will announce all new calls through the **Federal Register**.

2. Geographic Diversification. All Early Stage SBICs must first meet SBA's basic licensing criteria. After those criteria are met, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to the geographic location in which the Early Stage SBIC expects to invest.

Dated: December 13, 2012.

Sean Greene,

Associate Administrator, For Investment and Special Advisor for Innovation.

[FR Doc. 2012–30431 Filed 12–17–12; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012–0055]

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/Office of Personnel Management (OPM))—Match Number 1307

AGENCY: Social Security Administration.

ACTION: Notice of a renewal of an existing computer matching program that will expire on January 14, 2013.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with OPM.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Kirsten J. Moncada

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Office of Personnel Management (OPM)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions under which OPM will disclose civil service benefit and payment data to us. This disclosure will provide us with information necessary to verify an individual's self-certification of eligibility for the Extra Help with

Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable us to identify individuals who may qualify for Extra Help.

C. Authority for Conducting the Matching Program

The legal authority for OPM to disclose information under this agreement is 42 U.S.C. 1383(f) of the Social Security Act (Act). The legal authority for us to conduct this computer matching program is 1860D–14(a)(3) (42 U.S.C. 1395w-114), and 1144(a)(1) and (b)(1) (42 U.S.C. 1320b-14) of the Act.

D. Categories of Records and Persons Covered by the Matching Program

1. Systems of Records

OPM will provide us with electronic files containing civil service benefit and payment data from its system of records (SOR) published as OPM/Central-1 (Civil Service and Insurance Records), on October 8, 1999 (64 FR 54930), as amended on May 3, 2000 (65 FR 25775).

We will match the OPM data with data in our Medicare Database (MDB), SOR 60–0321, last published at 71 FR 42159 (July 25, 2006).

2. Number of Records

OPM's data file will consist of approximately 25,000 records of updated payment information for new civil service annuitants and annuitants whose civil service annuity has changed. Our comparison file contains approximately 65 million records obtained from the MDB. The number of people who apply for Extra Help determines in part the number of records matched.

3. Specified Data Elements

OPM will furnish us with the name, Social Security number (SSN), civil service claim number, and amount of current gross civil service benefits. We will conduct the match using the SSN, name, and date of birth on both the OPM file and the MDB.

4. Frequency of Matching

OPM will furnish us monthly with an electronic file containing civil service benefit and payment data. The actual matching will take place approximately during the first week of every month.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is January 15, 2013 provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2012–30381 Filed 12–17–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–49]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for reconsideration received.

SUMMARY: This notice contains a summary of a petition seeking reconsideration of the FAA's decision to deny a petition for an exemption from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 17, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0123 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ted Jones, ASW–111, (817) 222–5359, FAA Southwest Regional Office, 2601 Meacham Blvd., Fort Worth, TX 76137; or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *andrea.copeland@faa.gov,* (202) 267–8081. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 12, 2012.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2012–0123.

Petitioner: Bell Helicopter Textron Canada Limited.

Section of 14 CFR Affected: § 27.1.

Description of Relief Sought: Reconsideration of decision denying an exemption from the maximum gross weight limit of 7,000 pounds, allowing type certification of the Bell 429 under part 27 with an increase in its maximum gross weight from 7,000 pounds to 7,500 pounds.

[FR Doc. 2012–30360 Filed 12–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35682]

Decatur Junction Railway Co.; Acquisition and Operation Exemption—Line of Illinois Central Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Correction to notice of exemption.

On October 11, 2012, Decatur Junction Railway Co. (DJR), a Class III

rail carrier, filed with the Surface Transportation Board a verified notice of exemption under 49 CFR 1150.41 to acquire from Illinois Central Railroad Company (IC), and to operate, approximately 4.4 miles of rail line between milepost 745.54 near Elwin and milepost 749.94 near Decatur, in Macon County, Ill. (the Line). On October 26, 2012, notice of the exemption was served and published in the **Federal Register** (77 Fed. Reg. 65,446). The exemption became effective on November 10, 2012.

On November 21, 2012, DJR filed a letter with the Board clarifying that the published notice incorrectly states that DJR currently leases from IC, and operates, 17 miles of rail line between milepost 745.54 near Elwin and milepost 728.0 near Assumption, Ill. This notice corrects that statement. According to DJR, it leases the 17-mile rail line from Central Illinois Shippers, Inc.[1] All other information in the notice is correct. In its letter, DJR advises that the transaction involving the acquisition of the 4.4-mile line was consummated on November 20, 2012.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: December 11, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–30398 Filed 12–17–12; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Decatur Terminal Ry.—Lease and Operation Exemption—Lines in Illinois,* FD 32365 (ICC served Oct. 18, 1993, as corrected Oct. 26, 1993).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals and one entity whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182). In addition, OFAC is publishing an addition to the identifying information for one individual previously designated pursuant to the Kingpin Act.

DATES: The designation by the Director of OFAC of the three individuals and one entity identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On December 12, 2012, the Director of OFAC designated the following three individuals and one entity whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. ESQUERRA ESQUER, Jorge Enrique; DOB 25 Mar 1980; POB Culiacan, Sinaloa, Mexico; C.U.R.P. EUEJ800325HSLSSR02 (Mexico) (individual) [SDNTK] (Linked To: GRUPO CINJAB, S.A. DE C.V.; Linked To: GRUPO IMPERGOZA, S.A. DE C.V.).
2. ESTRADA GUTIERREZ, Julio Cesar, Calle Platon 268, Col. Paso Blanco, Ocotlan, Jalisco, Mexico; DOB 03 Oct 1981; POB Ocotlan, Jalisco, Mexico (individual) [SDNTK] (Linked To: GRUPO CINJAB, S.A. DE C.V.; Linked To: GRUPO IMPERGOZA, S.A. DE C.V.).
3. LEON SANTIESTEBAN, Carlos Alberto; DOB 14 Oct 1970; POB Navolato, Sinaloa, Mexico; R.F.C. LESC701014JM6 (Mexico); C.U.R.P. LESC701014HSLNNR08 (Mexico) (individual) [SDNTK] (Linked To: ESTACIONES DE SERVICIOS CANARIAS, S.A. DE C.V.; Linked To: GASODIESEL Y SERVICIOS ANCONA, S.A. DE C.V.; Linked To: GASOLINERA ALAMOS COUNTRY, S.A. DE C.V.; Linked To: GASOLINERA Y SERVICIOS VILLABONITA, S.A. DE C.V.; Linked To: PETROBARRANCOS, S.A. DE C.V.; Linked To: SERVICIOS CHULAVISTA, S.A. DE C.V.).

Entity

1. DESARROLLOS EVEREST, S.A. DE C.V. (a.k.a. RESIDENCIAL DEL LAGO), Cerrada Diego Rivera No. 347, Col. Desarrollo Urbano 3 Rios, Culiacan, Sinaloa C.P. 80020, Mexico; Blvd. Jose Diego Valadez Rios 94 36, Col. Proyecto Tres Rios, Culiacan, Sinaloa C.P. 80100, Mexico; R.F.C. DEV–031020 (Mexico) [SDNTK].

In addition, OFAC is publishing an addition to the identifying information for the following individual previously designated pursuant to the Kingpin Act.

1. GASTELUM PAYAN, Maria Guadalupe, Avenida Camino a la Tijera No. 806, Fraccionamiento La Tijera, Tlajomulco de Zuniga, Jalisco, Mexico; Calle Chichen Itza No. 4644, Colonia Mirador del Sol, Zapopan, Jalisco C.P. 45054, Mexico; Calle Morelos No. 2223, Colonia Arcos Vallarta, Guadalajara, Jalisco C.P. 44130, Mexico; DOB 30 Aug 1949; POB Pericos, Sinaloa, Mexico; R.F.C. GAPG4908307H1

(Mexico); C.U.R.P. GAPG490830MSLSYD06 (Mexico) (individual) [SDNTK] (Linked To: GRUPO IMPERGOZA, S.A. DE C.V.).

The listing for this individual now appears as follows:

1. GASTELUM PAYAN, Maria Guadalupe, Avenida Camino a la Tijera No. 806, Fraccionamiento La Tijera, Tlajomulco de Zuniga, Jalisco, Mexico; Calle Chichen Itza No. 4644, Colonia Mirador del Sol, Zapopan, Jalisco C.P. 45054, Mexico; Calle Morelos No. 2223, Colonia Arcos Vallarta, Guadalajara, Jalisco C.P. 44130, Mexico; DOB 30 Aug 1949; POB Pericos, Sinaloa, Mexico; R.F.C. GAPG4908307H1 (Mexico); C.U.R.P. GAPG490830MSLSYD06 (Mexico) (individual) [SDNTK] (Linked To: GRUPO IMPERGOZA, S.A. DE C.V.; Linked To: DESARROLLOS EVEREST, S.A. DE C.V.).

Dated: December 12, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–30424 Filed 12–17–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two (2) Individuals Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two (2) individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the two (2) individuals in this notice, pursuant to Executive Order 13224, are effective on December 11, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 11, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two (2) individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. AL–JUBURI, Maysar Ali Musa Abdallah (a.k.a. AL-JIBURI, Muyassir; a.k.a. AL-QAHTANI, Mus'ab; a.k.a. AL-SHAMMARI; a.k.a. AL-SHAMMARI, Muyassir; a.k.a. HARARA, Muyassir; a.k.a. HASSAN, Muhammad Khalid); DOB 01 Jun 1976; POB Al-Shura, Mosul, Iraq; alt. POB Harara, Ninawa Province, Iraq; citizen Iraq (individual) [SDGT].

2. KHATTAB, Anas Hasan (a.k.a. ABU HAMZAH; a.k.a. AL-KHAYAT, Samir Ahmed; a.k.a. ''HANI''); DOB 07 Apr 1986; POB Damascus, Syria; National ID No. 00351762055 (individual) [SDGT].

Dated: December 11, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–30420 Filed 12–17–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of six individuals and one entity whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182). In addition, OFAC is publishing an amendment to the identifying information of one individual previously designated pursuant to the Kingpin Act.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the six individuals and one entity, as well as the amendment of one individual, identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On December 12, 2012, the Director of OFAC removed from the SDN List the six individuals and one entity listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

1. ARCE FLORES, Lorenzo, Avenida Madero No. 1010, Tijuana, Baja California, Mexico; Carillo Puerto, Calle 2025, 21B, Zona Central, Tijuana, Baja California, Mexico; c/o MULTICAJA DE TIJUANA, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o CAJA AMIGO EXPRESS, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o MODULO DE CAMBIOS, Tijuana, Baja California, Mexico; c/o OPERADORA DE CAJA Y SERVICIOS, S.A. DE C.V., Tijuana, Baja California, Mexico; c/o PATRICIA CASA DE CAMBIO, Tijuana, Baja California, Mexico; c/o PROMOTORA FIN, S.A., Tijuana, Baja California, Mexico; c/o QUINTA REAL JARDIN SOCIAL Y DE EVENTOS, S.A. DE C.V., Tijuana, Baja California, Mexico; 750 Brookstone Road #201, Chula Vista, CA 91913; c/o CAJA AMIGO EXPRESS, S.A. DE C.V., Chula Vista, CA 91910; c/o A.L.S. FINANCIAL, INC., Coronado, CA 92178; DOB 06 May 1931; alt. DOB 06 May 1941; alt. DOB 05 May 1941; alt. DOB 01 May 1941; POB Mexicali, Baja California, Mexico; nationality Mexico; citizen Mexico; R.F.C. AEFL–410506–MS7 (Mexico) (individual) [SDNTK].
2. ARCE PINA, Araceli, c/o QUINTA REAL JARDIN SOCIAL Y DE EVENTOS S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 28 Oct 1974; POB Baja California, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. AEPA741028MBCRXR07 (Mexico) (individual) [SDNTK].
3. GOMEZ ZULUAGA, Pablo Alberto, c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; Carrera 91A No. 40–63, Medellin, Colombia; DOB 20 Jun 1967; Cedula No. 71685966 (Colombia) (individual) [SDNTK].
4. MARTINEZ GOMEZ, Milton Geovany; DOB 11 Jul 1972; POB Muzo, Boyaca, Colombia; Cedula No. 11186154 (Colombia) (individual) [SDNTK].
5. PINA DE ARCE, Delia, c/o PROMOTORA FIN, S.A., Tijuana, Baja California, Mexico; DOB 06 Aug 1942; POB Sonora, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. PIXD420806MSRXXL07 (Mexico) (individual) [SDNTK].
6. SALAMANCA BUITRAGO, Mesias, c/o GESTION ALFA LTDA., Bogota, Colombia; Calle 62 No. 9A–82 of. 616, Bogota, Colombia; DOB 05 Jan 1951; alt. DOB 01 May 1951; Cedula No. 19133648 (Colombia) (individual) [SDNTK].

Entity

1. GESTION ALFA LTDA., Calle 62 No. 9A–82 of. 810, Bogota, Colombia; NIT # 830095836–9 (Colombia) [SDNTK].

In addition, OFAC has amended the identifying information for the following individual previously designated pursuant to the Kingpin Act:

1. SAENZ LEHNHOFF, Maria Corina (a.k.a. DE DEL PINAL, Maria Corina; a.k.a. SAENZ LEHNHOFF, Maria Gabriela; a.k.a. SAENZ PINAL, Maria Corina); DOB 19 May 1965; POB Guatemala; nationality Guatemala; Passport 31486K (Guatemala) (individual) [SDNTK] (Linked To: INMOBILIARIA DATEUS; Linked To: WALNUTHILL; Linked To: CABOMARZO; Linked To: GRUPO MPV; Linked To: DELPSA; Linked To: BRODWAY COMMERCE INC.; Linked To: CASA VOGUE).

The listing for this individual now appears as follows:

1. SAENZ LEHNHOFF, Maria Corina (a.k.a. DE DEL PINAL, Maria Corina; a.k.a. SAENZ PINAL, Maria Corina); DOB 19 May 1965; POB Guatemala; nationality Guatemala; Passport 31486K (Guatemala) (individual) [SDNTK] (Linked To: INMOBILIARIA DATEUS; Linked To: WALNUTHILL; Linked To: CABOMARZO; Linked To: GRUPO MPV; Linked To: DELPSA; Linked To: BRODWAY COMMERCE INC.; Linked To: CASA VOGUE).

Dated: December 12, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–30423 Filed 12–17–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 27 individuals and 9 entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the 27 individuals and 9 entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On December 12, 2012, the Director of OFAC removed from the SDN List the 27 individuals and 9 entities listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. ALVARADO BONILLA, Alejandro, c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; DOB 29 May 1974; Cedula No. 79641039 (Colombia) (individual) [SDNT].
2. AMADOR CEDIEL, Fernando, c/o APVA S.A., Cali, Colombia; c/o CECEP EDITORES S.A., Cali, Colombia; c/o CECEP S.A., Cali, Colombia; c/o NEGOCIOS Y CAPITALES S.A., Pereira, Colombia; c/o RFA CONSULTORES Y AUDITORES LTDA., Cali, Colombia; c/o WORLD LINE SYSTEM S.A., Palmira, Valle, Colombia; Avenida 9A No. 25N–30, Cali, Colombia; DOB 12 Oct 1962; POB Sogamoso, Boyaca, Colombia; Cedula No. 16683047 (Colombia); Passport AG830763 (Colombia) (individual) [SDNT].
3. ARDILA PICO, Rosalba, c/o COMUDROGAS LTDA., Bucaramanga, Colombia; Cedula No. 63332705 (Colombia) (individual) [SDNT].
4. BARRIOS, Alba Lucia, Los Alcazares Bloq. 93 Ap. 402, Cali, Colombia; c/o CREDIREBAJA S.A., Cali, Colombia; c/o POLIEMPAQUES S.A., Cali, Colombia; c/o SONAR F.M. E.U. DIETER MURRLE, Cali, Colombia; c/o SONAR F.M. S.A., Cali, Colombia; Cedula No. 38853130 (Colombia) (individual) [SDNT].
5. BENOIT SANTAMARIA, Alvaro Jose, c/o BENOIT VELEZ AGROPECUARIA LA VEREDA Y CIA. S.C.S., Pereira, Colombia; Calle 24 No. 7–29 apto. 413, Pereira, Colombia; DOB 23 Oct 1964; POB Cali, Colombia; Cedula No. 16704710 (Colombia); Passport AH283771 (Colombia) (individual) [SDNT].
6. CAICEDO GALLEGO, Maria Nury (a.k.a. CAYCEDO GALLEGO, Maria Nury), 85 Brainerd Road, Townhouse 9, Allston, MA 02134; Calle 2 Casa No. 4–13, Barrio San Isidro, Venezuela; Calle 90 No. 10–05, Bogota, Colombia; Avenida 11 No. 7N–166, Cali, Colombia; 18801 Collins Ave., Apt. 322–3, Sunny Isles Beach, FL 33160; Diagonal 130 No. 7–20, Apt. 806, Bogota, Colombia; c/o COLOMBO ANDINA COMERCIAL COALSA LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o DIMABE LTDA., Bogota, Colombia; c/o SALOME GRAJALES Y CIA. LTDA., Bogota, Colombia; DOB 16 Nov 1956; POB Tulua, Valle, Colombia; nationality Colombia; citizen Colombia; Cedula No. 31191388 (Colombia); Passport AH286341 (Colombia); alt. Passport AE889461 (Colombia); SSN 594–33–3352 (United States) issued 1993 (individual) [SDNT].
7. CARDONA RUEDA, Fernando Ivan, c/o COINTERCOS S.A., Bogota, Colombia; c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; DOB 29 Apr 1957; Cedula No. 16607447 (Colombia) (individual) [SDNT].
8. DOMINGUEZ HERNANDEZ, Fernando Antonio, c/o DISMERCOOP, Cali, Colombia; DOB 07 Aug 1964; Cedula No. 16701778 (Colombia) (individual) [SDNT].
9. FAJARDO, Mary Victoria, c/o APVA S.A., Cali, Colombia; c/o CECEP EDITORES S.A., Cali, Colombia; c/o CECEP S.A., Cali, Colombia; c/o NEGOCIOS Y CAPITALES S.A., Pereira, Colombia; c/o WORLD LINE SYSTEM S.A., Palmira, Valle, Colombia; Cali, Colombia; Cedula No. 31923020 (Colombia) (individual) [SDNT].

10. FLOREZ UPEGUI, Carlos Jairo, c/o FLOREZ HERMANOS LTDA., Medellin, Colombia; nationality Colombia; citizen Colombia; Cedula No. 70660584 (Colombia) (individual) [SDNT].
11. FLOREZ UPEGUI, Elkin de Jesus, c/o FLOREZ HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES FLOREZ Y FLOREZ Y CIA S.C.A., Medellin, Colombia; nationality Colombia; citizen Colombia; Cedula No. 70660660 (Colombia) (individual) [SDNT].
12. GONZALEZ QUINTERO, Melba Patricia, c/o DISTRIBUIDORA DE DROGAS CONDOR S.A., Bogota, Colombia; c/o COINTERCOS S.A., Bogota, Colombia; c/o FIDUSER LTDA., Bogota, Colombia; c/o AMERICANA DE COSMETICOS S.A., Bogota, Colombia; c/o COSMEPOP, Bogota, Colombia; c/o LATINA DE COSMETICOS S.A. Y DISTRIBUCIONES S.A., Bogota, Colombia; DOB 24 Dec 1971; Cedula No. 35415232 (Colombia); Passport 35415232 (Colombia) (individual) [SDNT].
13. IDARRAGA ORTIZ, Jaime, c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o INTERAMERICA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES CAMINO REAL S.A., Cali, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o FARMATODO S.A., Bogota, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; DOB 14 Dec 1941; Cedula No. 8237011 (Colombia) (individual) [SDNT].
14. LONDONO VELEZ, Roberto, c/o ASESORIAS PROFESIONALES LTDA., Armenia, Colombia; Calle 13 No. 101–50, Armenia, Quindio, Colombia; Calle 19 No. 12–49, Apt. 504, Armenia, Quindio, Colombia; DOB 17 Dec 1958; POB Cali, Colombia; alt. POB Armenia, Quindio, Colombia; citizen Colombia; Cedula No. 7527342 (Colombia); Passport AI520011 (Colombia) (individual) [SDNT].
15. LUQUE AGUILERA, Maria Monserrat, Calle 6A No. 22–46, Medellin, Colombia; Calle Meridiana No. 35, Malaga, Spain; DOB 22 Feb 1963; POB Medellin, Colombia; Cedula No. 43051926 (Colombia); D.N.I. 44598335R (Spain) (individual) [SDNT].
16. MARTAN RODRIGUEZ, Oscar Ignacio, c/o CORPORACION CLUB DEPORTIVO TULUA, Tulua, Valle, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; Calle 27 No. 38A–26, Tulua, Valle, Colombia; Carrera 33A No. 19–67, Tulua, Valle, Colombia; DOB 08 Feb 1958; POB Guapi, Cauca, Colombia; nationality Colombia; citizen Colombia; Cedula No. 19365692 (Colombia); Passport AJ534873 (Colombia) issued 23 Jun 2005 expires 23 Jun 2015; alt. Passport AF775306 (Colombia); alt. Passport AD445570 (Colombia) expires 12 Jun 1992 (individual) [SDNT].
17. MEOUCHI SAADE, Pablo Agustin, c/o GRUPO IRUNA, S.A. DE C.V., Mexico, Distrito Federal, Mexico; c/o GRUPO JEZINNE, S.A. DE C.V., Mexico, Distrito Federal, Mexico; c/o INDUSTRIALIZADORA PURECORN, S.A. DE C.V., Mexico, Distrito Federal, Mexico; c/o MASA FACIL, S.A. DE C.V., Mexico, Distrito Federal, Mexico; DOB 17 Oct 1962; POB Distrito Federal, Mexico; Passport 330020001 (Mexico); C.U.R.P. MESP621017HDFCDB05 (Mexico) (individual) [SDNT].
18. MONTALVO GUZMAN, Luis Federico, c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 14953049 (Colombia) (individual) [SDNT].
19. MONTOYA MARTINEZ, Juan Carlos, c/o AGROPECUARIA LA ROBLEDA S.A., Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o INVERSIONES VILLA PAZ S.A., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; DOB 11 Oct 1966; Cedula No. 16801475 (Colombia) (individual) [SDNT].
20. MUNOZ NARVAEZ, Yamileth, c/o COMERCIALIZADORA INTERTEL S.A., Cali, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o DISTRIBUIDORA SANAR DE COLOMBIA S.A., Cali, Colombia; DOB 30 Dec 1970; Cedula No. 66825769 (Colombia); Passport 66825769 (Colombia) (individual) [SDNT].
21. MUVDY BERBESY, Salua Teresa, Avenida Las Americas No. 21N–50 Ofc. 702, Cali, Colombia; c/o PARQUE INDUSTRIAL PROGRESO S.A., Yumbo, Colombia; c/o CIA. MINERA DAPA S.A., Bogota, Colombia; c/o CONSTRUCTORA PYNZAR LTDA., Cali, Colombia; DOB 30 Jan 1959; POB Barranquilla, Atlantico, Colombia; Cedula No. 32639757 (Colombia); Passport 32639757 (Colombia) (individual) [SDNT].
22. OSORIO VALENCIA, James Augusto, c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; Carrera 26 No. 8–60, Cali, Colombia; Calle 4N No. 1–10, Apt. 901, Cali, Valle, Colombia; DOB 16 Nov 1959; POB Miranda, Cauca, Colombia; nationality Colombia; citizen Colombia; Cedula No. 14880646 (Colombia); Passport AG940978 (Colombia); alt. Passport AE758158 (Colombia) (individual) [SDNT].
23. PINSKY SARAGOVIA, Ezequiel, Avenida Las Americas No. 21N–50, Cali, Colombia; c/o PARQUE INDUSTRIAL PROGRESO S.A., Yumbo, Colombia; c/o CIA. MINERA DAPA S.A., Bogota, Colombia; c/o CONSTRUCTORA PYNZAR LTDA., Cali, Colombia; c/o PYZA E.U., Cali, Colombia; c/o NOVAPINSKI LTDA., Cali, Colombia; Cedula No. 14932390 (Colombia); Passport 14932390 (Colombia) (individual) [SDNT].
24. ROLDAN SALCEDO, Fabio, c/o CONSTRUCTORA SANTA TERESITA S.A., Cali, Colombia; DOB 08 Aug 1954; POB Buga, Valle, Colombia; Cedula No. 14875349 (Colombia) (individual) [SDNT].
25. ROLDAN SALCEDO, Milena, c/o CARMILE INVERSIONES LOPEZ Y CIA. S.C.A., Cali, Colombia; c/o INVERSIONES MEDICAS Y QUIRUGICAS ESPECIALIZADAS LTDA., Cali, Colombia; c/o UNIVISA S.A., Cali, Colombia; DOB 09 Feb 1960; Cedula No. 38858586 (Colombia); Passport PO66565 (Colombia) (individual) [SDNT].
26. SANCHEZ CANDELO, Piedad Rocio, c/o CALI @ TELE.COM LTDA., Cali, Valle, Colombia; c/o COMUNICACIONES ABIERTAS CAMARY LTDA., Cali, Valle, Colombia; DOB 20 Nov 1952; POB Colombia; Cedula No. 31252839 (Colombia) (individual) [SDNT].
27. VELEZ MONTES, William, Calle 92 No. 19–70 Apt. 304, Bogota, Colombia; c/o INTERCONTINENTAL DE AVIACION S.A., Bogota, Colombia;

c/o INVERSIONES Y COMERCIALIZADORA INCOM LTDA., Cali, Colombia; DOB 24 May 1943; POB Tulua, Valle, Colombia; Cedula No. 17086144 (Colombia); Passport AF870847 (Colombia); alt. Passport PE019274 (Colombia); alt. Passport PE029301 (Colombia) (individual) [SDNT].

Entities

1. BENOIT VELEZ AGROPECUARIA LA VEREDA Y CIA. S.C.S., Carrera 4 No. 26–14, Pereira, Colombia; NIT #816005088–0 (Colombia) [SDNT].
2. CONSTRUCTORA PYNZAR LTDA., Avenida 3 No. 21–50, Cali, Colombia; Avenida 3 No. 21–50 Apt. 800, Cali, Colombia; Avenida 3 Norte No. 21–44, Cali, Colombia; NIT #800240723–8 (Colombia) [SDNT].
3. GRUPO IRUNA, S.A. DE C.V., Avenida Insurgentes Sur No. 1605, Local 41, Colonia San Jose Insurgentes, Delegacion Benito Juarez, Mexico, Distrito Federal C.P. 03900, Mexico; R.F.C. GIR–070508–MK0 (Mexico) [SDNT].
4. GRUPO JEZINNE, S.A. DE C.V., Mexico, Distrito Federal, Mexico; Folio Mercantil No. 365647 (Mexico) issued 19 Jun 2007 [SDNT].
5. INDUSTRIALIZADORA PURECORN, S.A. DE C.V., Avenida Insurgentes Sur 933 202, Colonia Napoles, Delegacion Benito Juarez, Mexico, Distrito Federal C.P. 03810, Mexico; Calle Obrero Mundial No. 154, Colonia Del Valle, Delegacion Benito Juarez, Mexico, Distrito Federal C.P. 03100, Mexico; Camino Viejo a Coatepec s/n, Ixtapaluca, Estado de Mexico C.P. 56580, Mexico; R.F.C. IPU–030318–C6A (Mexico) [SDNT].
6. INVERSIONES FLOREZ Y FLOREZ Y CIA S.C.A. (a.k.a. FLOREZ Y FLOREZ Y CIA S.C.A.), Carrera 65 No. 34–35, Medellin, Colombia; NIT #811036947–7 (Colombia) [SDNT].
7. NOVAPINSKI LTDA., Avenida 3 No. 21–50, Cali, Colombia; NIT #800246936–7 (Colombia) [SDNT].
8. PYZA E.U., Avenida 3 No. 21–50, Cali, Colombia; NIT #805015054–3 (Colombia) [SDNT].
9. RFA CONSULTORES Y AUDITORES LTDA., Avenida 6 Norte No. 23N–85, Cali, Colombia; NIT #805025427–1 (Colombia) [SDNT].

Dated: December 12, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–30411 Filed 12–17–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, January 17, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, January 17, 2013 from 2:00 p.m. to 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 11, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–30362 Filed 12–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 9, 2013.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, January 9, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 11, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel

.

[FR Doc. 2012–30365 Filed 12–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 15, 2013.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, January 15, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–30363 Filed 12–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 8, 2013.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, January 8, 2013, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel

.

[FR Doc. 2012–30364 Filed 12–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 9, 2013.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, January 9, 2013, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: December 11, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–30366 Filed 12–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 23, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, January 23, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the web site: *http://www.improveirs.org.*

The agenda will include various IRS topics.

Dated: December 11, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–30361 Filed 12–17–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 243 December 18, 2012

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for the State of Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters; Water Quality Standards for the State of Florida's Streams and Downstream Protection Values for Lakes: Remanded Provisions; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2010–0222; FRL–9759–3]

RIN 2040–AF21

Water Quality Standards for the State of Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is proposing numeric water quality criteria to protect ecological systems, aquatic life, and human health from nitrogen and phosphorus pollution in estuaries and coastal waters within the State of Florida not covered by EPA-approved State rulemaking, and south Florida inland flowing waters. These proposed criteria apply to Florida waters that are designated as Class I, Class II, or Class III waters and they are intended to protect these designated uses as well as implement for the purposes of the Clean Water Act the State's narrative nutrient provision at Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), which provides that ''[i]n no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.''

DATES: Comments must be received on or before February 19, 2013. Because of EPA's obligation to sign a notice of final rulemaking on or before September 30, 2013 under Consent Decree, the Agency regrets that it will be unable to grant any requests to extend this deadline.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0222, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: ow-docket@epa.gov.*
3. *Mail to:* Water Docket, U.S. Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2010–0222.
4. *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2010–0222. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2010–0222. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at a docket facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. 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.

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, U.S. EPA Headquarters, Office of Water, Mailcode: 4305T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–1057; email address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

Table of Contents

I. General Information
- A. Executive Summary
- B. Which water bodies are affected by this rule?
- C. What entities may be affected by this rule?
- D. What should I consider as I prepare my comments for EPA?
- E. How can I get copies of this document and other related information?

II. Background
- A. Nitrogen and Phosphorus Pollution
- B. Statutory and Regulatory Background
- C. Water Quality Criteria
- D. EPA Determination Regarding Florida and Consent Decree
- E. EPA's Rulemaking and Subsequent Litigation
- F. Florida Adoption of Numeric Nutrient Criteria and EPA Approval

III. Proposed Numeric Criteria for Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters
- A. General Information and Approaches
- B. Proposed Numeric Criteria for Estuaries
- C. Proposed Numeric Criteria for Coastal Waters
- D. Proposed Numeric Criteria for South Florida Inland Flowing Waters
- E. Applicability of Criteria When Final

IV. Under what conditions will EPA either not finalize or withdraw these Federal standards?

V. Alternative Regulatory Approaches and Implementation Mechanisms
- A. Designating Uses
- B. Variances
- C. Site-Specific Alternative Criteria
- D. Compliance Schedules

VI. Economic Analysis
- A. Incrementally Impaired Waters
- B. Point Source Costs
- C. Non-Point Source Costs
- D. Governmental Costs
- E. Summary of Costs
- F. Benefits

VII. Statutory and Executive Order Reviews
- A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132 (Federalism)
- F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
- G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
- H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
- I. National Technology Transfer Advancement Act of 1995
- J. Executive Order 12898 (Federal Actions To Address Environmental Justice in

Minority Populations and Low-Income Populations)

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The primary purpose of this rule is to propose numeric water quality criteria to protect ecological systems, aquatic life, and human health within the State of Florida from nitrogen and phosphorus pollution. The criteria proposed in this rule apply to certain estuaries and coastal waters within the State of Florida and south Florida inland flowing waters (e.g., rivers, streams, canals),[1] with the exception of waters within the lands of the Miccosukee and Seminole Tribes, the Everglades Agricultural Area (EAA), and the Everglades Protection Area (EvPA).[2]

The criteria support implementation of pollution control programs authorized under the Clean Water Act (CWA). As part of a comprehensive program to restore and protect the Nation's waters, Section 303(c) of the CWA directs states to adopt water quality standards for their navigable waters. CWA Section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR 131 require that state water quality standards include the designated use (e.g. public water supply, propagation of fish and wildlife, recreational purposes) and criteria that protect those uses. Criteria may be numeric or narrative in form, but consistent with EPA regulations at 40 CFR 131.11(a)(1), such criteria ''must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.'' EPA regulations at 40 CFR 131.10(b) also provide that ''[i]n designating uses of a water body and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.'' The CWA requires that any new or revised water quality standards developed by states be submitted to EPA for review and approval or disapproval, and authorizes the EPA Administrator to determine, even in the absence of a state submission, that a new or revised standard is needed to meet CWA requirements.

Florida is known for its abundant and aesthetically beautiful natural resources, particularly its aquatic resources, which are very important to Florida's economy. Florida's coastal and estuarine waters play an especially important part in sustaining the environment and the economy in the State. For example, Florida's saltwater sport fishing industry contributes over $5 billion to the State's economy and more than 54,000 jobs annually; the State's commercial saltwater fishing industry contributes over $1 billion and more than 10,000 jobs annually.[3] In 2007, nearly 11.3 million residents and 46.3 million visitors participated in recreational saltwater beach activities in Florida. Nearly 3.5 million residents and approximately 1.4 million visitors used saltwater boat ramps, over 4.2 million residents and about 3 million visitors participated in saltwater non-boat fishing, and over 2.6 million residents and almost 1 million visitors participated in canoeing and kayaking.[4]

However, nitrogen and phosphorus pollution has contributed to serious water quality degradation affecting these coastal and estuarine resources in the State of Florida, as well as other Florida waters. In the most recent Florida Department of Environmental Protection (FDEP) water quality assessment report, the *Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update,* FDEP describes widespread water quality impairment in Florida due to nitrogen and phosphorus pollution. FDEP's 2012 report identifies approximately 754 square miles (482,560 acres) of estuaries (about 14 percent of assessed estuarine area) and 102 square miles (65,280 acres) of coastal waters (about 1.6 percent of assessed coastal waters) as impaired by nutrients. In addition, the same report indicates that 1,108 miles of rivers and streams (about 8 percent of assessed river and stream miles) and 107 square miles (68,480 acres) of lakes (about 5 percent of assessed lake square miles) are impaired due to nutrient pollution.[5]

On January 14, 2009, EPA determined under CWA section 303(c)(4)(B) that new or revised water quality standards (WQS) in the form of numeric nutrient water quality criteria are necessary to protect the designated uses that Florida has set for its Class I, Class II, and Class III waters. Subsequently, EPA entered into a Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper, effective on December 30, 2009, which established a schedule for EPA to propose and promulgate numeric nutrient criteria for Florida's lakes, flowing waters, estuaries, and coastal waters. The Consent Decree also provided that if Florida submitted and EPA approved numeric nutrient criteria for any relevant waterbodies before the dates outlined in the schedule, EPA would no longer be obligated to propose or promulgate criteria for those waterbodies.

On June 13, 2012, FDEP submitted new and revised WQS for review by the EPA pursuant to section 303(c) of the CWA. These new and revised WQS are set out primarily in Rule 62–302 of the F.A.C. [Surface Water Quality Standards]. FDEP also submitted amendments to Rule 62–303, F.A.C. [Identification of Impaired Surface Waters], which sets out Florida's methodology for assessing whether waters are attaining State WQS. On November 30, 2012, EPA approved the provisions of these rules submitted for review that constitute new or revised WQS (hereafter referred to as the ''newly-approved State WQS'').

Among the newly-approved State WQS are numeric criteria for nutrients that apply to a set of estuaries and coastal marine waters in Florida. Specifically, these newly-approved State WQS apply to Clearwater Harbor/St. Joseph Sound, Tampa Bay, Sarasota Bay, Charlotte Harbor/Estero Bay, Clam Bay, Tidal Cocohatchee River/Ten Thousand Islands, Florida Bay, Florida

[1] EPA has distinguished south Florida inland flowing waters as waters in the South Florida Nutrient Watershed Region (SFNWR). The SFNWR was defined previously in EPA's final rule for lakes and flowing waters as the area south of Lake Okeechobee, the Caloosahatchee River watershed (including Estero Bay) to the west of Lake Okeechobee, and the St. Lucie watershed to the east of Lake Okeechobee.

[2] FL Statute Section 373.4592 (1994) subsection (2) Definitions: (e) ''Everglades Agricultural Area'' or ''EAA'' means the Everglades Agricultural Area, which are those lands described in FL Statute Section 373.4592 (1994) subsection (15). FL Statute Section 373.4592 (1994) subsection (2) Definitions: (h) ''Everglades Protection Area'' means Water Conservation Areas 1 (which includes the Arthur R. Marshall Loxahatchee National Wildlife Refuge), 2A, 2B, 3A, and 3B, and the Everglades National Park.

[3] FFWCC. 2011. *The economic impact of saltwater fishing in Florida.* Florida Fish and Wildlife Conservation Commission. *http://myfwc.com/conservation/value/saltwater-fishing.* Accessed December 2011.

[4] FDEP. 2008. Chapter 5—Outdoor Recreation Demand and Need. In *Outdoor Recreation in Florida, 2008: Florida's Comprehensive Outdoor Recreation Plan, Final Draft.* Florida Department of Environmental Protection, Division of Recreation and Parks, Tallahassee, FL. *http://www.dep.state.fl.us/parks/planning/forms/SCORP5.pdf.* Accessed December 2011.

[5] FDEP. 2012. *Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update.* (May 2012). Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration, Tallahassee, FL. *http://www.dep.state.fl.us/water/docs/2012_integrated_report.pdf.* Accessed August 2012.

Keys, and Biscayne Bay.[6] Under the Consent Decree, EPA is relieved of its obligation to propose numeric criteria for these waters.

Finally, as described in EPA's November 30, 2012 approval of Florida's new or revised WQS, while EPA believes that the provisions addressing downstream protection will provide for quantitative approaches to ensure the attainment and maintenance of downstream waters consistent with 40 CFR 131.10(b), the provisions themselves do not consist of numeric values. Because EPA is currently subject to a Consent Decree deadline to sign a rule proposing numeric downstream protection values (DPVs) for Florida by November 30, 2012, EPA is proposing numeric DPVs to comply with the Consent Decree. However, EPA has amended its January 2009 determination to specify that numeric criteria for downstream protection are not necessary and that quantitative approaches designed to ensure the attainment and maintenance of downstream water quality standards, such as those established by Florida, are sufficient to meet CWA requirements. As such, EPA will ask the court to modify the Consent Decree consistent with the Agency's amended determination, i.e., to not require EPA to promulgate numeric DPVs for Florida. Accordingly, EPA approved the State's downstream protection provisions subject to the district court modifying the Consent Decree to not require EPA to promulgate numeric DPVs for Florida. If the district court agrees to so modify the Consent Decree, EPA will not promulgate numeric DPVs for Florida. However, if the district court declines to so modify the Consent Decree, EPA would intend to promulgate numeric DPVs for Florida and would also expect to revisit its November 30, 2012 approval of the State Rule's downstream protection provisions to modify or withdraw its approval. Therefore, EPA has also reserved its authority to do so in its approval document.

A full description of all of EPA's recent actions on Florida numeric nutrient criteria and related implications for EPA's own rules can be found at *http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm*.

EPA is proposing these numeric criteria in accordance with the terms of the January 14, 2009 determination, December 2009 Consent Decree, and subsequent revisions to that Consent Decree that require the EPA Administrator to sign this proposal by November 30, 2012 (discussed in more detail in Section II.D). EPA believes that the proposed criteria in this rule will assure protection of Florida's existing designated uses and are based on sound and substantial scientific data and analyses.

2. Summary of the Major Provisions of the Regulatory Action

To develop these proposed numeric nutrient criteria for Florida's estuaries, coastal waters, and south Florida inland flowing waters, the Agency conducted a detailed scientific analysis of the substantial amount of water quality data available from Florida's extensive monitoring data set.

EPA concluded that an approach using relevant biological endpoints and multiple lines of evidence including stressor-response analyses and mechanistic modeling was a strong and scientifically sound approach for deriving numeric nutrient criteria for estuaries, in the form of total nitrogen (TN), total phosphorus (TP) and chlorophyll *a* concentrations. EPA's methodology and the resulting proposed estuarine numeric nutrient criteria are presented in more detail in Section III.B of this notice of proposed rulemaking.

For coastal waters on the Atlantic and Gulf coasts of Florida, EPA is proposing to use a reference condition-based approach. EPA chose to use satellite remote sensing in all coastal areas of Florida except the Big Bend Coastal region. Using this approach, EPA developed chlorophyll *a* criteria from satellite remote sensing imagery and field data to calibrate the satellite remote sensing imagery. In the Big Bend Coastal region of Florida,[7] where satellite remote sensing predictions of chlorophyll *a* were not possible due to reflectance that interferes with the remote sensing imagery in that area, EPA used mechanistic and statistical models to determine TN, TP, and chlorophyll *a* criteria for these coastal waters.[8] EPA's methodology and results for its proposed coastal criteria are presented in more detail in Sections III.B and III.C.

EPA is proposing numeric nutrient criteria to ensure the attainment and maintenance of the water quality standards in downstream estuaries and south Florida marine waters pursuant to the provisions of 40 CFR 131.10(b). EPA examined a variety of modeling techniques and data to assess whether waters entering an estuary protect the water quality standards within the estuary. Accordingly, EPA is proposing an approach to derive TN and TP criteria expressed as downstream protection values (DPVs) at the points where inland flowing waters flow into estuaries, or marine waters in south Florida (referred to as 'pour points'). These proposed DPVs apply to all flowing waters, including south Florida inland flowing waters (with the exception of waters within the lands of the Miccosukee and Seminole Tribes, EAA, and EvPA), that flow directly into estuaries or south Florida marine waters. EPA's proposed approach for deriving DPVs at the pour points involves an evaluation of water quality in the downstream estuary, water quality conditions at the pour point, and selecting a method to derive the DPV values based on available data. The proposed approaches for deriving DPVs in flowing waters are presented in more detail in Sections III.B and III.D.

Finally, EPA is proposing to extend the approach finalized in 40 CFR 131.43(e)[9] to allow development of Site-Specific Alternative Criteria (SSAC) for estuaries, coastal waters, and south Florida inland flowing waters. EPA's rationale for extending these SSAC provisions is discussed in more detail in Section V.C.

EPA has incorporated sound science, local expertise, and substantial Florida-specific data throughout the development of these proposed numeric TN, TP, and chlorophyll *a* criteria. EPA relied upon peer-reviewed criteria development methodologies,[10] relevant biological endpoints, and a substantial

[6] Clam Bay, Tidal Cocohatchee River/Ten Thousand Islands, Florida Bay, Florida Keys, and Biscayne Bay are collectively referred to in this proposed rule as ''south Florida marine waters,'' as these are the predominantly marine waters downstream of the South Florida Nutrient Watershed Region.

[7] This area includes waters offshore of Apalachicola Bay, Alligator Harbor, Ochlockonee Bay, Big Bend/Apalachee Bay, Suwannee River, and Springs Coast.

[8] EPA derived TN and TP criteria for coastal waters in the Big Bend Coastal region because mechanistic models were used in these areas.

[9] 40 CFR 131.43(e) authorizes the derivation of Federal Site-Specific Alternative Criteria (SSAC) after EPA review and approval of applicant submissions of scientifically defensible criteria that meet the requirements of CWA section 303(c) and EPA's implementing regulations at 40 CFR 131.

[10] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

USEPA. 2000b. *Nutrient Criteria Technical Guidance Manual: Rivers and Streams.* EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

USEPA. 2001. *Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

USEPA. 2010. *Using Stressor-Response Relationships to Derive Numeric Nutrient Criteria.* EPA–820–S–10–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

body of scientific analysis provided to EPA by FDEP, as well as other federal, State, and local partners such as the National Park Service; National Oceanic and Atmospheric Administration (NOAA); U.S. Geological Survey (USGS); Tampa Bay, Indian River Lagoon, Sarasota Bay and Charlotte Harbor National Estuary Programs; St. Johns River and South Florida Water Management Districts; and Florida International University.

EPA sought feedback on the scientific defensibility of the approaches outlined in this proposed rule through a Science Advisory Board (SAB) review.[11] The SAB assembled a group of eighteen expert panelists to review EPA's *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.*[12] The SAB recommendations [13] strengthened the scientific basis of these proposed numeric nutrient criteria. A number of key interest groups presented their comments and views on the underlying science as part of the SAB review process. In addition, EPA met with several groups of stakeholders with local technical expertise to discuss potential approaches for deriving scientifically defensible numeric nutrient criteria.

3. Costs and Benefits

For the reasons presented in this notice, this is not an economically significant regulatory action under Executive Order 12866. Under the CWA, EPA's promulgation of WQS establishes standards that the State of Florida implements through the National Pollutant Discharge Elimination System (NPDES) permit process for point source dischargers and may also result in new or revised requirements for nitrogen and phosphorus pollution treatment controls on other sources (e.g., agriculture, urban runoff, and septic systems) through the development of Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs). As a result of this action, the State of Florida will need to ensure that permits it issues and Waste Load Allocations (WLAs) issued under TMDLs and BMAPs include any limitations on discharges and other sources necessary to comply with the standards established in the final rule. In doing so, the State will have considerable discretion and a number of choices associated with permit writing (e.g., relating to compliance schedules, variances, etc.) and flexibilities built into the TMDL and BMAP process for WLA assignment. While Florida's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers and WLA requirements for control on other sources, EPA's action, by itself, does not establish any requirements directly applicable to regulated entities or other sources of nitrogen and phosphorus pollution. Additionally, Florida already has an existing narrative water quality criterion [14] which requires that nutrients not be present in estuaries and coastal waters in Florida or in south Florida inland flowing waters in concentrations that cause an imbalance in natural populations of flora and fauna. The proposed criteria in this rule are consistent with and serve to implement the State's existing narrative nutrient provision.

Although the proposed rule does not establish any requirements directly applicable to regulated entities or other sources of nutrient pollution, EPA developed an economic analysis to provide information on potential costs and benefits that may be associated with the State implementation requirements that may be necessary to ensure attainment of WQS. EPA conducted an analysis to estimate both the increase in the number of impaired waters that may be identified as a result of the proposed rule and the annual cost of CWA pollution control actions likely to be implemented by the State of Florida to assure attainment of applicable State water quality designated uses for these waters. It is important to note that the costs and benefits of pollution controls needed to attain water quality standards for nutrients for waters already identified as impaired by the State (including waters with TMDLs in place and without TMDLs in place) are not included in EPA estimates of the cost of the rule. EPA believes that these costs and benefits would be incurred in the absence of the current proposed rule and are therefore part of the baseline against which the costs and benefits of this rule are measured. EPA's analysis is fully described in the document entitled *Economic Analysis of Proposed Water Quality Standards for the State of Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters* (hereinafter referred to as the Economic Analysis), which can be found in the docket and record for this proposed rule. The final conclusion of this assessment is that the incremental costs associated with the proposed rule range between $239.0 million and $632.4 million per year (2010 dollars) and total monetized benefits may be in the range from $39.0 to $53.4 million annually. EPA's analysis describes additional benefits that could not be monetized. EPA has provided estimates of the annual costs and benefits; these exceed the $100 million threshold that defines an economically significant rule under section 3(f) of Executive Order 12866. However, EPA cautions that these estimates cannot be used to determine that this rule is economically significant. The direct effect of this rule is to provide Florida with a numeric articulation of its current narrative articulation of nutrients criteria, without affecting the resulting level of protection offered by the criteria. The estimates of costs and benefits here are indirect estimates (costs and benefits associated with controls for waters that would immediately be judged to be impaired due to numeric criteria) of the direct effects of this proposed rule (decreasing the time to implement TMDLs on impaired waters), and the relationship these indirect estimates bear to the true costs and benefits cannot be determined.

B. Which water bodies are affected by this rule?

EPA's proposed rule applies to estuaries and coastal marine waters that have been classified by Florida as Class II (Shellfish Propagation or Harvesting) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife), including tidal creeks and marine lakes, but excluding the estuarine and marine waters contained in Florida's newly-approved State WQS. This proposed rule also applies to south Florida inland flowing waters that have been classified by Florida as Class I (Potable Water Supplies) or Class III water bodies pursuant to Section 62–302.400, F.A.C., excluding wetlands (e.g. sloughs in south Florida) and flowing waters within the lands of the Miccosukee and Seminole Tribes, EvPA,

[11] USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

[12] USEPA. 2010. *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[13] USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

[14] Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), provides that ''[i]n no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.''

or EAA.[15] Pursuant to Subsection 62–302.400(4), F.A.C., ''Class I, II, and III surface waters share water quality criteria established to protect fish consumption, recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.'' [16] Florida currently has a narrative nutrient criterion at Subsection 62–302.530(47)(b), F.A.C.[17] established to protect these three uses and EPA is numerically interpreting Florida's narrative criterion for the purpose of protecting the Class I, II, and III surface waters for the purposes of the CWA in this proposed rulemaking.

EPA is not proposing to change any of Florida's water body classifications with this regulation. The proposed criteria in this regulation would only apply to water bodies that are currently classified by Florida as Class I, II, or III and not to water bodies with other classifications such as Class III limited waters [18] for which use attainability analyses (UAAs) and SSACs for nutrients have been established, or Class IV canals in Florida's agricultural areas.

EPA is defining estuary to be consistent with Florida's definition of estuary in Section 62–303.200, F.A.C., where ''estuary'' shall mean ''predominantly marine regions of interaction between rivers and nearshore ocean waters, where tidal action and river flow mix fresh and salt water.'' Such areas include bays, mouths of rivers, and lagoons that have been classified as Class II (Shellfish Propagation or Harvesting) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Section 62–302.400, F.A.C., excluding wetlands.

EPA is defining coastal waters based on Florida's definitions of open coastal waters and open ocean waters, taking into account that CWA jurisdiction extends to three nautical miles from shore.[19] EPA's definition of ''coastal waters'' is all marine waters that have been classified as Class II (Shellfish Propagation or Harvesting) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Section 62–302.400, F.A.C., extending to three nautical miles from shore that are not classified as estuaries. EPA's proposed rule defines ''marine waters'' to mean surface waters in which the chloride concentration at the surface is greater than or equal to 1,500 milligrams per liter (mg/L).

EPA is defining tidal creeks as relatively small coastal tributaries with variable salinity that lie at the transition zone between terrestrial uplands and the open estuary. For another subset of marine waters, marine lakes, EPA is proposing to use the definition of ''marine waters'' and the definition of lakes included previously in *Water Quality Standards for the State of Florida's Lakes and Flowing Waters* (40 CFR 131.43) to define a marine lake as a slow-moving or standing body of marine water that occupies an inland basin that is not a stream, spring, or wetland.

EPA previously defined ''flowing waters'' in *Water Quality Standards for the State of Florida's Lakes and Flowing Waters* (40 CFR 131.43). A flowing water is defined as ''a free-flowing, predominantly fresh surface water in a defined channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar water bodies.'' Consistent with EPA's definition in 40 CFR 131.43, EPA defines ''canal'' for this proposed rule to mean a trench, the bottom of which is normally covered by water with the upper edges of its two sides normally above water. Also as defined in 40 CFR 131.43, ''predominantly fresh waters'' means surface waters in which the chloride concentration at the surface is less than 1,500 mg/L. EPA is not proposing criteria for areas currently managed by the State as wetlands (such as sloughs in south Florida), which are outside the scope of this rulemaking.[20]

C. What entities may be affected by this rule?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to estuaries, coastal waters, and flowing waters in Florida could be indirectly affected by this rulemaking because water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Examples of categories and entities that may ultimately be affected are listed in the following table:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to estuaries, coastal waters and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to estuaries, coastal waters and flowing waters in the State of Florida.
Stormwater Management Districts.	Entities responsible for managing stormwater runoff in the State of Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be indirectly affected by this action. Other types of entities not listed in the table, such as non-point source contributors to nitrogen and phosphorus pollution in Florida's waters, may be affected through implementation of Florida's water quality standards program (e.g., through Basin Management Action Plans (BMAPs)). Any parties or entities

[15] In this rule, EPA is interpreting the existing State narrative criterion under Subsection 62–302.530(47)(b), F.A.C. That criterion applies to Florida waters classified as Class I (Potable Water Supplies), Class II (Shellfish Propagation or Harvesting), and Class III Marine and Fresh (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife). EPA is not aware of any marine waters that Florida has classified as Class I potable water supply. Therefore, for purposes of this rule, EPA is interpreting Subsection 62–302.530(47)(b), F.A.C. to protect fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife in Florida's Class II and III estuarine and coastal waters.

[16] Class I waters also include an applicable nitrate limit of 10 mg/L and nitrite limit of 1 mg/L for the protection of human health in drinking water supplies. The nitrate limit applies at the entry point to the distribution system (i.e., after any treatment); see Section 62–550, F.A.C., for additional details.

[17] ''[i]n no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna''

[18] Class III limited waters include waters that support fish consumption; recreation or limited recreation; and/or propagation and maintenance of a limited population of fish and wildlife; see Chapter 62–302.400(1) F.A.C. for more details.

[19] While CWA jurisdiction, and therefore EPA's proposed criteria, extend only to three nautical miles from shore (CWA section 502(8)), Florida State jurisdiction extends beyond three nautical miles. Florida's seaward boundary in Gulf of Mexico waters is 3 marine leagues (9 nautical miles) and in Atlantic waters is 3 nautical miles (Submerged Lands Act of 1953. *http://www.boem.gov/uploadedFiles/submergedLA.pdf; United States* v. *Florida,* 363 U.S. 121 (1960)). Florida defines open coastal waters as ''all gulf or ocean waters that are not classified as estuaries or open ocean waters.'' Open ocean waters consist of ''all surface waters extending seaward from the most seaward natural 90-foot (15-fathom) isobath'' (Subsection 62–303.200, F.A.C.).

[20] FDEP. 2001. Chapter 2: Ecological Description. In: *Everglades Phosphorus Criterion Technical Support Document.* Part III: WCA–3/ENP. Florida Department of Environmental Protection, Everglades Technical Support Section. *http://www.dep.state.fl.us/water/wqssp/.everglades/docs/pctsd/IIIChapter.2.pdf.* Accessed January, 10, 2011.

Doherty, S.J., C.R. Lane, and M.T. Brown. 2000. Proposed Classification for Biological Assessment of Florida Inland Freshwater Wetlands. Report to the Florida Department of Environmental Protection. Contract No. WM68 (Development of a Biological Approach for Assessing Wetland Function and Integrity). Center for Wetlands, University of Florida, Gainesville, FL.

Ogden, J.C. 2005. Everglades ridge and slough conceptual ecological model. *Wetlands* 25(4):810–820.

conducting activities within Florida watersheds covered by this proposed rule, or who depend upon or contribute to the water quality of the estuaries, coastal waters, and flowing waters of Florida, may be affected by this rule. To determine whether your facility or activities may be affected by this action, you should examine this proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Submitting CBI.* Do not submit confidential business information (CBI) to EPA through *http://www.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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Commenters who submitted public comments or scientific information on the portions of EPA's January 26, 2010 proposed *Water Quality Standards for the State of Florida's Lakes and Flowing Waters* (75 FR 4173) that are addressed in this proposal should reconsider their previous comments in light of the new information presented in this proposal and must re-submit their comments during the public comment period for this rulemaking to receive EPA response.

E. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket Id. No. EPA–HQ–OW–2010–0222. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.E(1).

II. Background

A. Nitrogen and Phosphorus Pollution

1. What is nitrogen and phosphorus pollution?

a. Overview of Nitrogen and Phosphorus Pollution

Excess loading of nitrogen and phosphorus to surface water bodies and groundwater is one of the leading causes of water quality impairments in the United States.[21] The problem extends to both fresh and marine waters,[22] leading to over 15,000 nutrient pollution-related impairments in 49 states across the country—a figure that may substantially understate the problem as many waters have yet to be assessed.[23] Estuaries and coastal waters are especially vulnerable to nitrogen and phosphorus pollution because they are the ultimate receiving waters for most major watersheds transporting nitrogen and phosphorus loadings from multiple upstream sources.[24]

The problem of nitrogen and phosphorus pollution is not new. Over forty years ago, a 1969 report by the National Academy of Sciences[25] noted that ''[m]an's activities, which introduce excess nutrients, along with other

[21] Dubrovsky, N.M., K.R. Burow, G.M. Clark, J.M. Gronberg, P.A. Hamilton, K.J. Hitt, D.K. Mueller, M.D. Munn, B.T. Nolan, L.J. Puckett, M.G. Rupert, T.M. Short, NE. Spahr, L.A. Sprague, and W.G. Wilber. 2010. *The Quality of our Nation's waters—Nutrients in the Nation's Streams and Groundwater, 1992–2004.* Circular 1350. U.S. Geological Survey, National Water Quality Assessment Program, Reston, VA. *http://water.usgs.gov/nawqa/nutrients/pubs/circ1350.* Accessed December 2011.

[22] Smith, V.H., S.B. Joye, and R.W. Howarth. 2006. Eutrophication of freshwater and coastal marine ecosystems. *Limnology and Oceanography* 51(1, part 2):351–355.

Schindler, D.W. 2006. Recent advances in the understanding and management of eutrophication. *Limnology and Oceanography* 51(1, part2):356–363.

[23] Nationally, only 27% of rivers and streams and less than 50% of lakes, reservoirs, and ponds have been assessed for impairment (USEPA. 2011. *National Summary of State Information.* U.S. Environmental Protection Agency, Watershed Assessment, Tracking & Environmental Results. *http://iaspub.epa.gov/waters10/attains_nation_cy.control.* Accessed January 2012).

[24] Bricker, S., B. Longstaff, W. Dennison, A. Jones, K. Boicourt, C. Wicks, and J. Woerner. 2007. *Effects of Nutrient Enrichment in the Nation's Estuaries: A Decade of Change.* NOAA Coastal Ocean Program Decision Analysis Series No. 26. National Centers for Coastal Ocean Science, Silver Spring, MD. *http://ccma.nos.noaa.gov/publications/eutroupdate/Accessed* January 2012.

National Research Council. 2000. *Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution.* Report prepared by the Ocean Study Board and Water Science and Technology Board, Commission on Geosciences, Environment and Resources, National Resource Council, Washington, DC.

[25] National Academy of Sciences. 1969. *Eutrophication: Causes, Consequences, Correctives.* National Academy of Sciences, Washington, DC.

pollutants, into lakes, streams, and estuaries, are causing significant changes in aquatic environments. The excess nutrients greatly accelerate the process of eutrophication. The pollution problem is critical because of increased population, industrial growth, intensification of agricultural production, river-basin development, recreational use of waters, and domestic and industrial exploitation of shore properties. Accelerated eutrophication causes changes in plant and animal life—changes that often interfere with use of water, detract from natural beauty, and reduce property values.'' A 2000 report by the National Research Council [26] concluded that ''* * * scientists, coastal managers, and public decision-makers have come to recognize that coastal ecosystems suffer a number of environmental problems that can, at times, be attributed to the introduction of excess nutrients from upstream watersheds. The problems are caused by a complex chain of events and vary from site to site, but the fundamental driving force is the accumulation of nitrogen and phosphorus in fresh water on its way to the sea.''

Florida has long struggled with nutrient pollution impacts to its surface and ground waters. Florida's flat topography makes Florida particularly susceptible to nitrogen and phosphorus pollution because water moves more slowly over the landscape, allowing time for nitrogen and phosphorus pollution to accumulate in water bodies and cause eutrophication. Florida's high rainfall levels contribute to increased run-off, and higher temperatures and sunlight contribute to eutrophication when excess nutrients are available.[27]

In FDEP's *2012 Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update,* nutrient pollution is ranked as the fifth major cause of estuary impairments by impaired square miles [28] and the fifth major cause of impairments in coastal waters.[29] FDEP documents nutrient pollution impairments in 754 square miles (482,560 acres) of estuaries (about 14 percent of the estuarine area assessed by Florida) and 102 square miles (65,280 acres) of coastal waters (about 1.6 percent of the assessed coastal waters).[30]

FDEP noted in its *2008 Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update* that nitrogen and phosphorus pollution poses several challenges in Florida. FDEP stated, ''The close connection between surface and groundwater, in combination with the pressures of continued population growth, accompanying development, and extensive agricultural operations, present Florida with a unique set of challenges for managing both water quality and quantity in the future. After trending downward for 20 years, beginning in 2000 phosphorus levels again began moving upward, likely due to the cumulative impacts of non-point source pollution associated with increased population and development. Increasing pollution from urban stormwater and agricultural activities is having other significant effects.'' [31]

To better understand the nitrogen and phosphorus pollution problem in Florida, EPA looked at trends in the data Florida uses to create its Integrated Water Quality Reports,[32] and found increasing concentrations of nitrogen and phosphorus compounds in Florida waters over the 12 year period from 1996–2008. Florida's Impaired Waters Rule (IWR) data indicate that levels of total nitrogen have increased approximately 20 percent from a state-wide average of 1.06 mg/L in 1996 to 1.27 mg/L in 2008 and average state-wide total phosphorus levels have increased approximately 40 percent from an average of 0.108 mg/L in 1996 to 0.151 mg/L in 2008.

On a national scale, the primary sources of nitrogen and phosphorus pollution can be grouped into five major categories: (1) Urban and suburban stormwater runoff—sources associated with residential and commercial land use and development; (2) municipal and industrial wastewater discharges; (3) row crop agriculture and fertilizer use; (4) livestock production and manure management practices; and (5) atmospheric deposition resulting from nitrogen oxide emissions from fossil fuel combustion and ammonia emissions from row crop agriculture and livestock production. These sources contribute loadings of anthropogenic nitrogen and phosphorus to surface and groundwaters, and may cause harmful impacts to aquatic ecosystems and imbalances in the natural populations of aquatic flora and fauna.[33]

In general, the major sources of nitrogen and phosphorus pollution in Florida estuarine and coastal waters are the same as those found at the national scale: urban and suburban stormwater runoff, wastewater discharges, row crop agriculture, livestock production, and atmospheric deposition. As is the case with much of the southern United States, Florida's population continues to grow, with Florida among the top ten fastest growing states.[34] Florida's population growth is concentrated in major cities and along the coast. As of 2005, Florida's highest population density was along its eastern coast; there has also been significant population expansion along the western coast from Tampa to the south. As populations grow, the increased nitrogen and phosphorus pollution resulting from increased urban stormwater runoff, municipal wastewater discharges, air deposition, and agricultural livestock activities and row-crop runoff can place increased stress on all ecosystems.

In nearly half of the estuaries examined for this rulemaking, urban or stormwater runoff is a major contributor of nitrogen and phosphorus pollution. For example, a report issued in 2010 by the Sarasota Bay Estuary Program indicates that in Sarasota Bay, nutrients are primarily transported to the estuary by stormwater runoff, which is the predominant source in all segments of the estuary (42–60 percent of the total nitrogen load).[35] Similarly, according to

[26] National Research Council. 2000. *Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution.* Report prepared by the Ocean Study Board and Water Science and Technology Board, Commission on Geosciences, Environment and Resources, National Resource Council, Washington, DC.

[27] Perry, W.B. 2008. Everglades restoration and water quality challenges in south Florida. *Ecotoxicology* 17:569–578.

[28] First, second, third, and fourth major causes of estuary impairments by impaired square miles are mercury in fish, DO, bacteria in shellfish, and fecal coliform, respectively.

[29] FDEP. 2012. *Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update.* (May 2012). Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration, Tallahassee, FL. *http://www.dep.state.fl.us/water/docs/2012_integrated_report.pdf.* Accessed August 2012.

[30] FDEP. 2012. Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update. (May 2012). Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration, Tallahassee, FL. *http://www.dep.state.fl.us/water/docs/2012_integrated_report.pdf.* Accessed August 2012.

[31] FDEP. 2008. *Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update.* Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration, Tallahassee, FL. *http://www.dep.state.fl.us/water/docs/2008_Integrated_Report.pdf.* Accessed July 2011.

[32] IWR Run 40. Updated through February 2010.

[33] State-EPA Nutrient Innovations Task Group. 2009. *An Urgent Call to Action: Report of the State-EPA Nutrient Innovations Task Group. http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/2009_08_27_criteria_nutrient_nitgreport.pdf* Accessed May 2012.

[34] U.S. Census Bureau. 2011. *Population Distribution and Change: 2000 to 2010. http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf.* Accessed July 2011.

[35] SBEP. 2010. *Numeric Nutrient Criteria for Sarasota Bay.* Prepared for the Sarasota Bay Estuary

the Tampa Bay Estuary Program, the largest source of nitrogen to Tampa Bay is also runoff (63 percent of total nitrogen loadings to Tampa Bay from 1999–2003).[36] Impervious land cover is a large driver of stormwater volume. In 2005, one study estimated that 7 percent of Florida's area had total impervious area greater than 20 percent, and of that, a quarter of that land had total impervious area greater than 40 percent. As Florida's population grows, it is likely that the resulting expansion of impervious cover will cause increased harmful impacts on water quality in coastal areas, wetlands, and other aquatic ecosystems.[37]

Wastewater is also a significant contributor of nitrogen and phosphorus pollution. In Florida, there are 443 domestic (not including septic systems) and industrial wastewater dischargers with individual NPDES permits.[38] Of those facilities, 198 are classified as domestic (municipal) wastewater facilities, which treat sanitary wastewater or sewage from homes, businesses, and institutions. The other 245 facilities are classified as industrial wastewater facilities. About one third of Florida's population uses on-site sewage treatment and disposal (septic tanks) to treat wastewater.[39]

In Florida, fewer than a quarter of individually permitted domestic and industrial facilities are authorized to discharge to surface waters. The remaining permittees are authorized to discharge solely to groundwater through land-application, beneficial reuse of reclaimed water, or deep well injection. Domestic wastewater treatment facilities permitted by FDEP produce over 1.5 billion gallons of treated effluent and reclaimed water per day, with a total treatment capacity of over 2.5 billion gallons per day. Eighteen percent of domestic wastewater treatment facilities have treatment capacities greater than 500,000 gallons per day, whereas 73 percent of domestic wastewater treatment facilities have capacities less than 100,000 gallons per day.[40]

Wastewater has been cited as contributing to negative impacts on water quality in some areas. On the east coast of Florida, septic systems contribute an estimated 1.5 million pounds of nitrogen per year to Florida's Indian River Lagoon.[41] There have been some successes in reducing the impact of wastewater on marine waters. In Tampa Bay, wastewater treatment plants were one of the major sources of nitrogen prior to the institution of tertiary nitrogen removal. This treatment has contributed to an improvement in Tampa Bay's water quality.[42]

There have been a number of studies examining the sources of nitrogen and phosphorus pollution in waters across Florida. One area of study is Biscayne Bay, located on the southeast coast of Florida, adjacent to Miami. Nutrient pollution in the Bay comes from a number of key sources that vary geographically: stormwater runoff from urban areas, discharges from the Black Point Landfill and Sewage Treatment Plant, agricultural runoff from canals in the South Dade agricultural basin, and contaminated ground water.[43] In the northern section of the Bay, there are inputs from five canals, a landfill, and urban runoff. The southern section of the Bay has a greater contribution from agricultural sources.[44] In one study, researchers found that canals conveying waters from agricultural and urban areas contributed 88 percent and 66 percent of the Bay's total dissolved inorganic nitrogen and total phosphorus loads, respectively.[45]

b. Adverse Impacts of Nitrogen and Phosphorus Pollution on Aquatic Life

Nitrogen and phosphorus pollution in surface and ground waters degrade water quality and negatively impact aquatic life through processes associated with eutrophication.[46] Eutrophication is a predictable, well-understood, and widely-documented biological process by which anthropogenic nitrogen and phosphorus pollution results in increased growth of algae (plankton and periphyton).[47]

Program by Janicki Environmental, Inc. *http://www.sarasotabay.org/documents/SBEP–NNC-Final-Report.pdf.* Accessed August 2011.

[36] TBEP. No date. *About the Tampa Bay Estuary Program, State of the Bay: Water and Sediment Quality.* Tampa Bay Estuary Program. *http://www.tbep.org/tbep/stateofthebay/waterquality.html.* Accessed January 2012.

[37] Exum, L.R., S.L. Bird, J. Harrison, and C.A. Perkins. 2005. *Estimating and Projecting Impervious Cover in the Southeastern United States.* EPA/600/R–05/061. U.S. Environmental Protection Agency, Office of Research and Development, Washington, DC.

[38] Facilities with NPDES permits either discharge to surface waters or ground waters, using methods that include land application, beneficial reuse of reclaimed water, and deep well injection. USEPA. 2011. Permit Compliance System Database. U.S. Environmental Protection Agency. *http://www.epa.gov/enviro/facts/pcs/customized.html.* Accessed June 2011.

There are also 34,508 dischargers covered under generic or general permits, which FDEP regulates based on categories of wastewater facilities or activities that involve the same or similar types of operations or wastes.

[39] FDEP. 2011. *General Facts and Statistics about Wastewater in Florida.* Florida Department of Environmental Protection. *http://www.dep.state.fl.us/water/wastewater/facts.htm.* Accessed January 2012.

[40] FDEP. 2011. *Wastewater Program.* Florida Department of Environmental Protection. *http://www.dep.state.fl.us/water/wastewater/index.htm Accessed January 2012.*

[41] USEPA. 2003. *EPA Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems.* EPA–832–B–03–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://www.epa.gov/owm/septic/pubs/septic_guidelines.pdf.* Accessed August 2011.

[42] Johansson, J.O.R., and H.S. Greening. 2000. Seagrass Restoration in Tampa Bay: A Resource-based Approach to Estuarine Management. Chapter 20 In: *Seagrasses: Monitoring, Ecology, Physiology, and Management*, ed. S.A. Bortone, pp. 279–293. CRC Press, Boca Raton, FL.

[43] Caccia, V.G., and J.N. Boyer. 2007. A nutrient loading budget for Biscayne Bay, Florida. *Marine Pollution Bulletin* 54(7):994–1008.

Caccia, V.G., and J.N. Boyer. 2005. Spatial patterning of water quality in Biscayne Bay, Florida as a function of land use and water management. *Marine Pollution Bulletin* 50(11):1416–1429.

[44] Caccia, V.G., and J.N. Boyer. 2005. Spatial patterning of water quality in Biscayne Bay, Florida as a function of land use and water management. *Marine Pollution Bulletin* 50(11):1416–1429.

[45] Caccia, V.G., and J.N. Boyer. 2007. A nutrient loading budget for Biscayne Bay, Florida. *Marine Pollution Bulletin* 54(7):994–1008.

[46] Eutrophication is the process by which a water body becomes enriched with organic material, which is formed by primary productivity (i.e., photosynthetic activity) and can be stimulated to harmful levels by the anthropogenic introduction of high concentrations of nutrients—particularly nitrogen and phosphorus (National Research Council. 2000. *Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution.* Report prepared by the Ocean Study Board and Water Science and Technology Board, Commission on Geosciences, Environment and Resources, National Resource Council, Washington, DC. See also Nixon. SW. 1995. Coastal marine eutrophication: A definition, social causes, and future concerns. *Ophelia* 41:199–219.)

[47] Cambridge, M.L., J.R. How, P.S. Lavery, and M.A. Vanderklift. 2007. Retrospective analysis of epiphyte assemblages in relation to seagrass loss in a eutrophic coastal embayment. *Marine Ecology Progress Series* 346:97–107.

Frankovich, T.A., and J.W. Fourqurean. 1997. Seagrass epiphyte loads along a nutrient availability gradient, Florida Bay, USA. *Marine Ecology Progress Series* 159:37–50.

Peterson, B.J., T.A. Frankovich, and J.C. Zieman. 2007. Response of seagrass epiphyte loading to field manipulations of fertilization, gastropod grazing and leaf turnover rates. *Journal of Experimental Marine Biology and Ecology* 349(1):61–72.

Howarth, R., D. Anderson, J. Cloern, C. Elfring, C. Hopkinson, B. Lapointe, T. Malone, N. Marcus, K.J. McGlathery, A. Sharpley, and D. Walker. 2000. Nutrient pollution of coastal rivers, bays, and seas. *Issues in Ecology* 7:1–15.

Cloern, J.E. 2001. Our evolving conceptual model of the coastal eutrophication problem. *Marine Ecology Progress Series* 210:223–253.

Elser, J.J., M.E.S. Bracken, E.E. Cleland, D.S. Gruner, W.S. Harpole, H. Hillebrand, J.T. Ngai, E.W. Seabloom, J.B. Shurin, and J.E. Smith. 2007. Global analysis of nitrogen and phosphorus limitation of primary production in freshwater, marine, and terrestrial ecosystems. *Ecology Letters* 10:1135–1142.

Smith, V.H. 2006. Responses of estuarine and coastal marine phytoplankton to nitrogen and phosphorus enrichment. *Limnology and Oceanography* 51(1, part 2): 377–384.

Continued

Nitrogen and phosphorus pollution increases algal growth that negatively impacts many aspects of ecological communities. As algae growth accelerates in response to nutrient pollution, there may be negative changes in algal species composition and competition among species, leading to harmful, adverse effects, such as the increased growth or dominance of toxic or otherwise harmful algal species.[48] These harmful algal blooms (HABs) can contain undesirable species of diatoms, cyanobacteria, and dinoflagellates, which are known to generate toxins that are a threat to both aquatic life and recreational activities.[49] Many nuisance taxa of algae are also less palatable to aquatic organisms that consume phytoplankton, so prolonged HABs can impact the food supply of the overall aquatic community. More than 100 HAB species have been identified in the United States.[50]

Marine and fresh waters of the United States are increasingly being negatively impacted by HABs.[51] HAB toxins have been linked to illnesses and deaths of marine animals, including sea lions, turtles, fish, seabirds, dolphins, and manatees.[52] Diatoms in HABs, such as *Pseudo-nitzschia,* produce domoic acid.[53] Domoic acid has been shown to accumulate in the tissue of mussels, crabs, and fish, causing their predators to become ill or die.[54] Domoic acid poisoning has been reported as the cause of death of humpback whales in the Gulf of Maine in 2003 and sea lions in California's Monterey Bay during May and June of 1998.[55] Other toxin-producing algal species that have been linked to harmful, adverse aquatic life impacts include *Pfisteria piscicida,* which produces several toxins that impact fish and humans [56] and the flagellate *Heterosigma akashiwo* which produces an ichthyotoxin that kills fish.[57]

Secondly, excessive algal growth as a result of nitrogen and phosphorus pollution reduces water clarity, resulting in reduced light availability for macrophytes and seagrasses.[58] Seagrasses cover approximately 2.7 million acres throughout the State and are a central ecological feature of Florida's dynamic, highly productive marine ecosystems.[59] A substantial body of scientific research has linked nitrogen and phosphorus pollution, and

Vitousek, P.M., J.D. Aber, R.W. Howarth, G.E. Likens, P.A. Matson, D.W. Schindler, W.H. Schlesinger, and D.G. Tilman. 1997. Human alteration of the global nitrogen cycle: Sources and consequences. *Ecological Applications* 7(3):737–750.

Bricker, S.B., J.G. Ferreira, and T. Simas. 2003. An integrated methodology for assessment of estuarine trophic status. *Ecological Modelling* 169(1):39–60.

Bricker, S.B., B. Longstaff, W. Dennison, A. Jones, K. Boicourt, C. Wicks, and J. Woerner. 2008. Effects of nutrient enrichment in the nation's estuaries: A decade of change. *Harmful Algae* 8(1):21–32.

Boyer, J.N., C.R. Kelble, P.B. Ortner, and D.T. Rudnick. 2009. Phytoplankton bloom status: Chlorophyll *a* biomass as an indicator of water quality condition in the southern estuaries of Florida, USA. *Ecological Indicators* 9(6, Supplement 1):S56–S67.

Hutchinson, G.E. 1961. The paradox of plankton. *American Naturalist* 95:137–145.

Piehler, M.F., L.J. Twomey, N.S. Hall, and H.W. Paerl. 2004. Impacts of inorganic nutrient enrichment on phytoplankton community structure and function in Pamlico Sound, NC, USA. *Estuarine Coastal and Shelf Science* 61(2):197–209.

Sanders, J.G., S.J. Cibik, C.F. D'Elia, and W.R. Boynton. 1987. Nutrient enrichment studies in a coastal plain estuary: changes in phytoplankton species composition. *Canadian Journal of Fisheries & Aquatic Sciences* 44:83–90.

Parsons, T.R., P.J. Harrison, and R. Waters. 1978. An experimental simulation of changes in diatom and flagellate blooms. *Journal of Experimental Marine Biology and Ecology* 32:285–294.

Paerl, H.W. 1988. Nuisance phytoplankton blooms in coastal, estuarine, and inland waters. *Limnology and Oceanography* 33(4):823–847.

Harding, Jr., L.W. 1994. Long-term trends in the distribution of phytoplankton in Chesapeake Bay: roles of light, nutrients, and streamflow. *Marine Ecology Progress Series* 104:267–291.

Richardson, K. 1997. Harmful or Exceptional Phytoplankton Blooms in the Marine Ecosystem. *Advances in Marine Biology.* 31:301–385.

Hagy, J.D., J.C. Kurtz, and R.M. Greene. 2008. *An Approach for Developing Numeric Nutrient Criteria for a Gulf Coast Estuary.* U.S. Environmental Protection Agency, Office of Research and Development, National Health and Environmental Effects Research Laboratory, Research Triangle Park, NC., EPA 600R–08/004, 44 pp.

[48] Paerl, H.W. 1988. Nuisance phytoplankton blooms in coastal, estuarine, and inland waters. *Limnology and Oceanography* 33(4):823–847.

Anderson, D.M., P.M. Glibert, and J.M. Burkholder. 2002. Harmful algal blooms and eutrophication: Nutrient sources, composition, and consequences. *Estuaries* 25(4):704–726.

Anderson, D.M., J.M. Burkholder, W.P. Cochlan, P.M. Glibert, C.J. Gobler, C.A. Heil, R.M. Kudela, M.L. Parsons, J.E.J. Rensel, D.W. Townsend, V.L. Trainer, and G.A. Vargo. 2008. Harmful algal blooms and eutrophication: Examining linkages from selected coastal regions of the United States. *Harmful Algae* 8(1):39–53.

[49] Anderson, D.M., P.M. Glibert, and J.M. Burkholder. 2002. Harmful algal blooms and eutrophication: Nutrient sources, composition, and consequences. *Estuaries* 25(4):704–726.

Paerl, H.W. 2002. Connecting atmospheric nitrogen deposition to coastal eutrophication. *Environmental Science & Technology* 36(15):323A–326A.

Anderson, D.M., J.M. Burkholder, W.P. Cochlan, P.M. Glibert, C.J. Gobler, C.A. Heil, R.M. Kudela, M.L. Parsons, J.E.J. Rensel, D.W. Townsend, V.L. Trainer, and G.A. Vargo. 2008. Harmful algal blooms and eutrophication: Examining linkages from selected coastal regions of the United States. *Harmful Algae* 8(1):39–53.

[50] Abbott, G.M., J.H. Landsberg, A.R. Reich, K.A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task-force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/ Accessed* June 2011.

[51] Dortch, Q., P. Glibert, E. Jewett, and C. Lopez. 2008. Introduction. Chapter 1 In: *HAB RDDTT 2 National Workshop Report, A plan for Reducing HABs and HAB Impacts.* eds. Q. Dortch, D.M. Anderson, D.L. Ayres, and P.M. Glibert, pp. 5–12. Woods Hole, MA.

[52] WHOI. 2008. *Marine Mammals.* Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=14215.* Accessed June 2011.

WHOI. 2008. *HAB Impacts on Wildlife.* Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=9682.* Accessed June 2011.

NOAA. 2011. *Overview of Harmful Algal Blooms.* National Oceanic and Atmospheric Administration, Center for Sponsored Coastal Ocean Research.

http://www.cop.noaa.gov/stressors/extremeevents/hab/default.aspx. Accessed June 2011.

[53] Thessen, A.E., and D.K. Stoecker. 2008. Distribution, abundance and domoic acid analysis of the toxic diatom genus *Pseudo-nitzschia* from the Chesapeake Bay. *Estuaries and Coasts* 31:664–672.

[54] Bushaw-Newton, K.L., and K.G. Sellner. 1999. Harmful Algal Blooms. In: *NOAA's State of the Coast Report.* National Oceanic and Atmospheric Administration, Silver Spring, MD. *http://oceanservice.noaa.gov/Web* sites/retiredsites/sotc_pdf/hab.pdf. Accessed June 2011.

[55] MBARI. 2000, January 5. *Molecular Probes Link Sea Lion Deaths to Toxic Algal Bloom.* MBARI News and Information. Monterey Bay Aquarium Research Institute. *http://www.mbari.org/news/news_releases/2000/jan06_scholin.html.* Accessed June 2011.

[56] Waring G.T., E. Josephson, K. Maze-Foley, and P.E. Rosel, eds. 2010. Humpback Whale *(Megaptera novaeangliae*): Gulf of Maine Stock (December 2009). In: *U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—2010,* NOAA Technical Memorandum NMFS–NE–219. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Fisheries Science Center, Woods Hole, MA. *http://www.nefsc.noaa.gov/publications/tm/tm219/.* Accessed January 2012.

[57] Rensel, J.E.J. 2007. *Fish kills from the harmful alga* Heterosigma akashiwo *in Puget Sound: Recent blooms and review.* Prepared for National Oceanic and Atmospheric Administration, Center for Sponsored Coastal Ocean Research, by Rensel Associates Aquatic Sciences, Arlington, Washington, in cooperation with American Gold Seafoods, LLC. *http://www.whoi.edu/fileserver.do?id=39383&pt=2&p=29109.* Accessed January 2012.

[58] Vitousek, P.M., J.D. Aber, R.W. Howarth, G.E. Likens, P.A. Matson, D.W. Schindler, W.H. Schlesinger, and D.G. Tilman. 1997. Human alteration of the global nitrogen cycle: Sources and consequences. *Ecological Applications* 7(3):737–750.

Bricker, S.B., J.G. Ferreira, and T. Simas. 2003. An integrated methodology for assessment of estuarine trophic status. *Ecological Modelling* 169(1):39–60.

Bricker, S.B., B. Longstaff, W. Dennison, A. Jones, K. Boicourt, C. Wicks, and J. Woerner. 2008. Effects of nutrient enrichment in the nation's estuaries: A decade of change. *Harmful Algae* 8(1):21–32.

Boyer, J.N., C.R. Kelble, P.B. Ortner, and D.T. Rudnick. 2009. Phytoplankton bloom status: Chlorophyll *a* biomass as an indicator of water quality condition in the southern estuaries of Florida, USA. *Ecological Indicators* 9(6, Supplement 1):S56–S67.

[59] FFWCC. 2003. *Conserving Florida's Seagrass Resources: Developing a Coordinated Statewide Management Program.* Florida Fish and Wildlife Conservation Commission, Florida Marine Research Institute, St. Petersburg, FL.

subsequent reduced light availability, to seagrass decline. Excessive nutrient inputs increase phytoplankton biomass and thereby increase water column light attenuation, which limits the light available for seagrass photosynthesis. This results in reduced growth and increased mortality of seagrasses. In addition, nitrogen and phosphorus pollution can lead to excess growth of epiphytic algae on seagrasses that blocks the light available to seagrasses and affects seagrass growth.[60] This reduction of seagrass communities, in turn, results in harmful, adverse impacts such as destabilization of sediments, which causes the release of more nutrients into the water column.[61]

The role that nitrogen and phosphorus pollution plays in the decline of seagrass has been studied extensively in Florida.[62] In a report published by USGS in 2001, six of nine Florida estuaries located along the Gulf Coast showed declines in seagrass coverage, the predominant causes of which were nitrogen and phosphorus pollution, dredging, propeller scarring, hydrologic alterations, increased turbidity, and chronic light reduction.[63] Florida Fish & Wildlife Conservation Commission has noted several areas of significant seagrass decline between 1950 and 2000, including 72 percent loss in St. Joseph Sound, 43 percent loss in the northern section of Biscayne Bay near Miami, 40 percent loss in Tampa Bay, 30 percent loss in the Indian River Lagoon, and 29 percent loss in Charlotte Harbor. These losses coincided with population growth in these watersheds, and resulted from human activities such as fertilizer use in residential and agricultural areas and construction projects which contribute high levels of suspended sediments.[64] Several studies have attributed declines in seagrass to excess chlorophyll *a* and phytoplankton in the water column which can increase light attenuation. One study conducted from 1989–1991 found that excess chlorophyll *a* caused light attenuation of 16 to 28 percent across Charlotte Harbor and Tampa Bay. In the same study, the authors noted an overall improvement in seagrass recolonization and areal cover in Hillsborough Bay and other parts of Tampa Bay starting in the late 1980s coinciding with decreased nutrient loading, which resulted in decreased concentrations of chlorophyll *a* and increased water clarity.[65] A later study, which conducted sampling monthly between June 1998 and July 1999, estimated that phytoplankton biomass contributed approximately 29 percent of total water column light attenuation in Lemon Bay, Florida. The authors predicted a continuation in the potential decline of seagrasses with increased urbanization.[66]

Lastly, excessive algal growth also leads to low dissolved oxygen (DO) potentially creating hypoxic and anoxic conditions that cannot support aquatic life and thereby can change the balance of natural populations of aquatic fauna expected to occur.[67] Hypoxia is typically defined as DO < 2 mg/L, and anoxia as DO < 0.1 mg/L.[68] The cause and effect relationship between nitrogen and phosphorus pollution and marine hypoxia is clear and well documented in the scientific literature.[69] Increased nitrogen and phosphorus inputs lead to excessive algal growth and organic matter loading to bottom waters. Bacterial decomposition of the organic matter consumes oxygen and depletes the water column of DO.[70] In estuaries and coastal waters, low DO is one of the most widely reported consequences of nitrogen and phosphorus pollution and one of the best predictors of a range of biotic impairments.[71] Low DO causes negative impacts to aquatic life ranging from mortality to chronic impairment of growth and reproduction.[72] When nitrogen and phosphorus pollution creates adverse conditions that result in large hypoxic zones, substantial negative changes in fish, benthic, and plankton communities may occur.[73] This includes avoidance of these areas by fish, mobile benthic invertebrates migrating from the hypoxic area, and fish kills in some systems when fish and other mobile aquatic organisms have nowhere to migrate away from the areas

[60] Duarte, C.M. 1991. Seagrass depth limits. *Aquatic Botany* 40(4):363–377.

[61] Boyer, J.N., C.R. Kelble, P.B. Ortner, and D.T. Rudnick. 2009. Phytoplankton bloom status: Chlorophyll a biomass as an indicator of water quality condition in the southern estuaries of Florida, USA. *Ecological Indicators* 9(6, Supplement 1):S56–S67.

[62] Dawes, C.J., R.C. Phillips, and G. Morrison. 2004. *Seagrass Communities of the Gulf Coast of Florida: Status and Ecology, Final Report.* Technical Publication #03–04. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, and the Tampa Bay Estuary Program, St. Petersburg, FL.

Tomasko, D.A., C.A. Corbett, H.S. Greening, and G.E. Raulerson. 2005. Spatial and temporal variation in seagrass coverage in Southwest Florida: assessing the relative effects of anthropogenic nutrient load reductions and rainfall in four contiguous estuaries. *Marine Pollution Bulletin* 50:797–805.

Orth, R.J., T.J.B. Carruthers, W.C. Dennison, C.M. Duarte, J.W. Fourqurean, K.L. Heck Jr., A.R. Hughes, G.A. Kendrick, W.J. Kenworthy, S. Olyarnik, F.T. Short, M. Waycott, and S.L. Williams. 2006. A global crisis for seagrass ecosystems. *Bioscience* 56:987–996.

Burkholder, J.M., D.A. Tomasko, and B.W. Touchette. 2007. Seagrasses and eutrophication. *Journal of Experimental Marine Biology and Ecology* 350:46–72.

Collado-Vides, L., V.G. Caccia, J.N. Boyer, and J.W. Fourqurean. 2007. Tropical seagrass-associated macroalgae distributions and trends relative to water quality. *Estuarine, Coastal and Shelf Science* 73:680–694.

[63] USGS. 2001. *Seagrass Habitat In the Northern Gulf of Mexico: Degradation, Conservation, and Restoration of a Valuable Resource.* 855–R–04–001. U.S. Geological Survey, Gulf of Mexico Habitat Program Team. *http://gulfsci.usgs.gov/gom_ims/pdf/pubs_gom.pdf.* Accessed July 2011.

[64] FFWCC. 2002. *Florida's Seagrass Meadows: Benefitting Everyone.* Florida Fish and Wildlife Conservation Commission, St. Petersburg, FL. *http://www.sarasotabay.org/documents/seagrassbrochure.pdf.* Accessed July 2011.

[65] McPherson, B.F., and R.L. Miller. 1994. Causes of Light Attenuation in Tampa Bay and Charlotte Harbor, Southwestern Florida. *Water Resources Bulletin* 30(1):43–53.

[66] Tomasko, D.A., D.L. Bristol, and J.A. Ott. 2001. Assessment of present and future nitrogen loads, water quality, and seagrass (*Thalassia testudinum*) depth distribution in Lemon Bay, Florida. *Estuaries* 24(6A):926–938.

[67] Vitousek, P.M., J.D. Aber, R.W. Howarth, G.E. Likens, P.A. Matson, D.W. Schindler, W.H. Schlesinger, and D.G. Tilman. 1997. Human alteration of the global nitrogen cycle: Sources and consequences. *Ecological Applications* 7(3):737–750.

[68] USEPA. 1999. *The Ecological Condition of Estuaries in the Gulf of Mexico.* EPA 620–R–98–004. U.S. Environmental Protection Agency, Office of Research and Development, National Health and Environmental Effects Research Laboratory, Gulf Ecology Division, Gulf Breeze, FL.

[69] Conley, D., J. Carstensen, R. Vaquer-Sunyer, and C. Duarte. 2009. Ecosystem thresholds with hypoxia. *Hydrobiologia* 629(1):21–29.

Conley, D.J., H.W. Paerl, R.W. Howarth, D.F. Boesch, S.P. Seitzinger, K.E. Havens, C. Lancelot, and G.E. Likens. 2009. Controlling Eutrophication: Nitrogen and Phosphorus. *Science* 323(5917):1014–1015.

Diaz, R.J. 2001. Overview of hypoxia around the world. *Journal of Environmental Quality* 30(2):275–281. Diaz, R.J., and R. Rosenberg. 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321(5891):926–929.

[70] Clement, C., S.B. Bricker and D.E. Pirhalla. 2001. Eutrophic Conditions in Estuarine Waters. In: *NOAA's State of the Coast Report.* National Oceanic and Atmospheric Administration, Silver Spring, MD. *http://state-of-coast.noaa.gov/bulletins/html/eut_18/eut.html.* Accessed December 2011.

[71] Bricker, S.B., J.G. Ferreira, and T. Simas. 2003. An integrated methodology for assessment of estuarine trophic status. *Ecological Modelling* 169(1):39–60.

Bricker, S.B., C.G. Clement, D.E. Pirhalla, S.P. Orlando, and D.R.G. Farrow. 1999. *National Estuarine Eutrophication Assessment, Effects of Nutrient Enrichment in the Nation's Estuaries.* National Oceanic and Atmospheric Administration, National Ocean Service, Special Projects Office and the National Centers for Coastal Ocean Science. Silver Spring, MD.

[72] USEPA. 2001. *Nutrient Criteria Technical Guidance Manual, Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[73] Howell, P., and D. Simpson. 1994. Abundance of marine resources in relation to dissolved oxygen in Long Island Sound. *Estuaries* 17(2):394–402.

Kidwell, D.M., A.J. Lewitus, S. Brandt, E.B. Jewett, and D.M. Mason. 2009. Ecological impacts of hypoxia on living resources. *Journal of Experimental Marine Biology and Ecology* 381(Supplement 1):S1–S3.

with low DO.[74] This can result in negative changes to the benthic invertebrate community structure of estuaries and coastal areas, with increases of organisms more tolerant of low DO.[75] Even intermittent hypoxia can cause shifts in the benthic assemblage to favor resistant or tolerant organisms, which are less desirable food sources, creating unbalanced benthic communities in the hypoxic zone because fish avoid the area.[76] When hypoxia extends into shallow waters, it affects spawning and nursery areas for many important fish species by reducing the habitat available that protects smaller fish and aquatic organisms, especially juveniles, from predation.[77] Hypoxia has been implicated in a recent increase and late-summer dominance of hypoxia-tolerant gelatinous zooplankton (jellyfish and ctenophores) in the Chesapeake Bay and other eastern estuaries.[78] Reduced fishery production in hypoxic zones has been documented in the United States and worldwide.[79]

Hypoxia and anoxia in bottom waters result in anoxia in the surface sediments, which has geochemical consequences including acidification and release of toxic hydrogen sulfide, soluble reactive phosphorus, and ammonia.[80] The sediment of hypoxic zones then becomes a potential source of nutrients that can increase the degree of eutrophication. Systems that have had persistent and chronic hypoxia often fail to recover quickly even after pollution loadings have been reduced.[81] Reduced oxygen also affects a variety of other biogeochemical processes that can negatively impact water quality, such as the chemical form of metals in the water column.[82]

The harmful, adverse impacts of nitrogen and phosphorus pollution on aquatic life have been manifested throughout Florida. The State has been negatively impacted by algal blooms for many years. Red algae, *Laurencia intricata* and *Spyridia filamentosa;* brown algae, *Dictyota sp.* and *Sargassum filipendula;* and green algae, *Enteromorpha sp., Codium isthmocladum,* and *Halimeda sp.* grow in the Florida Bay area.[83] At times their increased growth has threatened the commercially important fish, lobster, and shrimp nurseries in the area.[84] Southern Palm Beach and northern Broward counties have been negatively impacted by algal mats made up of *Caulerpa* species since the 1990s. *Caulerpa* species can become overgrown or displace coral, other macroalgae, or sponges. Off Palm Beach County, dive operators and fishermen have reported large amounts of *Caulerpa brachypus* driving fish and lobster away from reefs. Researchers in Florida (e.g., Florida Sea Grant, University of Florida IFAS Extension, University of Central Florida, Tampa Bay Estuary Program) and nationally (e.g., National Sea Grant, NOAA) have noted the spread of a related green alga (*Caulerpa taxifolia*) along the California coast, which is illustrative of the potential for future further spread of *C. brachypus* in Florida coastal waters. California is spending millions to eradicate the *C. taxifolia*.[85] *Gambierdiscus toxicus* (a ciguatoxin producer) is found from Palm Beach to the Dry Tortugas and Florida Bay and is suspected to have caused fish kills and disease events.[86] Blooms of *Lyngbya majuscula* were reported in Charlotte Harbor, Cedar Key, Sebastian Inlet, Sarasota Bay, Tampa Bay, Terra Ceia Bay, Palma Sola, Manatee River, and northwest Bradenton in 1999, 2000, and 2002. *Lyngbya majuscula* can form sizeable, floating mats that emit foul odors.[87] In 1991, widespread and persistent blooms of cyanobacteria in Florida Bay coincided with massive sponge die-offs, which negatively impacted the behavior and abundance of populations of juvenile Caribbean spiny lobsters.[88] Two *Pseudo-nitzschia* species found in Florida are *P. calliantha,* which was observed at bloom levels in the northern Indian River Lagoon, and *P.*

[74] Howell, P., and D. Simpson. 1994. Abundance of marine resources in relation to dissolved oxygen in Long Island Sound. *Estuaries* 17(2):394–402.

Kidwell, D.M., A.J. Lewitus, S. Brandt, E.B. Jewett, and D.M. Mason. 2009. Ecological impacts of hypoxia on living resources. *Journal of Experimental Marine Biology and Ecology* 381(Supplement 1):S1–S3.

[75] Baker, S., and R. Mann. 1992. Effects of hypoxia and anoxia on larval settlement, juvenile growth, and juvenile survival of the oyster *Crassostrea virginica*. *Biological Bulletin* 182(2):265–269.

Baker, S., and R. Mann. 1994. Feeding ability during settlement and metamorphosis in the oyster *Crassostrea virginica* (Gmelin, 1791) and the effects of hypoxia on post-settlement ingestion rates. *Journal of Experimental Marine Biology and Ecology* 181(2):239–253.

Baker, S.M., and R. Mann. 1994. Description of metamorphic phases in the oyster *Crassostrea virginica* and effects of hypoxia on metamorphosis. *Marine Ecology Progress Series* 104:91–99.

Baustian, M., and N. Rabalais. 2009. Seasonal composition of benthic macroinfauna exposed to hypoxia in the northern Gulf of Mexico. *Estuaries and Coasts* 32(5):975–983.

Breitburg, D. 2002. Effects of hypoxia, and the balance between hypoxia and enrichment, on coastal fishes and fisheries. *Estuaries* 25(4):767–781.

[76] Kidwell, D.M., A.J. Lewitus, S. Brandt, E.B. Jewett, and D.M. Mason. 2009. Ecological impacts of hypoxia on living resources. *Journal of Experimental Marine Biology and Ecology* 381(Supplement 1):S1–S3.

[77] Breitburg, D. 2002. Effects of hypoxia, and the balance between hypoxia and enrichment, on coastal fishes and fisheries. *Estuaries* 25(4):767–781.

[78] Grove, M., and D.L. Breitburg. 2005. Growth and reproduction of gelatinous zooplankton exposed to low dissolved oxygen. *Marine Ecology Progress Series* 301:185–198.

[79] Diaz, R.J., and R. Rosenberg. 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321(5891):926–929.

[80] Diaz, R.J., and R. Rosenberg. 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321(5891):926–929.

Kemp, W.M., W.R. Boynton, J.E. Adolf, D.F. Boesch, W.C. Boicourt, G. Brush, J.C. Cornwell, T.R. Fisher, P.M. Glibert, J.D. Hagy, L.W. Harding, E.D. Houde, D.G. Kimmel, W.D. Miller, R.I.E. Newell, M.R. Roman, E.M. Smith, and J.C. Stevenson. 2005. Eutrophication of Chesapeake Bay: Historical trends and ecological interactions. *Marine Ecology Progress Series* 303:1–29.

McCarthy, M., K. McNeal, J. Morse, and W. Gardner. 2008. Bottom-water hypoxia effects on sediment–water interface nitrogen transformations in a seasonally hypoxic, shallow bay (Corpus Christi Bay, TX, USA). *Estuaries and Coasts* 31(3):521–531.

Cai, W., X. Hu, W. Huang, M.C. Murrell, J.C. Lehrter, SE. Lohrenz, W. Chou, W. Zhai, J.T. Hollibaugh, Y. Wang, P. Zhao, X. Guo, K. Gundersen, M. Dai, and G. Gong.. 2011. Acidification of subsurface coastal waters enhanced by eutrophication. *Nature Geoscience* 4:766–770.

[81] Conley, D.J., J. Carstensen, G. Ærtebjerg, P.B. Christensen, T. Dalsgaard, J.L.S. Hansen, and A.B. Josefson. 2007. Long-term changes and impacts of hypoxia in Danish coastal water. *Ecological Applications* 17(sp5):S165–S184.

Diaz, R.J., and R. Rosenberg. 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321(5891):926–929.

[82] Snoeyink, V.L., and D. Jenkins. 1980. Oxidation-Reduction Reactions. Chapter 7 In: *Water Chemistry,* pp. 316–430. John Wiley and Sons, New York.

[83] Anderson, D.M., ed. 1995. *ECOHAB: The Ecology and Oceanography of Harmful Algal Blooms: A National Research Agenda*. Woods Hole Oceanographic Institution, Woods Hole, MA.

[84] Anderson, D.M., ed. 1995. *ECOHAB: The Ecology and Oceanography of Harmful Algal Blooms: A National Research Agenda*. Woods Hole Oceanographic Institution, Woods Hole, MA.

[85] Jacoby, C., B. Lapointe, and L. Creswell. No date. *Are native and nonindigenous seaweeds overgrowing Florida's east coast reefs?* SGEF–156. Florida Sea Grant College Program. *http://nsgl.gso.uri.edu/flsgp/flsgpg01015.pdf.* Accessed January 2012.

Jacoby, C., and L. Walters. 2009. *Can We Stop ''Killer Algae'' from Invading Florida?* (March 2009 rev.) SGEF–155. Florida Sea Grant College Program. *http://edis.ifas.ufl.edu/pdffiles/sg/sg07200.pdf.* Accessed April 2012.

[86] FFWCC. No date. *Gambierdiscus toxicus.* Florida Fish and Wildlife Conservation Commission. *http://myfwc.com/media/202186/g_toxicus_1054.pdf.* Accessed January 2012.

[87] FFWCC. No date. *Blue-Green Algal Blooms in Coastal Florida; 1999, 2000, and 2002.* Florida Fish and Wildlife Conservation Commission. *http://myfwc.com/research/redtide/archive/historical-events/blue-green-algal-blooms-coastal-fl/.* Accessed January 2012.

[88] Butler, M.J., J.H. Hunt, W.F. Herrnking, M.J. Childress, R. Bertelsen, W. Sharp, T. Matthews, J.M. Field, and H.G. Marshall. 1995. Cascading disturbances in Florida Bay, USA: cyanobacteria blooms, sponge mortality, and implications for juvenile spiny lobsters *Panulirus argus*. *Marine Ecology Progress Series* 129:119–125.

pseudodelicatissima.[89] *Pseudo-nitzschia* spp. has been observed in Tampa Bay since the 1960s. *Pseudo-nitzschia* spp. cause amnesic shellfish poisoning in humans and mortality of marine mammals and seabirds.[90]

In addition to being negatively indirectly impacted by algal toxins and decline of seagrass, aquatic life in Florida is directly impacted by hypoxia. In June 2011, a fish kill in Marco Island, Florida was attributed to low dissolved oxygen, resulting from a ''mixed'' bloom of non-toxic algae and diatoms.[91] In 2010, there were reports of algal blooms and fish kills in the St. Johns River.[92] Spring releases of water from Lake Okeechobee into the St. Lucie Canal resulted in floating mats of toxic cyanobacteria, *Microcystis aeruginosa,* prompting Martin and St. Lucie county health departments to issue public health warnings.[93] A large *Microcystis* bloom was documented in the Lower St. Johns River in 2005, covering a 100 mi (160 km) stretch from Jacksonville to Crescent City.[94] Toxic cyanobacteria *Anabaena circinalis* and *Cylindrospermopsis raciborskii* have been implicated in fish kills in the Lower St. Johns River basin.[95] In addition, in June 2009, a large algal bloom stretching more than 14 mi (23 km) was documented in Tampa Bay. This was linked to surface water runoff of nutrients and pollutants (e.g., fertilizers, yard waste, animal feces) that were washed into the bay from recent heavy rains.[96]

Numerous algal blooms, some capable of producing toxins, foul odors, and fish kills, occurred in Florida coastal areas, estuaries, and canals in 2011. Green algae, known as June Grass, were found washing onto local beaches on Okaloosa Island. The algae adhere to swimmers, cover beaches and hinder fishing.[97]

In the Caloosahatchee River and estuary, high algae and salinity levels caused the Olga water treatment plant in Lee County to close in May 2011. Customers complained about unusual tastes and odors in their drinking water. The blue-green algae bloom significantly affected areas from the W.P. Franklin Lock and Dam, upstream through Alva and LaBelle, Florida. The bloom caused fish, bird and shellfish mortalities, and triggered the Lee County Health Department to issue warnings and advisories on water and fish consumption as well as swimming. Toxic blue-green algae species were identified in the bloom, including *Anabaena, Oscillatoria* and *Aphanizomenon* sp.[98]

The Indian River Lagoon also experienced large and prolonged algae blooms. High levels of green algae *Resultor* sp. were found from Titusville to Melbourne and covering the entire Banana River. The algae were thought to be responsible for killing hundreds of fish and inhibiting seagrass growth.[99] A large rust-colored bloom of *Pyrodinium bahamense* formed in Old Tampa Bay in August 2011; the bloom stretched from Safety Harbor to the Howard Frankland Bridge and was thought to be caused by a combination of heat, rain, and fertilizer runoff.[100]

c. Adverse Impacts of Nitrogen and Phosphorus Pollution on Human Health

As noted previously in section II.A.1.b, nitrogen and phosphorus pollution have been explicitly linked to changes in natural algal species composition including increased growth or dominance of toxic or otherwise harmful algal species.[101] Toxins produced by HABs have been linked, through recreational exposure, to adverse human health impacts through ingestion of contaminated seafood,

[89] Phlips, E.J., S. Badylak, M. Christman, J. Wolny, J. Brame, J. Garland, L. Hall, J. Hart, J. Lansberg, M. Lasi, J. Lockwood, R. Paperno, D. Scheidt, A. Staples, K. Steidinger. 2011. Scales of temporal and spatial variability in the distribution of harmful algae species in the Indian River Lagoon, Florida, USA. *Harmful Algae* 10:277–290.

Phlips, E.J., S. Badylak, S. Youn, and K. Kelley. 2004. The occurrence of potentially toxic dinoflagellates and diatoms in a subtropical lagoon, the Indian River Lagoon, Florida, USA. *Harmful Algae* 3(1):39–49.

[90] Badylak, S., E.J. Phlips, P. Baker, J. Fajans, and R. Boler. 2007. Distributions of phytoplankton in Tampa Bay estuary, U.S.A. 2002–2003. *Bulletin of Marine Science* 80(2):295–317.

Lopez, C.B., Q. Dortch, E.B. Jewett, and D. Garrison. 2008. *Scientific Assessment of Marine Harmful Algal Blooms.* Interagency Working Group on Harmful Algal Blooms, Hypoxia, and Human Health of the Joint Subcommittee on Ocean Science and Technology, Washington, DC. *http://www.cop.noaa.gov/stressors/extremeevents/hab/habhrca/assess_12–08.pdf.* Accessed April 2012.

[91] *Fish kill in island canals appears over.* 2011, June 2. Marconews.com –Marco Eagle. *http://www.marconews.com/news/2011/jun/02/dead-fish-bad-smell-permeate-parts-island/?print=1.* Accessed January 2012.

[92] Patterson, S. 2010, July 23. *St John's River Looks Sick, Nelson says.* The Florida Times Union. *http://jacksonville.com/news/metro/2010–07–23/story/st-johns-looks-sick-nelson-says.* Accessed September 2010.

Patterson, S. 2010, July 21. *Foam on St. John's River Churns Up Environmental Interest.* The Florida Times Union. *http://jacksonville.com/news/metro/2010–07–21/story/foam-st-johns-churns-environmental-questions.* Accessed October 2010.

[93] Killer, E. 2010, June 10. *Blue-green Algae Found Floating Near Palm City as Lake Okeechobee Releases Continue.* TCPalm. *http://www.tcpalm.com/news/2010/jun/10/blue-green-algae-found-floating-near-palm-city-o/.* Accessed October 2010.

[94] Aubel, M., P. D'Aiuto, A. Chapman, D. Casamatta, A. Reich, S. Ketchen, and C. Williams. 2006. Blue-Green Algae in St. Johns River, FL. *Lakeline* Summer 2006:40–45.

[95] Abbott, G. M., J. H. Landsberg, A. R. Reich, K. A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task-force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/.* Accessed June 2011.

http://www.lsjr.org/pdf/ResourceGuide_FL_algal_blooms_2009.pdf. Accessed June 2011.

[96] Pittman, C. 2009, June 26. *Algae bloom one of largest in Tampa Bay history.* St. Petersburg Times. *http://www.tampabay.com/news/environment/water/article1013322.ece.* Accessed July 2010.

[97] Tammen, K. 2011, April 20. *It's not even June and the June Grass is Back.* Northwest Florida Daily News. *http://www.nwfdailynews.com/news/grass-39438-island-okaloosa.html.* Accessed April 2011.

[98] *Lee Closes a Water Plant; Blame Algae and Saltwater intrusion in Caloosahatchee.* 2011, May 19. CBS Wink News Now. *http://www.winknews.com/Local-Florida/2011–05–19/Lee-Closes-a-Water-Plant-Blame-Algae-and-Salt-water-intrusion-in-Caloosahatchee.* Accessed December 2011.

Lollar, K. 2011, June 6. *Bacterial bloom stains waterway up to LaBelle.* News-Press. *http://www.marconews.com/news/2011/jun/02/dead-fish-bad-smell-permeate-parts-island/.* Accessed June 2011.

Crisis in the Caloosahatchee: Algal blooms in local waters. 2011, June 8. Sanibel-Captiva Islander. *http://sanibel-captiva-islander.com/page/content.detail/id/511872/Crisis-in-the-Caloosahatchee—Algal-blooms-in-local-waters.html?nav=5051.* Accessed June 2011.

Warning added for Lee County waters. 2011, June 16. CBS Wink News Now.

http://www.winknews.com/Local-Florida/2011–06–16/Warning-added-for-Lee-County-waters. Accessed June 2011.

Cornwell, B. 2011, June 22. *Algae Bloom doesn't deter everyone.* Fort Meyers Florida Weekly. *http://fortmyers.floridaweekly.com/news/2011–06–22/Top_News/Algae_bloom_doesnt_deter_everyone.html.* Accessed June 2011.

[99] Florida Today. 2011, July 18. *Green algae killing fish, seagrass in northern Indian River Lagoon.* 10 News WTSP—Tampa Bay. *http://www.wtsp.com/rss/article/201465/19/Green-algae-killing-fish-seagrass-in-northern-Indian-River-Lagoon.* Accessed December 2011.

[100] Reyes, R. 2011, August 31. *Algae bloom continues to grow in Old Tampa Bay.* Tampa Bay Online. *http://www2.tbo.com/news/breaking-news/2011/aug/31/1/algae-bloom-continues-to-grow-in-old-tampa-bay-ar-254281/.* Accessed December 2011.

Harwell, D. 2011, August 27. *Tampa Bay algae bloom threatens the estuary's fish.* St. Petersburg Times. *http://www.tampabay.com/news/environment/water/tampa-bay-algae-bloom-threatens-the-estuarys-fish/1188284.* Accessed August 2011.

[101] Paerl, H.W. 1988. Nuisance phytoplankton blooms in coastal, estuarine, and inland waters. *Limnology and Oceanography* 33(4):823–847.

Anderson, D.M., P.M. Glibert, and J.M. Burkholder. 2002. Harmful algal blooms and eutrophication: Nutrient sources, composition, and consequences. *Estuaries* 25(4):704–726.

Anderson, D.M., J.M. Burkholder, W.P. Cochlan, P.M. Glibert, C.J. Gobler, C.A. Heil, R.M. Kudela, M.L. Parsons, J.E.J. Rensel, D.W. Townsend, V.L. Trainer, and G.A. Vargo. 2008. Harmful algal blooms and eutrophication: Examining linkages from selected coastal regions of the United States. *Harmful Algae* 8(1):39–53.

dermal reactions, and respiratory problems.[102] Ingestion of seafood that is contaminated with toxins can cause gastrointestinal, neurological, cardiovascular, and hepatological illnesses. In some severe cases, ingestion of even a small amount of contaminated seafood can result in coma or death.[103]

Nitrogen and phosphorus pollution has been linked to human health impacts in Florida, primarily through illnesses associated with HABs. Although marine HABs occur naturally, increased nutrient loadings and pollution have been linked to increased occurrence of some types of HABs.[104] Significant HAB-caused toxins that have been found in Florida's marine waters include saxitoxins, brevetoxins, ciguatoxins, cyanotoxins, domoic acid, and okadaic acid.[105]

Ciguatoxins lead to Ciguatera fish poisoning (CFP), one of the most commonly reported food borne illnesses caused by a marine biotoxin in the United States,[106] with 176 cases reported to U.S. poison centers in 2009 (22 percent of the total reported cases of food poisoning from seafood toxins).[107] Ciguatoxins are bioaccumulative, causing gastrointestinal, neurological, or cardiovascular symptoms that vary in intensity.[108] In Florida, CFP poses a significant risk to public health.[109] One estimate indicates that approximately 1,300 cases of CFP (reported and unreported cases) occur annually in Florida.[110] The Florida Department of Health (FDOH) reported 8 cases of CFP in 2005, 44 cases in 2006, 34 cases in 2007, and 51 cases in 2008.[111]

Saxitoxins lead to paralytic shellfish poisoning (PSP), which occurs when humans eat shellfish contaminated with saxitoxins. These toxins affect the nervous system and in severe cases cause respiratory paralysis.[112] Between January 2002 and May 2004, 28 cases of saxitoxin poisoning associated with puffer fish caught in Florida's Indian River Lagoon (IRL) were reported. In 2002, the Florida Fish and Wildlife Conservation Commission banned the commercial and recreational harvest of puffer fish in several water bodies in Florida and made that ban permanent in 2004.[113] Domoic acid, also produced by HABs, can also cause food poisoning, producing symptoms ranging from mild gastrointestinal discomfort to permanent brain damage and, in rare cases, death.[114]

In addition, elevated levels of nitrate, a byproduct of nitrogen pollution in surface waters, can cause public health concerns if the water is a drinking water source, where [115] nitrate is converted to harmful nitrite after ingestion.[116] The primary human health concern with nitrates and nitrites in drinking water is methemoglobinemia, although adverse thyroid effects have been associated with elevated nitrates as well.[117]

---

[102] WHOI. 2006. *Harmful Algae and Red Tides Primer.* Woods Hole Oceanographic Institution, Woods Hole, MA.

Anderson, D.M. 2004. The Growing Problem of Harmful Algae: Tiny plants pose a potent threat to those who live in and eat from the sea. Woods Hole Oceanographic Institution. *Oceanus Magazine* 43(1):1–5.

Graham, J. 2007. *Harmful Algal Blooms.* Fact Sheet 2006–3147. U.S. Geological Survey, Lawrence, KS CDC. 2004. *About Harmful Algal Blooms.* Centers for Disease Control and Prevention, Atlanta, GA Bronstein, A.C., D.A. Spyker, L.R. Cantilena, Jr., J.L. Green, B.H. Rumack, S.L. Giffin. 2009. 2008 Annual Report of the American Association of Poison Control Centers' National Poison Data System (NPDS): 26th Annual Report. *Clinical Toxicology* 48:979–1178.

Landsberg, J., F.Van Dolah, and G. Doucette. 2005. Marine and estuarine harmful algal blooms: Impacts on human and animal health. Chapter 8 In: *Oceans and Health: Pathogens in the Marine Environment.* eds. S. Belkin and R.R. Colwell, pp.165–215. Springer, New York.

NOAA. 2009. *Marine Biotoxins.* National Oceanic and Atmospheric Administration, Northwest Fisheries Science Center. *http://www.nwfsc.noaa.gov/hab/habs_toxins/marine_biotoxins/index.html.* Accessed December 2011.

Anderson, D., P. Glibert, and J. Burkholder. 2002. Harmful Algal Blooms and Eutrophication: Nutrient Sources, Composition, and Consequences. *Estuaries* 25(4b):704–726.

[103] Bushaw-Newton, K.L., and K.G. Sellner. 1999. Harmful Algal Blooms. In: *NOAA's State of the Coast Report.* National Oceanic and Atmospheric Administration, Silver Spring, MD. *http://oceanservice.noaa.gov/websites/retiredsites/sotc_pdf/hab.pdf.* Accessed June 2011.

[104] Lopez, C.B., Q. Dortch, E.B. Jewett, and D. Garrison. 2008. *Scientific Assessment of Marine Harmful Algal Blooms.* Interagency Working Group on Harmful Algal Blooms, Hypoxia, and Human Health of the Joint Subcommittee on Ocean Science and Technology, Washington, DC.

[105] Abbott, G.M., J.H. Landsberg, A.R. Reich, K.A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task- force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/.* Accessed June 2011.

[106] Dickey, R.W., and S.M. Plakas. 2010. Ciguatera: A public health perspective. *Toxicon* 56:123–136.

[107] Bronstein, A.C., D.A. Spyker, L.R. Cantilena, Jr., J.L. Green, B.H. Rumack, and S.L. Giffin. 2009. 2008 Annual Report of the American Association of Poison Control Centers' National Poison Data System (NPDS): 26th Annual Report. *Clinical Toxicology* 48:979–1178.

[108] McKee D.B., L.E. Fleming, R. Tamer, R. Weisman, and D. Blythe. 2001. Physician diagnosis and reporting of ciguatera fish poisoning in an endemic area. In: *Harmful Algal Blooms* 2000: Proceedings *of the Ninth International Conference on Harmful Algal Blooms, Hobart, Australia, 7–11 February 2000,* eds. G.M. Hallegraeff, S.I. Blackburn, C.J. Bolch, and R.J. Lewis, pp. 451–453. Intergovernmental Oceanographic Commission of UNESCO, Paris, France.

[109] Abbott, G. M., J. H. Landsberg, A.R. Reich, K.A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task-force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/.* Accessed June 2011.

[110] Abbott, G. M., J. H. Landsberg, A.R. Reich, K.A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task- force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/.* Accessed June 2011.

[111] Abbott, G. M., J.H. Landsberg, A.R. Reich, K.A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task-force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/.* Accessed June 2011.

[112] Landsberg, J., F. Van Dolah, and G. Doucette. 2005. Marine and estuarine harmful algal blooms: Impacts on human and animal health. Chapter 8 In: *Oceans and Health: Pathogens in the Marine Environment.* eds. S. Belkin and R.R. Colwell, pp. 165–215. Springer, New York.

[113] Abbott, G.M., J.H. Landsberg, A.R. Reich, K.A. Steidinger, S. Ketchen, and C. Blackmore. 2009. *Resource Guide for Public Health Response to Harmful Algal Blooms in Florida.* FWRI Technical Report TR–14. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL. *http://myfwc.com/research/redtide/task-force/reports-presentations/resource-guide-for-public-health-response-to-harmful-algal-blooms-in-florida/.* Accessed June 2011.

Landsberg, J.H., S. Hall, J.N. Johannessen, K.D. White, S.M. Conrad, J.P. Abbott, L.J. Flewelling, R.W. Richardson, R.W. Dickey, E.L.E. Jester, S. M. Etheridge, J.R. Deeds, F.M. Van Dolah, T.A. Leighfield, Y. Zou, C.G. Beaudry, R.A. Benner, P.L. Rogers, P.S. Scott, K. Kawabata, J.L. Wolny, and K.A. Steidinger. 2006. Saxitoxin Puffer Fish Poisoning in the United States, with the First Report of *Pyrodinium bahamense* as the Putative Toxin Source. *Environmental Health Perspectives* 114(10):1502–1507.

[114] NOAA. 2009. *Marine Biotoxins.* National Oceanic and Atmospheric Administration, Northwest Fisheries Science Center. *http://www.nwfsc.noaa.gov/hab/habs_toxins/marine_biotoxins/index.html.* Accessed December 2011.

[115] FDEP. 1998. *Ground-water Quality and Agricultural Land Use in the Polk County Very Intense Study Area (VISA).* AMR 1998–2. Florida Department of Environmental Protection, Division of Water Facilities. *http://www.dep.state.fl.us/water/monitoring/docs/facts/fs9802.pdf. Accessed September 2010.*

[116] Gulis. G., M. Czompolyova, and J.R. Cerhan. 2002. An Ecologic Study of Nitrate in Municipal Drinking Water and Cancer Incidence in Trnava District, Slovakia. *Environmental Research* 88:182–187.

[117] Fan, A.M., and V.E. Steinberg. 1996. Health implications of nitrate and nitrite in drinking water: An update on methemoglobinemia occurrence and reproductive and development toxicity. *Regulatory Toxicology and Pharmacology* 23(1 Pt 1):35–43.

Methemoglobinemia, or ''blue baby syndrome,'' as the name implies, most often affects infants less than six months old (although adults can also be affected) when the ingested nitrate is converted to nitrite in the body that prevents hemoglobin in the blood from delivering oxygen effectively throughout the body. Methemoglobinemia is an acute disease and symptoms can develop rapidly in infants, usually over a period of days. Symptoms include shortness of breath and blueness of the skin, and even death in severe cases.[118]

EPA developed a Maximum Contaminant Level (MCL) of 10 mg/L for nitrate in drinking water and an MCL of 1 mg/L for nitrite.[119] Nitrates are found in groundwater and wells in Florida, ranging from the detection limit of 0.02 mg/L to over 20 mg/L. Elevated nitrate concentrations in groundwater are more common in rural agricultural areas which are often served by private wells. When nitrate occurs at concentrations greater than 1 mg/L, it is considered to be the result of human activities such as application of agricultural fertilizers, disposal of animal wastes, and use of septic tanks.[120] Monitoring of Florida Public Water Supplies from 2004–2011 indicates that exceedances of the nitrate MCL reported by drinking water plants in Florida ranged from 19–34 annually.[121] A study in the late 1980s conducted by Florida Department of Agriculture and Consumer Services (FDACS) and FDEP, analyzed 3,949 shallow drinking water wells for nitrate.[122] Nitrate was detected in 2,483 wells (63%), with 584 wells (15%) above the MCL of 10 mg/L.

d. Adverse Impacts of Nitrogen and Phosphorus Pollution on the Economy

Excessive algal blooms result in a range of economic losses, including lost revenue from impacts to commercial fisheries, recreational fishing and boating trips, and tourism, as well as increased drinking water costs and reduced waterfront property values.[123] More information concerning the costs and benefits of the numeric nutrient criteria proposed in this rule can be found in Section VI.

The economic value of Florida's marine recreational fisheries is higher than any other state in the country. Recreational fishing contributed over $5 billion to Florida's economy in 2006. In the 2008–2009 fiscal year, over 1 million individuals bought a marine recreational fishing license, generating over $29 million in revenue.[124] Similarly, Florida has one of the nation's top producing commercial fisheries. In 2009, Florida's harvest of the top five commercial species of fish and shellfish was worth more than $55 million combined. In total, commercial fishing contributed more than $1 billion to the economy of Florida. Outdoor recreation in Florida (including wildlife-viewing, fishing, and water sports) generates $10.1 billion annually.[125] In 2006, over 3 million Florida residents and 746,000 visitors participated in wildlife-viewing activities, for total retail sales of an estimated $3.1 billion.[126]

At the county level, Monroe County's commercial tourism and fishing industries rely on finfish and shellfish from Florida Bay. Measurable economic losses associated with the changing environmental conditions of the Bay have occurred, primarily from the substantial decline in pink shrimp harvests due to loss of submerged aquatic vegetation (habitat), which was linked to nitrogen and phosphorus pollution as a contributing factor. From 1986 through the early 1990s, employment in commercial fishing declined by about 10 percent, while income of individuals in the industry declined by $16 million. These losses coincided with massive seagrass die-offs in the Bay and blue-green algae blooms.[127]

HAB toxins can make seafood unsafe for human consumption, leading to an overall reduction in the amount of fish purchased due to the real or perceived threats of contamination.[128] Potential economic impacts from nitrogen and phosphorus pollution in Florida include monetary losses due to depressed fisheries, tourism and property values, and elevated costs to address nutrient impacts (e.g., beach cleanup costs, HAB monitoring).

Seagrass habitats are valuable components of Florida's estuarine and coastal waters. FDEP has estimated that each acre of seagrass is worth $20,255 per year, which would translate to a benefit of $44.6 billion statewide.[129]

[118] Manassaram, D.M., L.C. Backer, and D.M. Moll. 2006. A Review of Nitrates in Drinking Water: Maternal Exposure and Adverse Reproductive and Developmental Outcomes. *Environmental Health Perspectives* 114(3):320–327. FDEP. 2011. *Drinking Water: Inorganic Contaminants.* Florida Department of Environmental Protection. *http://www.dep.state.fl.us/water/drinkingwater/inorg_con.htm.* Accessed November 2011.

[119] USEPA. 2007. *Nitrates and Nitrites: TEACH Chemical Summary.* U.S. Environmental Protection Agency. *http://www.epa.gov/teach/chem_summ/Nitrates_summary.pdf.* Accessed May 2012.

[120] DeSimone, L.A., P.A. Hamilton, and R.J. Gilliom. 2009. *Quality of Water from Domestic Wells in Principal Aquifers of the United States, 1991–2004: Overview of Major Findings.* Circular 1332.U.S. Geological Survey, National Water Quality Assessment Program, Reston, VA. *http://water.usgs.gov/nawqa/studies/domestic_wells/WaterWellJournalArticle_DeSimoneetal2009.pdf.* Accessed November 2011.

Spechler, R.M. 2010. *Hydrogeology and Groundwater Quality of Highlands County, Florida.* Scientific Investigations Report 2010–5097. U.S. Geological Survey, Reston, VA

Dubrovsky, N.M., K.R. Burow, G.M. Clark, J.M. Gronberg, P.A. Hamilton, K.J. Hitt, D.K. Mueller, M.D. Munn, B.T. Nolan, L.J. Puckett, M.G. Rupert, T.M. Short, NE. Spahr, L.A. Sprague, and W.G. Wilber. 2010. *The Quality of our Nation's Waters—Nutrients in the Nation's Streams and Groundwater, 1992–2004.* Circular 1350. U.S. Geological Survey, National Water Quality Assessment Program, Reston, VA. *http://water.usgs.gov/nawqa/nutrients/pubs/circ1350.* Accessed May 2012.

[121] FDEP. 2012. *Chemical Data for 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011.* Florida Department of Environmental Protection. *http://www.dep.state.fl.us/water/drinkingwater/chemdata.htm.* Accessed May 2012.

[122] Southern Regional Water Program. 2010. *Drinking Water and Human Health in Florida. http://srwqis.tamu.edu/florida/program-information/florida-target-themes/drinking-water-and-human-health.aspx.* Accessed May 2012.

Obreza, T.A., and K.T. Morgan. 2008. *Nutrition of Florida Citrus Trees.* 2nd ed. SL 253. University of Florida, IFAS Extension. *http://edis.ifas.ufl.edu/pdffiles/SS/SS47800.pdf.* Accessed May 2012.

[123] Dodds, W.K., W.W. Bouska, J.L. Eitzmann, T.J. Pilger, K.L. Pitts, A.J. Riley, J.T. Schloesser, and D.J. Thornbrugh. 2009. Eutrophication of U.S. Freshwaters: Analysis of Potential Economic Damages. *Environmental Science and Technology* 43(1):12–19.

[124] FFWCC. No Date. *The Economic Impact of Saltwater Fishing in Florida.* Florida Fish and Wildlife Conservation Commission. *http://myfwc.com/conservation/value/saltwater-fishing.* Accessed December 2011.

[125] FFWCC. No Date. *Economic Impact of Outdoor Recreation.* Florida Fish and Wildlife Conservation Commission.

http://myfwc.com/conservation/value/outdoor-recreation. Accessed July 2011.

[126] USFWS. 2008. *2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation: Florida.* FHW/06–FL. U.S. Fish and Wildlife Service. *http://www.census.gov/prod/2008pubs/fhw06-fl.pdf.* Accessed July 2011.

[127] Gorte, R.W. 1994. *The Florida Bay economy and changing environmental conditions.* 94–435 ENR, CRS Report for Congress, Congressional Research Service, The Library of Congress.

[128] Anderson, D.M.. 2008. *Hearing on ''Harmful Algal Blooms: The Challenges on the Nation's Coastlines''.* Woods Hole Oceanographic Institution. *http://www.whoi.edu/page.do?pid=8916&tid=282&cid=46007.* Accessed December 2011.

[129] USGS. 2001. *Seagrass Habitat In the Northern Gulf of Mexico: Degradation, Conservation, and Restoration of a Valuable Resource.* U.S. Geological Survey, Gulf of Mexico Habitat Program Team,

855–R–04–001. *http://gulfsci.usgs.gov/gom_ims/pdf/pubs_gom.pdf.* Accessed July 2011.

Burkholder, J.M., D.A. Tomasko, and B.W. Touchette. 2007. Seagrasses and eutrophication. *Journal of Experimental Marine Biology and Ecology* 350:46–72.

Waycott, M., C.M. Duarte, T.J.B. Carruthers, R.J. Orth, W.C. Dennison, S. Olyarnik, A. Calladine, J.W. Fourqurean, K.L. Heck, Jr., A.R. Hughes, G.A. Kendrick, W.J. Kenworthy, F.T. Short, and S.L. Williams. 2009. Accelerating loss of seagrasses across the globe threatens coastal ecosystems. *Proceedings of the National Academy of Sciences of the United States of America* 106(30):12377–12381.

Continued

The nearly 2.2 million acres of seagrass beds in Florida's nearshore waters support fish and shellfish that are economically vital to commercial and recreational businesses in Florida.[130] Some estuary experts have attempted to quantify the overall value of individual estuaries in Florida. For example, the Indian River Lagoon National Estuary Program estimated the total value of the Indian River Lagoon at $3.7 billion (2009 dollars). In the study, recreational and non-use values of the lagoon were estimated to increase by nearly $80 million per year (2009 dollars) if there were a significant increase in the amount and diversity of wildlife in the lagoon, as well as increased water quality throughout the system from restoration and water quality improvement projects.[131]

According to a study on the impacts of HABs on beachfront tourism-dependent businesses in the Ft. Walton Beach and Destin areas of Florida, HABs reduced restaurant and lodging revenues by $2.8 million and $3.7 million per month, respectively, representing a 29 percent to 35 percent decline in average monthly revenues.[132]

A study by Mather Economics estimated the effects of water quality on real estate value in the South Florida Water Management District. The aggregate owner-occupied residential real estate value in the 16-county South Florida Water Management District is approximately $976 billion. If water quality (measured by dissolved oxygen levels) can be returned to 1970 levels as a result of restoring the Everglades (a potential 23.4 percent improvement in water quality), the study found that real estate values would increase by $16 billion.[133]

In addition to negatively impacting Florida businesses, nitrogen and phosphorus pollution increases costs for beach cleanup, HAB monitoring, and wastewater treatment. For example, approximately $63,000 was spent annually from 1995–1997 to dispose of red seaweed and fish killed by HAB events that littered 17.5 miles of beach in Sarasota County.[134]

In addition, there are increased costs due to the need to treat polluted sources of drinking water. As an example of increased costs for drinking water treatment, in 1991, Des Moines (Iowa) Water Works constructed a $4 million ion exchange facility to remove nitrate from its drinking water supply. This facility was designed to be used an average of 35–40 days per year to remove excess nitrate levels at a cost of nearly $3,000 per day.[135] In another example, Fremont, Ohio (a city of approximately 20,000) has experienced high levels of nitrate from its drinking water source, the Sandusky River, resulting in numerous drinking water use advisories. An estimated $15 million is needed to build a reservoir (and associated piping) that will allow for selective withdrawal from the river to avoid elevated levels of nitrate and provide storage.[136] By regulating allowable levels of chlorophyll *a* in Oklahoma drinking water reservoirs, the Oklahoma Water Resources Board estimated that the long-term cost savings in averted drinking water treatment for 86 systems would range between $106 million and $615 million if such regulations were implemented.[137] These statistics are illustrative of what treatment to address nitrates and nitrites can cost. Any impacts in Florida would be site-specific and might or might not be comparable to these numbers.

B. Statutory and Regulatory Background

Section 303(c) of the CWA (33 U.S.C. 1313(c)) directs states to adopt WQS for their navigable waters. CWA Section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR 131 require, among other things, that state WQS include the designated use and criteria that protect those uses. EPA regulations at 40 CFR 131.11(a)(1) provide that states shall ''adopt those water quality criteria that protect the designated use'' and that such criteria ''must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.'' In addition, 40 CFR 131.10(b) provides that ''[i]n designating uses of a water body and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.''

States are also required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards (CWA section 303(c)(1)). Any new or revised water quality standards must be submitted to EPA for review and approval or disapproval (CWA section 303(c)(2)(A) and (c)(3)). In addition, CWA section 303(c)(4)(B) authorizes the Administrator to determine, even in the absence of a state submission, that a new or revised standard is needed to meet CWA requirements. The EPA approved the State of Florida's rules (which include criteria for certain estuaries and coastal marine waters) on November 30, 2012. The criteria proposed in this rulemaking protect the uses designated by the State of Florida and implement Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), F.A.C. for the purposes of the CWA. These criteria include numeric values that apply to Florida's

Short, F.T., B. Polidoro, S.R. Livingstone, K.E. Carpenter, S. Bandeira, J.S. Bujang, H.P. Calumpong, T.J.B. Carruthers, R.G. Coles, W.C. Dennison, P.L.A. Erftemeijer, M.D. Fortes, A.S. Freeman, T.G. Jagtap, A.H.M. Kamal, G.A. Kendrick, W.J. Kenworthy, Y.A. La Nafie, I.M. Nasution, R.J. Orth, A. Prathep, J.C. Sanciangco, B. van Tussenbroek, S.G. Vergara, M. Waycott, and J.C. Zieman. 2011. Extinction risk assessment of the world's seagrass species. *Biological Conservation*144:1963–1971.

Watson R.A., R.G. Coles, and W.J. Lee Long. 1993. Simulation estimates of annual yield and landed value for commercial penaeid prawns from a tropical seagrass habitat, Northern Queensland, Australia. *Australian Journal of Marine and Freshwater Research* 44:211–219.

Carlson, P., and L. Yarbro. 2008. Seagrass Mapping and Monitoring: Big Bend and Beyond. Presented at Florida Water Resources Monitoring Council Meeting, St. Petersburg, FL, September 24–25, 2008.

Costanza, R., R. d'Arge, R. de Groot, S. Farber, M. Grasso, B. Hannon, K. Limburg, S. Naeem, R.V. Neill, J. Paruelo, R.G. Raskin, P. Sutton, and M. van den Belt. 1997. The value of the world's ecosystem services and natural capital. *Nature* 387:253–260.

[130] FDEP. 2011. *Celebrate Seagrass Awareness Month*. Florida Department of Environmental Protection. *http://www.dep.state.fl.us/coastal/news/articles/2011/1103_Seagrass.htm*. Accessed June 2011.

Scott, R. 2011. *Seagrass Awareness Month*. Proclamation by Governor Rick Scott of the State of Florida. Florida Department of Environmental Protection. *http://www.dep.state.fl.us/coastal/habitats/seagrass/awareness/Proclamation_2011.pdf*. Accessed June 2011.

[131] USEPA. 2009. *Determining an Estuary's Economic Value*. EPA–842F09001. U.S. Environmental Protection Agency, National Estuary Program, Washington, DC. *http://water.epa.gov/type/oceb/nep/upload/2009_05_28_estuaries_inaction_Efficient_IndianRiver.pdf*. Accessed July 2011.

[132] Larkin, S.L., and C.M. Adams. 2007. Harmful algal blooms and coastal business: economic consequences in Florida. *Society & Natural Resources* 20(9):849–859.

[133] McCormick, B., R. Clement, D. Fischer, M. Lindsay, R. Watson. 2010. *Measuring the Economic Benefits of America's Everglades Restoration: An Economic Evaluation of Ecosystem Services Affiliated with the World's Largest Ecosystem Restoration Project*. Prepared for the Everglades Foundation, Palmetto Bay, FL, by Mather Economics, Roswell, GA.

[134] Hoagland, P., D.M. Anderson, Y. Kaoru, and A.W. White. 2002. The economic effects of harmful algal blooms in the United States: estimates, assessment issues, and information needs. *Estuaries* 25:819–837.

[135] Jones, C.S., D. Hill, and G. Brand. 2007. Use a multifaceted approach to manage high sourcewater nitrate. *Opflow* June:20–22.

[136] Taft, Jim, Association of State Drinking Water Administrators (ASDWA). 2009. Personal Communication.

[137] Moershel, Philip, Oklahoma Water Resources Board (OWRB) and Mark Derischweiler, Oklahoma Department of Environmental Quality (ODEQ). 2009. Personal Communication.

estuaries and coastal waters not covered by the newly-approved State WQS, south Florida inland flowing waters, and DPVs to ensure the attainment and maintenance of the water quality standards of downstream estuaries.[138] As explained more fully in Section I.A, EPA does not intend to finalize these DPVs if the district court modifies the Consent Decree consistent with EPA's amended determination that numeric DPVs are not necessary to meet CWA requirements in Florida.

C. Water Quality Criteria

Water quality criteria include three components. The first component is ''magnitude,'' the concentration of a pollutant that can be maintained over time in the ambient receiving water without adversely affecting the designated use that the criteria is intended to support. The second component is ''duration,'' or the time period over which exposure is averaged (i.e., the averaging period) to limit the time of exposure to elevated concentrations. This accounts for the variability in the quality of the ambient water due to variations of constituent inputs, flow, and other factors. The third component is ''frequency,'' or how often the magnitude/duration condition may be exceeded and still protect the designated use. Combining the criterion-magnitude with the duration and frequency prevents harmful effects from infrequent exceedances of the criterion-magnitude by ensuring compensating periods of time during which the concentration is below the criterion-magnitude. When criterion-magnitudes are exceeded for short periods of time or infrequently, aquatic life can typically recover; that is, the designated uses of the water body are typically protected. Designated uses are typically not protected when criterion-magnitudes are exceeded for longer periods of time (i.e., for longer than the specified duration) or more frequently (i.e., more often than the allowed frequency).[139] Use of this magnitude-duration-frequency format allows for some exceedances of the criterion-magnitude concentrations while still protecting applicable designated uses, which is important for pollutants such as nitrogen and phosphorus because their concentrations can vary naturally in the environment.

Under CWA section 304(a), EPA periodically publishes criteria recommendations for use by states in setting water quality criteria for particular parameters to protect recreational and aquatic life uses of waters. Where EPA has published recommended criteria, states have the option of adopting water quality criteria based on EPA's CWA section 304(a) criteria guidance, section 304(a) criteria guidance modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)).

For nitrogen and phosphorus pollution, EPA has published under CWA section 304(a) a series of peer-reviewed, national technical approaches and methods for the development of numeric nutrient criteria for lakes and reservoirs,[140] rivers and streams,[141] and estuarine and coastal marine waters.[142] EPA based the methodologies used to develop numeric nutrient criteria for Florida in this proposed regulation on these published guidance documents, which identify three scientifically defensible approaches for deriving nutrient criteria: (1) The reference condition approach derives criteria from observations collected in reference water bodies or during reference time periods; (2) the mechanistic modeling approach represents contaminant loadings, hydrodynamics, and impacts in aquatic systems using equations that represent physical and ecological processes, calibrated using site-specific data; and (3) the stressor-response approach estimates the relationship between nutrient concentrations and response measures related to a designated use of the water body. These three analytical approaches have been independently peer-reviewed and are appropriate for deriving scientifically defensible numeric nutrient criteria, taking into consideration the method-specific data needs and available data. In addition to these approaches, consideration of established (e.g., published and peer-reviewed) nutrient response thresholds is also an acceptable approach for deriving criteria.[143]

The criteria proposed in this rulemaking implement Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), F.A.C., for the purposes of the CWA as numeric values that apply to, and protect, Class I, II, and III estuaries and coastal waters in Florida and south Florida inland flowing waters. In Florida, water quality criteria established for Class I, II, and III surface waters must protect ''fish consumption, recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.'' [144] Florida's existing narrative nutrient provision serves to protect Class I, II, and III waters from nitrogen and phosphorus pollution by requiring that ''[i]n no case shall nutrient concentration of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.''

After an extensive review of the latest scientific knowledge relating to the impacts of nutrient pollution on aquatic systems, EPA is proposing the use of three biological endpoints—maintenance of seagrasses, maintenance of balanced algal populations, and maintenance of aquatic life (fauna)—as the most sensitive to effectively derive numeric nutrient criteria that will protect Class I, II, and III designated uses from the harmful, adverse effects of nutrient pollution. The endpoint measures that EPA is proposing to use to determine the nutrient concentrations to protect these biological endpoints are light levels to maintain historic depth of seagrass colonization, chlorophyll *a* concentrations associated with balanced phytoplankton biomass, and sufficient DO to maintain aquatic life. Fish consumption relies on the presence of fish and aquatic life as well as the habitat that supports them, which in turn relies on seagrasses and limited occurrence of nuisance algal blooms. The protection of recreation (both fishing and swimming related uses) relies on the presence of fish and aquatic life as well as limited occurrence of nuisance algal blooms. Lastly, the protection of propagation and maintenance of a healthy, well-balanced population of fish and wildlife relies on the presence of fish and

[138] The criteria proposed in this rulemaking do not address or implement Florida's narrative nutrient provision at Subsection 62–302.530(47)(a), F.A.C. Subsection 62–302.530(47)(a), F.A.C. remains in place as an applicable water quality standard for CWA purposes.

[139] USEPA. 1994. *Water Quality Standards Handbook: Second Edition, Chapter 3—Water Quality Criteria.* EPA–823–B–94–005a. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

USEPA 1991. *Technical Support Document for Water Quality-based Toxics Control. Appendix D—Duration and Frequency.* EPA/505/2–90–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[140] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[141] USEPA. 2000b. *Nutrient Criteria Technical Guidance Manual: Rivers and Streams.* EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[142] USEPA. 2001. *Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[143] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[144] Pursuant to Subsection 62–302.400(4), F.A.C.

aquatic life as well as the habitat that supports them.

EPA's January 14, 2009 determination addressed Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), F.A.C. As discussed earlier, EPA has proposed and promulgated criteria, in this and other proposals, to implement that provision, which provides that ''[i]n no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna. The criteria proposed in this rulemaking do not address or implement Florida's narrative nutrient provision at Subsection 62–302.530(47)(a), F.A.C. which provides that ''[t]he discharge of nutrients shall continue to be limited as needed to prevent violations of other standards contained in this chapter. Human-induced nutrient enrichment (total nitrogen or total phosphorus) shall be considered degradation in relation to the provisions of Sections 62–302.300, 62–302.700, and 62–4.242, F.A.C.'' Subsection 62–302.530(47)(a), F.A.C. remains in place as an applicable WQS for CWA purposes and could result in more stringent nitrogen and phosphorus limits than those proposed in this rule, where necessary to protect other applicable water quality standards in Florida.

D. EPA Determination Regarding Florida and Consent Decree

On January 14, 2009, EPA determined under CWA section 303(c)(4)(B) that new or revised water quality standards in the form of numeric water quality criteria for nitrogen and phosphorus pollution are necessary to meet the requirements of the CWA in the State of Florida. EPA's determination is available at the following Web site: *http://water.epa.gov/lawsregs/rulesregs/florida_consent.cfm*.

Subsequently, EPA entered into a Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper, effective on December 30, 2009, which established a schedule for EPA to propose and promulgate numeric nutrient criteria for Florida's lakes, springs, flowing waters, estuaries, and coastal waters, as well as downstream protection values (DPVs) to protect downstream lakes and estuaries. The Consent Decree provided that if Florida submitted and EPA approved numeric nutrient criteria for the relevant water bodies before the dates outlined in the schedule, EPA would no longer be obligated to propose or promulgate criteria for those water bodies.

E. EPA's Rulemaking and Subsequent Litigation

On December 6, 2010, EPA published a rule finalizing numeric nutrient criteria for Florida's lakes, springs, and flowing waters outside of the South Florida Nutrient Watershed Region (40 CFR 131.43). The 2010 ''inland waters rule'' was previously scheduled to take effect on March 6, 2012, with the exception of one provision that allowed entities to submit Site-Specific Alternative Criteria (SSAC) effective February 4, 2011. The March 6, 2012 effective date was subsequently extended on two occasions (77 FR 13497 and 77 FR 39949) such that the current effective date of the rule is January 6, 2013. Concurrently with this proposal, EPA is issuing a separate proposed rule to stay the inland waters rule until November 15, 2013. For more information on the proposed stay rule, see *http://water.epa.gov/lawsregs/rulesregs/florida_inland.cfm*.

Following the publication of the inland waters rule, 12 cases were filed in the U.S. District Court for the Northern District of Florida challenging the rule. The cases, consolidated before Judge Robert Hinkle in the Tallahassee Division of the Northern District, were filed by environmental groups, Florida's State Department of Agriculture, the South Florida Water Management District, and various industry/discharger groups. The challenges alleged that EPA's determination and final inland waters rule were arbitrary, capricious, an abuse of discretion, and not in accordance with the law for a variety of reasons. Oral argument in the case was held on January 9, 2012 before Judge Hinkle.

On February 18, 2012, the Court upheld EPA's January 2009 determination and the final numeric nutrient criteria for Florida's lakes and springs, as well as the site-specific alternative criteria (SSAC) provisions and the provisions for calculating DPVs using either modeling or a default option for an impaired lake that is not attaining its numeric nutrient criteria.[145] With regard to EPA's numeric nutrient criteria for flowing waters (i.e., streams) and the default option to calculate DPVs for unimpaired lakes based on ambient stream nutrient concentrations at the point of entry to the lake, the Court found that EPA had not provided sufficient information in its final rule explaining why or how the criteria or DPV protect against harmful increases, as opposed to any increase, in nutrients. The Court observed that EPA's scientific approach to deriving stream criteria (i.e., the reference condition approach), including the criteria's duration and frequency components, ''are matters of scientific judgment on which the rule would survive arbitrary-or-capricious review.'' The Court also found, however, that EPA had not explained in sufficient detail how the stream criteria would prevent a ''harmful increase in a nutrient level''. In addition, the Court found that EPA had not explained in sufficient detail how exceedances of the default DPV for unimpaired lakes would lead to ''harmful effects'' in the downstream lake. Thus, the Court invalidated these two aspects of EPA's final rule and remanded them to the Agency for further action. Concurrently with this proposal, EPA is issuing a separate proposed rule for Florida's streams and DPVs for unimpaired lakes (*Water Quality Standards for the State of Florida's Streams and Downstream Protection Values for Lakes: Remanded Provisions*). For more information on the proposed rule for the remanded provisions, see *http://water.epa.gov/lawsregs/rulesregs/florida_inland.cfm*.

On several occasions, the court granted EPA's request to modify the deadlines in the December 2009 Consent Decree.[146] Under the revised Consent Decree, EPA is required to propose criteria for Florida's estuaries, coastal waters, and south Florida inland flowing waters by November 30, 2012 and to finalize such criteria by September 30, 2013.

In accordance with the January 14, 2009 determination, the December 30, 2009 Consent Decree, and the subsequent modifications to the deadlines in the December 30, 2009 Consent Decree, EPA is proposing in this notice numeric nutrient criteria for estuaries and coastal waters in the State of Florida, and south Florida inland flowing waters. This proposed rule satisfies EPA's requirement to propose criteria for these three categories of Florida waters by November 30, 2012.

F. Florida Adoption of Numeric Nutrient Criteria and EPA Approval

On June 13, 2012, FDEP submitted new and revised WQS for review by the EPA pursuant to section 303(c) of the CWA. These new and revised WQS are set out primarily in Rule 62–302 of the F.A.C. [Surface Water Quality Standards]. FDEP also submitted amendments to Rule 62–303, F.A.C. [Identification of Impaired Surface Waters], which sets out Florida's methodology for assessing whether

[145] Case 4:08–cv–00324–RH–WCS, February 18, 2012.

[146] *http://water.epa.gov/lawsregs/rulesregs/florida_consent.cfm*.

waters are attaining State WQS. On November 30, 2012, EPA approved the provisions of these rules submitted for review that constitute new or revised WQS (referred to in this preamble as the ''newly-approved State WQS'').

Among the newly-approved State WQS are numeric criteria for nutrients that apply to a set of estuaries and coastal marine waters in Florida. Specifically, these newly-approved State WQS apply to Clearwater Harbor/St. Joseph Sound, Tampa Bay, Sarasota Bay, Charlotte Harbor/Estero Bay, Clam Bay, Tidal Cocohatchee River/Ten Thousand Islands, Florida Bay, Florida Keys, and Biscayne Bay. Under the Consent Decree, EPA is relieved of its obligation to propose numeric criteria for these waters.

III. Proposed Numeric Criteria for Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters

In this notice of proposed rulemaking, EPA is proposing numeric nutrient criteria to protect against harmful increases in nutrients, and therefore, protect the designated uses of the State of Florida's Class I, II, and III waters, specifically Florida's estuaries and coastal waters (excluding those contained in Florida's newly-approved State WQS), and south Florida inland flowing waters. This proposed rule also includes downstream protection values (DPVs) to ensure the attainment and maintenance of WQS in downstream estuarine and south Florida marine waters. The proposed criteria and related provisions in this rule reflect a detailed consideration of the best available scientific research, data, and analyses related to the specific circumstances for deriving numeric nutrient criteria in the State of Florida. EPA's actions are consistent with and support existing Florida WQS regulations.

EPA proposes developing numeric nutrient criteria to restore and maintain the balance of natural populations of aquatic flora and fauna in Florida waters. The analytical process that EPA used to derive the proposed criteria consisted of several steps that included (1) classification of the water body systems, (2) subdividing water body systems into smaller segments that have similar chemical, physical, and biological features, (3) review and analysis of biological endpoints, and (4) application of one or more analytical methodologies.

After accounting for the spatial coverage of Florida's newly-approved State WQS, EPA grouped Florida's remaining estuarine and coastal waters according to the natural geographic features of estuarine basins and their associated watersheds (classification). This resulted in 19 estuarine systems and three coastal systems. Next, EPA divided each resulting estuary and coastal system into segments on the basis of similar biological, chemical, and physical attributes (segmentation). Segmentation resulted in 89 estuarine segments among the 19 estuarine systems and 71 coastal segments among the three coastal systems. In the Big Bend region (Ochlockonee Bay to Springs Coast) EPA combined coastal waters with estuarine waters for analysis. The classification serves as an organizing framework for analyses, and the segmentation delineates areas in each estuary or coastal system where the numeric nutrient criteria apply.

EPA is proposing to develop numeric nutrient criteria for Florida's estuarine and coastal waters based on three biological endpoints that are sensitive to changes in nitrogen and phosphorus concentrations. These biological endpoints reflect the water quality conditions necessary to ensure protection of balanced populations of aquatic flora and fauna: (1) Maintenance of seagrasses (as measured by water clarity sufficient to maintain historic depth of seagrass colonization), (2) maintenance of balanced algal populations (as measured by chlorophyll *a* concentrations associated with balanced phytoplankton biomass), and (3) maintenance of aquatic life (as measured by levels of dissolved oxygen sufficient to maintain aquatic life). For each water body, EPA derived numeric nutrient criteria based on the most nutrient sensitive of the three endpoints and the sufficiency of data available in each segment.

For each estuary and coastal system, one of three analytical approaches was used to derive numeric nutrient criteria—reference condition, stressor-response (statistical modeling), and mechanistic modeling. In some cases, a secondary approach provided corroborating evidence for the results of the primary analytical methodology. EPA evaluated multiple lines of evidence to determine the analytical approach that was best suited for derivation of numeric nutrient criteria in each estuarine or coastal system. In general, and as discussed in more detail in later Sections of this proposed rule, the reference condition approach was applied when there were sufficient data available to characterize conditions that were representative of and protective of designated uses, the stressor-response approach was applied when there were sufficient data available to statistically quantify relationships between nutrient concentrations and the biological endpoints, and lastly, the mechanistic modeling approach was applied when there were sufficient data and information available to quantify the relationships between nutrient loads and the biological endpoints.

For calculating DPVs for estuaries and south Florida marine waters, EPA is proposing four approaches for setting nitrogen and phosphorus protective levels in a hierarchy that reflects the data and scientific information available, including (1) water quality simulation modeling, (2) reference condition approach, (3) dilution models, and (4) the numeric nutrient criteria in the estuarine segment to which a freshwater stream or canal discharges.

For south Florida EPA is proposing the use of downstream protection values (DPVs) to manage nitrogen and phosphorus pollution in the inland flowing waters and protect the water quality of estuaries and coastal waters downstream. As in estuarine and coastal systems, EPA followed a series of steps to derive criteria in south Florida inland flowing waters, including classification of water bodies, segmentation, review and analysis of biological endpoints, application of analytical methodologies, and development of DPVs. EPA defined south Florida inland flowing waters as inland predominantly fresh surface waters that have been classified as Class I or Class III, which encompasses the waters south of Lake Okeechobee, the Caloosahatchee River (including Estero Bay) watershed, and the St. Lucie watershed. EPA segmented south Florida waters by identifying 22 canal pour points that drain freshwater to each marine segment. To manage nitrogen and phosphorus pollution in the inland flowing waters and protect the water quality of estuaries and coastal waters downstream EPA then screened water quality data at each pour point to prevent the use of upstream water quality data that coincided with a documented downstream impact. EPA then calculated DPVs using the reference condition approach.

In deriving scientifically sound numeric nutrient criteria for this proposed rulemaking, EPA relied on the local technical expertise of various scientific experts in Florida. EPA met and consulted with FDEP's scientific and technical experts during the development of these numeric nutrient criteria as part of an ongoing collaborative process to analyze, evaluate, and interpret a substantial amount of Florida-specific data. EPA carefully evaluated the technical approaches and scientific analyses that FDEP presented as part of their draft

approaches to develop numeric nutrient criteria for estuaries within the State. Finally, EPA also carefully considered substantial stakeholder input from twelve public hearings conducted by FDEP during 2010, in addition to working with scientists from several Florida National Estuary Programs (NEPs), Water Management Districts, universities, and other government agencies in Florida.

To further ensure the best use of available data and scientific analyses for deriving criteria, the Agency submitted its potential methods and approaches for an independent, scientific peer review by EPA's Science Advisory Board (SAB) in November 2010. The SAB reviewed the document entitled, *Methods and Approaches for Numeric Nutrient Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters,* and submitted their final recommendations to EPA in July 2011.[147] The SAB agreed that a dual nutrient strategy to derive criteria for both nitrogen and phosphorus is warranted. The SAB also found that all of the approaches that EPA proposed for use in this rulemaking (i.e., reference condition, stressor-response, and mechanistic modeling) have utility and recommended that a combination of approaches be used where data and models are available. The SAB provided numerous recommendations to strengthen the application of the approaches to develop numeric nutrient criteria for Florida waters that EPA has used to refine the methods and approaches for deriving the criteria proposed in this rulemaking.[148]

Section III.A provides an overview of the technical elements used to support derivation of the numeric nutrient criteria proposed in this rulemaking for estuaries and coastal waters.[149] The remainder of Section III specifically describes EPA's proposed numeric nutrient criteria for estuaries (Section III.B), coastal waters (Section III.C), and south Florida inland flowing waters (Section III.D). Also included are proposed DPVs for estuaries (Section III.B) and south Florida marine waters (Section III.D).

A. General Information and Approaches

For each group of waters addressed in Section III, EPA is proposing to use system-specific approaches based on the classification and segmentation results for each system (described in detail in Sections III.B, III.C, and III.D) for the derivation of numeric nutrient criteria to ensure that the diversity of unique ecosystems found in each type of water body is taken into consideration. This system-specific approach allows the Agency to consider the physical, chemical, and biological characteristics of a particular water body and to select a scientifically defensible approach, considering the data and information available for each system. This section describes the technical approaches EPA employed to derive the proposed criteria and DPVs, including (1) data and segmentation, (2) biological endpoints, and (3) analytical methodologies.

1. Data Sources and Segmentation

(a) Estuaries

Florida's estuarine areas encompass approximately 1,950 square miles. EPA used the IWR Run 40 database[150] to identify available data from a range of sampling sites in Florida's estuaries. To compute relationships between nutrient concentrations and chlorophyll *a,* EPA relied on measurements of Total Kjeldahl Nitrogen (TKN), TN, Nitrate-Nitrite (NO_3-NO_2), TP, and chlorophyll *a* from the IWR Run 40 database. The resulting dataset included 180,814 water quality samples, collected at 13,648 sites. The Agency also analyzed additional data submitted by local experts and organizations.

The water quality and biological communities of an estuary are affected by multiple factors related to the shape and size of the estuary, its connections to the ocean, geology, climate, and watershed characteristics (e.g., watershed area and land use). Because each of these factors can vary from one system to another, causing the water quality and aquatic populations of flora and fauna in each estuary to be distinct, EPA proposes to classify 19 individual estuarine systems based on the natural geographic features of estuarine basins and their associated watersheds. This approach has been utilized previously in development of the NOAA Coastal Assessment Framework.[151] This approach is also consistent with a watershed approach to water quality management, which EPA encourages as a way to integrate and coordinate efforts within a watershed in order to most effectively and efficiently assess conditions and implement controls.[152]

EPA is proposing to sub-divide each estuarine system into segments based on physical factors and long-term average salinity gradients. Estuaries are complex and dynamic systems that reflect the mixing of fresh and marine water, and different ecological zones correspond to differences in salinity within each estuary. The estuary segments are expected to have unique physical, chemical, and biological characteristics that may respond differently to nutrient inputs than other segments within the same estuary.[153] EPA is proposing numeric nutrient criteria for 89 individual segments in 19 estuaries. A detailed description and detailed maps of EPA's proposed within-estuary segments are provided in the TSD (Volume 1: Estuaries, Section 1.3 and for each estuarine system in Section 2).

(b) Coastal Waters

There are substantial data available from satellite remote sensing that can be used in a scientifically defensible and reliable way in conjunction with available field monitoring data to derive numeric chlorophyll *a* criteria for coastal waters. Satellite remote sensing technologies have been widely used[154] to measure chlorophyll *a* in approximately 3,865 square miles of coastal waters in Florida. These technologies allow consistent and

[147] USEPA–SAB. 2011. *Review of EPA's Draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

USEPA. 2010. *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[148] EPA response letter to SAB. *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/DCC3488B67473BDA852578D20058F3C9/$File/EPA-SAB-11-010_Response_10-26-2011.pdf.* Accessed May 2012.

[149] Additional details are provided in a separate document, the *Technical Support Document for U.S. EPA's Proposed Rule for Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters (TSD);* located at *www.regulations.gov,* Docket ID No. EPA–HQ–OW–2010–0222.

[150] Florida's IWR data are the chemical, physical and biological water quality data that FDEP uses to create its integrated reports. IWR Run 40. Updated through February 2010. FL IWR and STORET can be found at: *http://www.dep.state.fl.us/WATER/STORET/INDEX.HTM.*

[151] NOAA. 2007. *NOAA's Coastal Geospatial Data Project, Coastal Assessment Framework (CAF).* NOAA/NOS Special Projects Office—Coastal Geospatial Data Project. Silver Spring, MD. *http://coastalgeospatial.noaa.gov/.* Accessed May 2012.

[152] USEPA. 2008. *Handbook for Developing Watershed Plans to Restore and Protect Our Waters.* EPA 841–B–08–002. U.S. Environmental Protection Agency, Office of Water, Washington DC.

[153] Telesh, I.V., and V.V. Khlebovich. 2010. Principal processes within the estuarine salinity gradient: A review. *Marine Pollution Bulletin* 61(4–6):149–155.

[154] Gregg, W.W., and NW. Casey. 2004. Global and regional evaluation of the SeaWiFS chlorophyll data set. *Remote Sensing of Environment* 93(4):463–479.

reliable monitoring of expansive areas of Florida's coastline.

The data EPA used to derive numeric chlorophyll *a* criteria for Florida's coastal waters encompass a twelve year period of record (1998–2009). The length of this data record captures the long-term variability that has been observed in water quality within Florida's coastal waters and allows EPA to take advantage of the available remote sensing data. To obtain chlorophyll *a* measurements from satellite remote sensing (chl_{RS}-*a*), EPA processed data from over 1,000 8-day composites of remotely sensed images from satellite ocean color data. The eight-day binning period is a standard approach based on the satellite orbit repeat period of 16 days for the Sea-viewing Wide Field-of-view Sensor (SeaWiFS) satellite.[155] EPA also obtained field monitoring TN, TP, and chlorophyll *a* data from FDEP IWR Run 40, the Northeastern Gulf of Mexico Chemical Oceanography and Hydrography Study (NEGOM), the Ecology and Oceanography of Harmful Algal Blooms Research Program (ECOHAB), the Florida Fish and Wildlife Conservation Commission Fish and Wildlife Research Institute (FWRI), NOAA Oceanographic Data Center (NODC), Mote Marine Laboratory, and the SeaWiFS Bio-optical Archive and Storage System (SeaBASS). Field monitoring data included over 5,500 chlorophyll *a* measurements, which were reduced to 1,947 measurements after screening for data quality, as described later in this proposed rule.

EPA is not proposing to derive TN and TP criteria for Florida's coastal waters due to lack of sufficient field monitoring data for TN and TP. Although it would be a more reliable indicator to include TN and TP in combination with chlorophyll *a,* EPA believes that the chlorophyll *a* criteria should protect these Florida waters because chlorophyll *a* can be a sensitive biological parameter that would serve as a signal to the State that nutrient pollution is creating an imbalance in the natural populations of aquatic flora and fauna in Florida's coastal waters. Where EPA has not derived criteria for certain parameters in this proposed rule, due to insufficient scientific evidence to support a protective threshold for numeric nutrient criteria (e.g., TN and TP for the majority of Florida's coastal waters), EPA or the State may consider deriving criteria in the future for those parameters.

To ensure data quality, EPA screened available field monitoring data to find samples with, at a minimum, metadata for date, time, latitude, longitude, and chlorophyll *a* or light attenuation information. Where multiple samples of chlorophyll *a* at different depths existed, EPA selected the sample closest to the surface in order to provide a better comparison to the remotely sensed data. The monitoring sampling times were also compared to the satellite overpass times. EPA used samples falling within a plus or minus three hour time window to minimize variability between the sample time and satellite overpass time. EPA then compared the satellite chl_{RS}-*a* data to the field monitored chlorophyll *a* data. From this assessment EPA determined that chl_{RS}-*a* accurately represents chlorophyll *a* in coastal waters.

For the purposes of deriving criteria for coastal waters using remote sensing data, EPA is proposing to exclude chl_{RS}-*a* measurements taken during known bloom events of *Karenia brevis* from the statistical distribution of coastal data. *K. brevis* is a dinoflagellate responsible for red tide. Satellites can detect *K. brevis* blooms when cell counts are above 50,000 cells/L. EPA flagged coastal segments with cell counts greater than 50,000 cells/L during an 8-day composite and did not include them in the chl_{RS}-*a* distributions used in criteria derivation.[156] In addition, the same segment was flagged one week prior to and after a bloom detection to provide a temporal buffer as blooms are transported along the coast. This proposed approach is consistent with recommendations from the Agency's Science Advisory Board, which recommended EPA screen out these data points, as they are likely not representative of reference conditions.[157] Analyses of cumulative distributions of chl_{RS}-*a* show they are minimally affected by inclusion or removal of observations affected by *K. brevis.*

EPA classified Florida's coastal waters into three main areas: The Florida Panhandle, West Florida Shelf, and Atlantic Coast. These three coastal areas were subdivided into a total of 71 segments based on FDEP's Water Body Identification System (WBIDs), physical factors, the optical properties of the coastal areas, water quality characteristics, and the jurisdictional limits of the Clean Water Act (i.e., three nautical mile seaward limit). A detailed description of EPA's data screening process and a map of the coastal waters are provided in the TSD (Volume 2: Coastal Waters, Section 1.3).

(c) Request for Comment on Data and Segmentation

EPA believes the proposed data and segmentation approaches provide a strong foundation for the derivation of numeric nutrient criteria that will protect the designated uses in Florida's estuaries and coastal waters. EPA requests comment on all aspects of these approaches. Additionally, the Agency is soliciting additional relevant data and information to assist in the derivation of numeric nutrient criteria. Relevant data and information includes, but is not limited to: Monitoring data for DO, chlorophyll *a,* TN, TP, TKN, dissolved organic nitrogen, dissolved organic phosphorus, dissolved inorganic nitrogen, dissolved inorganic phosphorus, and NO_3-NO_2. EPA also invites comment on the timeframe of the data used to derive criteria for each of the water body types. In addition, EPA requests comment on excluding chl_{RS}-*a* measurements taken during known bloom events of *K. brevis* from the statistical distribution of coastal data. EPA also solicits additional available scientific data and information that could be used in the derivation of numeric criteria for nitrogen and phosphorus in coastal waters.

Even though waters were assigned to segments to ensure homogeneity of water quality across different locations within a segment, EPA recognizes that limited variability may still exist across locations within a given segment. EPA also solicits comment on and requests any additional available information regarding the ability of the proposed segmentation approaches to account for the unique water quality conditions that can be found in estuarine and coastal waters throughout the State. Finally, EPA is proposing to derive numeric nutrient criteria using a system-specific approach. EPA requests comment on the spatial scale of the proposed criteria and whether a broader spatial approach would be more appropriate.

2. Biological Endpoints

When deriving numeric nutrient criteria, it is important to identify nutrient-sensitive biological endpoints

[155] Campbell, J.W., J.M. Blaisdell, and M. Darzi. 1995. Volume 32, Level-3 SeaWiFS Data Products: Spatial and Temporal Binning Algorithms. In: *SeaWiFS Technical Report Series.* eds. Hooker, S.B., E.R. Firestone, and J.G. Acker. NASA Technical Memorandum 104566, Vol. 32. National Aeronautics and Space Administration. Greenbelt, MD.

[156] Heil, C.A., and K.A. Steidinger. 2009. Monitoring, management, and mitigation of *Karenia* blooms in the Eastern Gulf of Mexico. *Harmful Algae* 8:611–617.

[157] USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

relevant to particular estuarine and coastal systems. These biological endpoints serve as sensitive measures to identify protective concentrations of TN, TP, and chlorophyll *a* that, in turn, will support balanced natural populations of aquatic flora and fauna and protect the State's designated uses. EPA conducted an extensive evaluation of available scientific literature to select appropriate biological endpoints, reviewing over 800 documents. From this review of the latest scientific knowledge, EPA has determined that maintenance of seagrasses, maintenance of balanced algal populations, and maintenance of aquatic life are three sensitive biological endpoints, which can be measured by water clarity (as it relates to light levels sufficient to maintain historic depth of seagrass colonization), chlorophyll *a,* and DO, respectively, and appropriately used in derivation of numeric nutrient criteria that protect the State's designated uses from harmful increases in nitrogen and phosphorus concentrations. The selection of these biological endpoints was based upon their scientific defensibility; sensitivity to harmful, adverse effects caused by the pollutants nitrogen and phosphorus; and the sufficiency of data available for each.

EPA derived TN, TP, and chlorophyll *a* criteria to: (1) Maintain water clarity to achieve seagrass depth of colonization targets, (2) reduce the risk of phytoplankton blooms, and (3) maintain dissolved oxygen concentrations sufficient for balanced, natural aquatic life in Florida's estuaries and coastal waters. As set out more fully in the following discussion, these three biological endpoints provide a scientifically defensible basis upon which to derive numeric nutrient criteria that protect balanced natural populations of aquatic flora and fauna over the full range of estuarine and coastal conditions across Florida; waters that achieve these endpoints support designated uses.

(a) Maintenance of Seagrasses

EPA selected the maintenance of seagrasses, as measured by water clarity to maintain historic depth of seagrass colonization, as one biological endpoint and corresponding endpoint measure to derive numeric nutrient criteria for estuaries. Healthy populations of seagrasses serve as widely recognized indicators of biological integrity in estuarine systems and, in turn, of balanced natural populations of aquatic flora and fauna.[158]

Because of the unique conditions that are created within seagrass communities, populations of other aquatic floral and faunal species benefit from the presence and abundance of seagrasses.[159] For example, seagrasses act as nurseries for many species by providing refuge from predators. Seagrasses also improve water quality by trapping suspended sediments, preventing sediment resuspension, and retaining nutrients. Florida's NEPs and FDEP have also used endpoints based on seagrasses to derive their recommended estuarine criteria because of seagrass sensitivity to nutrient pollution.

Seagrass communities depend on a variety of physical, chemical, and biological conditions to thrive. Among these, adequate underwater light availability (as measured by water clarity) is one critical factor for seagrass health. The relationship between water clarity and the depth to which seagrasses grow, known as the depth of colonization, has been well-documented.[160] When seagrasses receive sufficient sunlight, seagrass biomass remains constant or increases over time. Conversely, when incoming light is blocked by substances in the water column, such as phytoplankton, suspended solids, or color, seagrass growth slows or stops. Studies on seagrasses have documented the relationship of nutrient pollution-related accelerated algal growth to declines in available light and subsequent declines in seagrass communities.[161] Since the area within an estuary available for seagrass growth is partially a function of the total area with enough sunlight at sufficient depths to sustain growth, as water clarity decreases and reduces the amount of sunlight that can reach the seagrasses, the available area for seagrass growth also decreases. Hence, the greater the water clarity (and associated available light), the deeper the water that can support seagrass communities and, therefore, the greater the extent of seagrass coverage.

EPA reviewed studies that empirically assessed the relationship between seagrass growth and available light[162] and is proposing that, for Florida, when an average value of 20 percent of the sunlight that strikes the water's surface (incident light) reaches the bottom of the water column (to the depth of seagrass colonization), sufficient light is available to maintain seagrasses. A similar value has been used in previous nutrient management efforts in Florida.[163]

[158] Ferdie, M., and J.W. Fourqurean. 2004. Responses of seagrass communities to fertilization along a gradient of relative availability of nitrogen and phosphorus in a carbonate environment. *Limnology and Oceanography* 49(6):2082–2094.

Orth, R.J., T.J.B. Carruthers, W.C. Dennison, C.M. Duarte, J.W. Fourqurean, K.L. Heck, A.R. Hughes, G.A. Kendrick, W.J. Kenworthy, S. Olyarnik, F.T. Short, M. Waycott, and S.L. Williams. 2006. A global crisis for seagrass ecosystems. *BioScience* 56(12):987–996.

Doren, R.F., J.C. Trexler, A.D. Gottlieb, and M.C. Harwell. 2009. Ecological indicators for system-wide assessment of the greater everglades ecosystem restoration program. *Ecological Indicators* 9:S2–S16.

Gibson, G.R., M.L. Bowman, J. Gerritsen, and B.D. Snyder. 2000. *Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical Guidance.* EPA 822–B–00–024. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/biocriteria/upload/2009_04_22_biocriteria_States_estuaries_estuaries.pdf.* Accessed November 2011.

[159] Orth, R.J., T.J.B. Carruthers, W.C. Dennison, C.M. Duarte, J.W. Fourqurean, K.L. Heck Jr., A.R. Hughes, G.A. Kendrick, W.J. Kenworthy, S. Olyarnik, F.T. Short, M. Waycott, and S.L. Williams. 2006. A global crisis for seagrass ecosystems. *Bioscience* 56(12):987–996.

[160] Dennison, W.C. 1987. Effects of light on seagrass photosynthesis, growth, and depth distribution. *Aquatic Botany* 27:15–26.

Dennison, W.C., R.J. Orth, K.A. Moore, J.C. Stevenson, V. Carter, S. Kollar, P.W. Bergstrom, and R.A. Batiuk. 1993. Assessing water quality with submersed aquatic vegetation. *BioScience* 43(2):86–94.

Duarte, C.M. 1991. Seagrass depth limits. *Aquatic Botany* 40(4):363–377.

Gallegos, C.L. 1994. Refining habitat requirements of submersed aquatic vegetation: Role of optical models. *Estuaries* 17(1):187–199.

Gallegos, C.L., and W.J. Kenworthy. 1996. Seagrass depth limits in the Indian River Lagoon (Florida, USA): Application of an optical water quality model. *Estuarine, Coastal and Shelf Science* 42(3):267–288.

Gallegos, C.L. 2005. Optical water quality of a blackwater river estuary: the Lower St. Johns River, Florida, USA. *Estuarine, Coastal and Shelf Science* 63(1–2):57–72.

Steward, J.S., R.W. Virnstein, L.J. Morris, and E.F. Lowe. 2005. Setting seagrass depth, coverage, and light targets for the Indian River Lagoon system, Florida. *Estuaries and Coasts* 28(6):923–935.

[161] Ferdie, M., and J.W. Fourqurean. 2004. Responses of seagrass communities to fertilization along a gradient of relative availability of nitrogen and phosphorus in a carbonate environment. *Limnology and Oceanography* 49(6):2082–2094.

Orth, R.J., T.J.B. Carruthers, W.C. Dennison, C.M. Duarte, J.W. Fourqurean, K.L. Heck, A.R. Hughes, G.A. Kendrick, W.J. Kenworthy, S. Olyarnik, F.T. Short, M. Waycott, and S.L. Williams. 2006. A global crisis for seagrass ecosystems. *BioScience* 56(12):987–996.

[162] Dennison, W.C., R.J. Orth, K.A. Moore, J.C. Stevenson, V. Carter, S. Kollar, P.W. Bergstrom, and R.A. Batiuk. 1993. Assessing water quality with submersed aquatic vegetation. *BioScience* 43(2):86–94.

Duarte, C.M. 1991. Seagrass depth limits. *Aquatic Botany* 40(4):363–377.

Gallegos, C.L. 1994. Refining habitat requirements of submersed aquatic vegetation: Role of optical models. *Estuaries* 17(1):187–199.

Steward, J.S., R.W. Virnstein, L.J. Morris, and E.F. Lowe. 2005. Setting seagrass depth, coverage, and light targets for the Indian River Lagoon system, Florida. *Estuaries and Coasts* 28(6):923–935.

[163] Janicki, A.J., and D.L. Wade. 1996. Estimating critical external nitrogen loads for the Tampa Bay estuary: An empirically based approach to setting management targets. Technical Publication 06–96.

EPA is also proposing that protecting and maintaining water clarity sufficient to support an appropriate depth of colonization provides the greatest protection of balanced natural populations of aquatic flora and fauna since maintenance of seagrass habitat is critical to ecosystem conditions. EPA used available historical seagrass coverage data (including the earliest available, generally 1940–1960, or more recent, 1992) to compute the historical maximum depth of seagrass colonization as a reference. In all cases the most recent (2000–2010) seagrass coverage was also evaluated to determine existing depth of colonization, and to relate this value to existing water quality. To compute seagrass depth of colonization, EPA overlaid seagrass coverage data and bathymetric data compiled by NOAA using a Geographic Information System.[164] EPA then used the data on seagrass coverage to determine the maximum depths that seagrasses have been able to grow in each estuary, where applicable (this approach was not used in some estuaries in Florida that do not have historical evidence of seagrass colonization), in order to identify a reference point for a healthy level of seagrass colonization. Because seagrass habitats support a rich array of biological uses,[165] EPA is proposing to derive numeric nutrient criteria to maintain a comparable depth of seagrass colonization to the reference level (i.e. seagrasses growing at the deepest observed depth of colonization) to ensure protection of balanced natural populations of aquatic flora and fauna. EPA chose to use the historical maximum observed depth, and resulting areal coverage, because increasing nutrients beyond the point that is protective of maximum coverage of seagrass is likely to cause a decline in seagrass coverage. Because a wide variety of organisms rely on healthy seagrass communities, a decrease in seagrass coverage to levels below the maximum observed depth will result in a decline in overall system health and biodiversity.[166] EPA calculated a water clarity target that would ensure 20% percent of incident light at the surface would be able to reach the reference depth of colonization. Finally, EPA used this water clarity target to derive numeric criteria for TN, TP, and chlorophyll *a* to support balanced natural populations of aquatic flora and fauna. (More detail on the importance of seagrass can be found in the TSD, Volume 1: Estuaries, Section 1.2.1).

(b) Maintenance of Balanced Algal Populations

Based upon EPA's extensive review of current scientific literature, EPA selected maintenance of balanced algal populations, as measured by the chlorophyll *a* concentrations associated with balanced phytoplankton biomass, as the second biological endpoint and corresponding endpoint measure to derive numeric nutrient criteria for estuaries and coastal waters. The maintenance of balanced algal populations is an important sensitive biological endpoint because of its responsiveness to nutrient enrichment, integral role in aquatic food webs, well-established use as an integrative measure of aquatic ecosystem condition, and correlation with changes in floral composition and subsequent faunal response.[167] Chlorophyll *a* is the endpoint measure of balanced algal populations, and has a long history of use in aquatic ecology as a measure of phytoplankton biomass and production.[168] Elevated chlorophyll *a* concentrations resulting from nutrient pollution-enhanced algal growth and accumulation are a well-documented symptom of eutrophication and the harmful, adverse impacts of nitrogen and phosphorus pollution across the nation, and specifically in Florida (refer to Section II.A for additional information).[169] In most of Florida's coastal and estuarine waters, healthy biological communities depend on balanced natural populations of algae because algae are integral components of aquatic food webs and aquatic nutrient cycling.[170]

Elevated chlorophyll *a* concentrations resulting from nitrogen and phosphorus pollution alter the trophic state of estuarine and coastal waters and increase the frequency and magnitude of algal blooms. EPA evaluated the available scientific literature to determine chlorophyll *a* concentrations indicative of phytoplankton blooms associated with imbalance in natural populations of aquatic flora and fauna. Published reports on chlorophyll *a* concentrations in estuarine waters across the nation, including Florida estuaries, reflect the range of natural trophic states and enrichment. These studies suggest that low algal bloom conditions are defined as maximum chlorophyll *a* concentrations less than or equal to 5 μg/L, medium bloom conditions are defined as maximum chlorophyll *a* concentrations from greater than 5 to 20 μg/L, high bloom conditions are defined as maximum chlorophyll *a* concentrations from greater than 20 to 60 μg/L, and hypereutrophic conditions are defined by maximum bloom concentrations

Prepared for Tampa Bay National Estuary Program, St. Petersburg, FL, by Coastal Environmental, Inc., St. Petersburg, FL.

[165] Hughes, A.R., S.L. Williams, C.M. Duarte, K.L. Heck, Jr., and M. Waycott. 2009. Associations of concern: declining seagrasses and threatened dependent species. *Frontiers in Ecology and the Environment* 7(5):242–246.

[166] Hughes, A.R., S.L. Williams, C.M. Duarte, K.L. Heck, Jr., and M. Waycott. 2009. Associations of concern: declining seagrasses and threatened dependent species. *Frontiers in Ecology and the Environment* 7(5):242–246.

Orth, R.J., T.J.B. Carruthers, W.C. Dennison, C.M. Duarte, J.W. Fourqurean, K.L. Heck, A.R. Hughes, G.A. Kendrick, W.J. Kenworthy, S. Olyarnik, F.T. Short, M. Waycott, and S.L. Williams. 2006. A global crisis for seagrass ecosystems. *BioScience* 56(12):987–996.

FFWCC. 2003. *Conserving Florida's Seagrass Resources: Developing a Coordinated Statewide Management Program.* Florida Fish and Wildlife Conservation Commission, Florida Marine Research Institute. St. Petersburg, FL.

[167] Boyer, J.N., C.R. Kelble, P.B. Ortner, and D.T. Rudnick. 2009. Phytoplankton bloom status: Chlorophyll a biomass as an indicator of water quality condition in the southern estuaries of Florida, USA. *Ecological Indicators* 9s:S56–S67.

Hagy, J.D., J.C. Kurtz, and R.M. Greene. 2008. *An approach for developing numeric nutrient criteria for a Gulf coast estuary.* EPA 600R–08/004. U.S. Environmental Protection Agency, Office of Research and Development, National Health and Environmental Effects Research Laboratory, Gulf Breeze, FL.

Bricker, S.B., C.G. Clement, D.E. Pirhalla, S.P. Orlando, and D.R.G. Farrow. 1999. *National Estuarine Eutrophication Assessment. Effects of Nutrient Enrichment in the Nation's Estuaries.* National Oceanic and Atmospheric Administration, National Ocean Service, Special Projects Office and the National Centers for Coastal Ocean Science, Silver Spring, MD.

See Section B.3 in Appendix B of USEPA. 2010. *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[168] Wetzel, R.G. 2001. *Limnology: Lakes and River Ecosystems.* 3rd ed. Academic Press, San Diego, CA.

Kalff, J. 2002. *Limnology: Inland Water Ecosystems.* Prentice-Hall, Inc., Upper Saddle River, New Jersey.

[169] Elser, J.J., M.E.S. Bracken, E.E. Cleland, D.S. Gruner, W.S. Harpole, H. Hillebrand, J.T. Ngai, E.W. Seabloom, J.B. Shurin, and J.E. Smith. 2007. Global analysis of nitrogen and phosphorus limitation of primary production in freshwater, marine, and terrestrial ecosystems. *Ecology Letters* 10:1135–1142.

Smith, V.H. 2006. Responses of estuarine and coastal marine phytoplankton to nitrogen and phosphorus enrichment. *Limnology and Oceanography* 51(1 part 2):377–384

[170] Hauxwell, J., C. Jacoby, T. Frazer, and J. Stevely. 2001. *Nutrients and Florida's Coastal Waters: The Links Between People, Increased Nutrients and Changes to Coastal Aquatic Systems.* Florida Sea Grant Report No. SGEB–55. Florida Sea Grant College Program, University of Florida, Gainesville, FL. *http://edis.ifas.ufl.edu/pdffiles/SG/SG06100.pdf.* Accessed June 2011.

NOAA. 2011. *Overview of Harmful Algal Blooms.* National Oceanic and Atmospheric Administration, Center for Sponsored Coastal Research. *http://www.cop.noaa.gov/stressors/extremeevents/hab/default.aspx.* Accessed June 2011.

above 60 µg/L.[171] Two Florida estuaries, Florida Bay and Pensacola Bay, were analyzed as a part of a larger NOAA national survey of estuaries. The authors reported the average chlorophyll *a* concentrations were 20 µg/L or less for seven of ten large estuaries nationally, and were especially low for Florida Bay (8 µg/L) and Pensacola Bay (10 µg/L).[172] Other literature regarding phytoplankton blooms indicated similar results.[173]

Chlorophyll *a* concentrations associated with hypereutrophic conditions (>60 µg/L) reflect a trophic state that is unnatural for Florida estuaries. While some estuaries in the State are more productive than others, high chlorophyll *a* concentrations (20 to 60 µg/L) also do not appear to reflect balanced conditions in Florida, especially given observed ranges in Florida. Concentrations of chlorophyll *a* in this high range are associated more frequently with loss of seagrass and a shift of algal populations to monoculture or, in other words, a loss in the balance of diverse populations of aquatic flora.[174] Moreover, this concentration range was also associated with conditions where other uses, including recreation, are adversely affected. Based on the range of chlorophyll *a* concentrations indicative of natural algal bloom conditions characteristic of Florida estuaries, as well as the literature on concentrations associated with harmful, adverse conditions for estuarine biota and other use support, EPA is proposing a chlorophyll *a* concentration of 20 µg/L as the water quality target to define a nuisance algal bloom. Thus, estuarine waters with chlorophyll *a* concentrations that exceed this water quality target threshold are indicative of imbalanced populations of aquatic flora and fauna (More detail regarding EPA's analysis can be found in the TSD, Volume 1: Estuaries, Section 1.2.2).

EPA also considered the available scientific research described in this section to establish an allowable frequency of occurrence of phytoplankton blooms, represented by chlorophyll *a* levels greater than 20 µg/L, to further define this endpoint measure. EPA is proposing a value of 10% as an allowable frequency of occurrence of phytoplankton blooms, that is, chlorophyll *a* measurements may not exceed 20 µg/L more than 10% of the time. This frequency is also consistent with current nutrient management practices in Florida, such as those utilized in approved Florida TMDLs.

(c) Maintenance of Aquatic Life

EPA selected maintenance of aquatic life, as measured by the sufficiency of dissolved oxygen (DO) to maintain aquatic life, as a third biological endpoint and corresponding endpoint measure to derive numeric nutrient criteria for estuaries. DO concentrations are a well-known indicator of the health of estuarine and coastal biological communities. Aquatic animals including fish, benthic macroinvertebrates, and zooplankton depend on adequate levels of DO to survive and grow. These levels may differ depending on the species and life stage of the organism (e.g., larval, juvenile, and adult).[175]

To derive the DO endpoint, EPA conducted an analysis of the dissolved oxygen requirements of sensitive species in Florida using the Virginian Province dissolved oxygen evaluation procedure.[176] This analysis derives DO levels that protect both larval recruitment and growth for aquatic organisms. EPA used the results of this analysis to determine the dissolved oxygen water quality targets considered for numeric nutrient criteria development that would protect sensitive aquatic species in Florida estuaries. EPA is proposing that satisfying three different DO requirements in Florida's estuarine waters would meet the needs of resident sensitive aquatic species, and thus support the maintenance of aquatic life. These requirements are an instantaneous DO concentration of 4.0 mg/L, a daily average DO concentration of 5.0 mg/L, and a bottom water average DO concentration of 1.5 mg/L. Both the instantaneous minimum of 4.0 mg/L and the daily average of 5.0 mg/L are spatial averages over the water column for each estuarine segment. These values and interpretations are consistent with existing Florida DO criteria (Subsection 62–302.530(30), F.A.C.) and FDEP's assessment procedures (Subsection 62–303.320(5), F.A.C.). (More detail on both the existing Florida DO criteria and EPA's analysis can be found in the TSD, Volume 1: Estuaries, Sections 1.2.3 and 1.4.1).

(d) Other Endpoints Considered by EPA

EPA considered, but is not proposing to use, the following nutrient-sensitive biological endpoints: (1) Harmful algal blooms (HABs), (2) coral, (3) epiphytes, (4) macroinvertebrate and fish indices, (5) macroalgae, (6) *Spartina* marshes (salt-marshes), and (7) the Eastern oyster (*Crassostrea virginica*). EPA did not select these biological endpoints because there was an absence of sufficient data to quantify the link between measurements of these endpoints and nitrogen and phosphorus concentrations. Additional details on these alternative endpoints are provided in Appendix B in the *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.*[177]

(e) Request for Commerce on Endpoints

EPA believes that maintenance of seagrasses, maintenance of balanced algal populations, and maintenance of aquatic life are the three most appropriate nutrient-sensitive biological endpoints to use to derive numeric nutrient criteria to ensure that nutrient concentrations in a body of water

[171] Bricker, S.B., J.G. Ferreira, and T. Simas. 2003. An integrated methodology for assessment of estuarine trophic status. *Ecological Modelling* 169(1):39–60.

[172] Glibert, P.M., C.J. Madden, W. Boynton, D. Flemer, C. Heil, and J. Sharp, eds. 2010. *Nutrients in Estuaries: A Summary Report of the National Estuarine Experts Workgroup, 2005–2007.* Report to U.S. Environmental Protection Agency, Office of Water, Washington DC.

[173] OECD. 1982. *Eutrophication of Waters: Monitoring, Assessment and Control.* Organisation for Economic Cooperation and Development, Paris, France.

Painting, S.J., M.J. Devlin, S.J. Malcolm, E.R. Parker, D.K. Mills, C. Mills, P. Tett, A. Wither, J. Burt, R. Jones, and K. Winpenny. 2007. Assessing the impact of nutrient enrichment in estuaries: susceptibility to eutrophication. *Marine Pollution Bulletin* 55:74–90.

Painting, S.J., M.J. Devlin, S.I. Rogers, D.K. Mills, E.R. Parker, and H.L. Rees. 2005. Assessing the suitability of OSPAR EcoQOs for eutrophication vs. ICES criteria for England and Wales. *Marine Pollution Bulletin* 50:1569–1584.

Tett, P., R. Gowen, D. Mills, T. Fernandes, L. Gilpin, M. Huxham, K. Kennington, P. Read, M. Service, M. Wilkinson, and S. Malcolm. 2007. Defining and detecting undesirable disturbance in the context of marine eutrophication. *Marine Pollution Bulletin* 55:282–297.

[174] Bricker, S.B., J.G. Ferreira, and T. Simas. 2003. An integrated methodology for assessment of estuarine trophic status. *Ecological Modelling* 169(1):39–60.

[175] Diaz, R.J. 2001. Overview of hypoxia around the world. *Journal of Environmental Quality* 30(2):275–281.

Diaz, R.J., and R. Rosenberg. 2008. Spreading dead zones and consequences for marine ecosystems. *Science* 321(5891):926–929.

[176] Vincent, A.M., J. Flippin, E. Leppo, and J.D. Hagy III. Dissolved oxygen requirements of Florida-resident saltwater species applied to water quality criteria development. *In review.*

USEPA. 2000. *Ambient Aquatic Life Water Quality Criteria for Dissolved Oxygen (Saltwater): Cape Cod to Cape Hatteras.* EPA–822–R–00–012. U.S. Environmental Protection Agency, Office of Water, Washington DC.

[177] USEPA. 2010. *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Office of Water, Washington, DC.

protect balanced natural populations of aquatic flora and fauna, and in turn support designated uses. EPA requests comment regarding the biological endpoints and endpoint measures selected. EPA also solicits additional scientific information on other appropriate endpoints that can be used to protect fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife in Florida's Class II and III estuarine and coastal waters.

3. Analytical Methodologies

EPA used three analytical approaches to derive TN, TP, and chlorophyll *a* numeric nutrient criteria for different types of waters in Florida. In most of Florida coastal waters, EPA is proposing to use a reference condition approach that utilizes data from waters that support balanced natural populations of aquatic flora and fauna to derive numeric nutrient criteria. In Florida estuaries (including some coastal waters in the Big Bend Coastal region), EPA is proposing to use statistical and mechanistic models to determine protective concentrations of TN, TP, and chlorophyll *a* linked to biological endpoints. Where sufficient data were not available to apply statistical models (i.e., stressor-response approach) in all segments in an estuary, EPA used mechanistic model predictions to derive criteria. In these instances, EPA analyzed the available stressor-response analysis as a second line of evidence, in segments where the data were available.

(a) Reference Condition Approach

EPA is proposing to use the reference condition approach to derive numeric nutrient criteria in coastal waters that support balanced natural populations of aquatic flora and fauna. EPA is proposing this approach to derive numeric chlorophyll *a* criteria for Florida's coastal waters because the scientific data and information available were insufficient to establish accurate quantifiable relationships between TN and TP concentrations and harmful, adverse effects due to the limited TN and TP data available. Therefore, EPA is proposing to rely upon the reference condition approach to identify numeric chlorophyll *a* criteria concentrations that protect the designated uses, and avoid any adverse change in natural populations of aquatic flora or fauna in Florida's coastal waters.

The reference condition approach, which has been well documented, peer reviewed, and developed in a number of different contexts,[178] is used to derive numeric nutrient criteria that are protective of applicable designated uses by identifying numeric nutrient criteria concentrations occurring in least-disturbed, healthy coastal waters that are supporting designated uses.

To derive the proposed numeric nutrient criteria using the reference condition approach, EPA first selected reference conditions in Florida's coastal waters where the Agency was confident that designated uses are protected. EPA reviewed available monitoring information, peer-reviewed literature, and technical reports to ensure that, where applicable, seagrass beds are healthy, DO is adequate for sensitive species, phytoplankton biomass is balanced, and that any other information relating to the ecosystem indicates that the waters are supporting balanced natural populations of aquatic flora and fauna. EPA also removed data during periods of temporary known human disturbances (e.g., bridge and roadway construction) where natural populations were temporarily affected. Finally, EPA reviewed CWA section 303(d) listings, and removed data associated with impairment listings for chlorophyll *a,* dissolved oxygen, and nutrients, as well as data from coastal segments adjacent to CWA section 303(d) impaired estuary waters, such that the resulting data would reflect unimpaired conditions. EPA only removed data from the period of impairment. The result of this rigorous analysis was a set of reference waters that, although not pristine, reflected healthy conditions that were supporting designated uses, and thus free from harmful, adverse effects on natural populations of aquatic flora and fauna due to nutrient pollution. EPA has confidence that these reference waters are supporting designated uses and balanced natural populations of flora and fauna, and has confidence that if the criteria are attained or maintained at the concentrations that are among the highest observed in these waters, then designated uses and natural populations of aquatic flora and fauna will be protected in coastal waters. Further details regarding data screening can be found in the TSD (Volume 2: Coastal Waters, Section 1.4).

After selecting the reference waters, EPA calculated the annual geometric mean concentrations of chlorophyll *a* for each year of the data record and for each segment.[179] EPA then calculated a normal distribution based on the annual geometric mean chlorophyll *a* concentrations. From this distribution, which represents the population of water quality observations in each segment, EPA selected the 90th percentile as the applicable criteria for each segment. EPA selected the 90th percentile as an appropriate concentration to specify the criterion-magnitude because the Agency is confident that the distribution reflects minimally-impacted, biologically healthy reference conditions, which support the State's Class II and III designated uses. The use of the 90th percentile of chlorophyll *a* is also supported by several eutrophication assessment frameworks in Europe and the U.S, such as the Oslo-Paris Commission ''Common Procedure'' (OSPAR), Water Framework Directive of the EU, Assessment of Estuarine Trophic Status in the US, and the Marine Strategy Framework Directive used by the European Commission, which identify the 90th percentile as representative of a chlorophyll *a* concentration above which eutrophication is considered ecologically problematic or where an undesirable disturbance to aquatic life and water quality from eutrophication are highly likely to appear.[180] For

[178] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

USEPA. 2000b. *Nutrient Criteria Technical Guidance Manual: Rivers and Streams.* EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

Stoddard, J.L., D.P. Larsen, C.P. Hawkins, R.K. Johnson, and R.H. Norris. 2006. Setting expectations for the ecological condition of streams: The concept of reference condition. *Ecological Applications* 16:1267–1276.

Herlihy, A.T., S.G. Paulsen, J. Van Sickle, J.L. Stoddard, C.P. Hawkins, L.L. Yuan. 2008. Striving for consistency in a national assessment: The challenges of applying a reference-condition approach at a continental scale. *Journal of the North American Benthological Society* 27:860–877.

USEPA. 2001. *Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

[179] Geometric means were used for averages in the reference condition, statistical modeling, and mechanistic modeling approaches because concentrations were log-normally distributed.

[180] OSPAR Commission. 2005. *Common Procedure for the Identification of the Eutrophication Status of the OSPAR Maritime Area (Reference Number: 2005–3*). OSPAR Commission, London.

Ferreira, J.G., J.H. Andersen, A. Borja, S.B. Bricker, J. Camp, M.C. da Silva, E. Garcés, A–S. Heiskanen, C. Humborg, L. Ignatiades, C. Lancelot, A. Menesguen, P. Tett, N. Hoepffner, and U. Claussen. 2011. Overview of eutrophication indicators to assess environmental status within the

Continued

further information on the use of the reference approach see the TSD (Volume 2, Coastal Waters, Section 1.5.1).

EPA chose not to select the extreme upper end of the distribution (95th or 100th percentile). This is because these highest observed annual average concentrations (i.e., 95th or 100th percentile) have rarely been observed at any reference site and are most likely to be heavily influenced by extreme event factors (e.g., hurricanes, droughts). Thus these highest observed concentrations could be outliers that are not representative of conditions that would typically support designated uses and natural populations of aquatic flora and fauna. Therefore, EPA has less confidence that such highest observed concentrations would continue to be supportive of designated uses and natural populations of aquatic flora and fauna if maintained in all coastal waters at all times.

Alternatively, the selection of a much lower percentile, such as a representation of the central tendency of the distribution (i.e., 50th percentile), would not be appropriate because it would imply that half of the conditions observed at reference sites would not support designated uses and natural populations of aquatic flora and fauna, when EPA's analysis indicates that they do. By setting the criteria at the 90th percentile of the reference condition distribution, EPA believes the designated uses, i.e., natural populations of aquatic flora and fauna, will be protected when these concentrations are attained for the majority of coastal water segments. For those coastal water segments that are shown to accommodate or require higher or lower concentrations, the SSAC provision is provided in EPA's proposed rule as discussed in Section V.C.

(b) Statistical Modeling

EPA evaluated the data available for each estuary segment in terms of temporal and spatial representativeness to establish whether there were sufficient data to use a statistical model. Where enough monitoring data in estuaries were available, EPA developed statistical models (i.e., stressor-response relationships) [181] that quantified relationships between TN, TP, chlorophyll *a,* and the selected endpoint measures (i.e., water clarity to maintain maximum depth of seagrass colonization and chlorophyll *a* concentrations associated with balanced phytoplankton biomass). There were not enough temporally-resolved DO monitoring data, particularly in pre-dawn hours when dissolved oxygen concentrations are typically lower than during that day,[182] in any of the estuaries to permit the use of statistical models to derive criterion values associated with sufficient DO to support aquatic life. Where the available endpoints were shown to be sufficiently sensitive, EPA used these relationships to calculate TN, TP, and chlorophyll *a* concentrations that achieved the selected water quality targets for these endpoints, which serve as measures of balanced natural populations of aquatic flora and fauna.

To determine chlorophyll *a* concentrations supportive of the water clarity depth target to achieve the healthy seagrass endpoint in a segment, EPA estimated the relationship between annual geometric mean chlorophyll *a* concentrations and annual geometric mean water clarity for each segment. Then, EPA computed the chlorophyll *a* criterion as the chlorophyll *a* concentration that was associated with the water clarity target. In other words, the chlorophyll *a* criterion was determined such that the water quality target for water clarity was achieved on an annual average basis.[183] In some segments, increased annual geometric mean chlorophyll *a* concentrations were not associated with decreased annual geometric mean water clarity, possibly because other factors, such as suspended sediment or colored dissolved organic material, more strongly affected water clarity.[184] In these segments, EPA determined that the water clarity endpoint was not sufficiently sensitive to increased chlorophyll *a,* and therefore, this endpoint was not used to derive a chlorophyll *a* criterion, and associated TN and TP criteria in that segment.

EPA also used stressor-response relationships to derive chlorophyll *a* criteria to maintain balanced algal populations. To this end, EPA used logistic regression to estimate the relationship between annual geometric mean chlorophyll *a* concentrations and the probability of any single chlorophyll *a* measurement exceeding EPA's proposed water quality target of 20 μg/L during the year. Then, EPA derived a chlorophyll *a* criterion from this relationship by selecting the annual geometric mean chlorophyll *a* concentration that ensured that any single chlorophyll *a* measurement would not exceed 20 μg/L more than 10% of the time.

After calculating chlorophyll *a* candidate criteria values necessary to meet the water quality targets for the two biological endpoints for which data were available (maintenance of seagrasses and maintenance of balanced algal populations), in each water body segment, EPA selected the more stringent of the two as the proposed criterion for that segment to ensure that the proposed chlorophyll *a* criterion would protect both endpoints.

To calculate TN and TP criteria associated with the chlorophyll *a* criterion, EPA estimated the relationship between annual geometric mean TN and TP concentrations and annual geometric mean chlorophyll *a* concentrations for each segment. EPA then used these relationships to compute the TN and TP concentrations that were required to maintain average chlorophyll *a* concentrations at the chlorophyll *a* criterion. In some estuary segments, increased TN or TP concentrations were not associated with increased chlorophyll *a* concentrations, possibly because of differences in the proportion of TP or TN that was composed of biologically unavailable forms of phosphorus or nitrogen, or because of unique physical or hydrological characteristics of the estuary segment.[185] In these segments, EPA determined that chlorophyll *a* concentrations were not sufficiently sensitive to increases in TN or TP concentrations, and therefore, this approach was not used to derive criteria for these segments.

European Marine Strategy Framework Directive. *Estuarine, Coastal and Shelf Science* 93(2):117–131.

Bricker, S.B., J.G. Ferreira, and T. Simas. 2003. An integrated methodology for assessment of estuarine trophic status. *Ecological Modelling* 169:39–60.

European Commission. 2003. *Common Implementation Strategy for the Water Framework Directive (2000/60/EC): Guidance Document No. 5, Transitional and Coastal Waters-Typology, Reference Conditions and Classification Systems.* European Commission, Working Group 2.4—COAST, Office for Official Publications of the European Communities, Luxembourg.

[181] USEPA. 2010. *Using stressor-response relationships to derive numeric nutrient criteria.* EPA–820–S–10–001. U.S. Environmental Protection Agency, Office of Water, Office of Science and Technology, Washington, DC.

[182] D'Avanzo, C., and J.N. Kremer. 1994. Diel Oxygen Dynamics and Anoxic Events in an Eutrophic Estuary of Waquoit Bay, Massachusetts. *Estuaries and Coasts* 17(1B):131–139.

[183] Dennison, W.C. 1987. Effects of light on seagrass photosynthesis, growth, and depth distribution. *Aquatic Botany* 27:15–26.

[184] Gallegos, C.L. 2005. Optical water quality of a blackwater river estuary: the Lower St. Johns River, Florida, USA. *Estuarine, Coastal and Shelf Science* 63(1–2):57–72.

[185] USEPA. 2001. *Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

In instances where one of the endpoints was not sufficiently sensitive to increases in TN or TP concentrations the relationship of the other endpoint to TN or TP was examined. If both endpoints were insensitive to TN or TP, then the statistical models were not used to derive candidate criteria for the particular nutrient.

In a limited number of estuary segments, EPA found that the TN, TP, or chlorophyll *a* concentrations that were associated with achieving the water quality targets for the biological endpoints were outside (greater than or less than) the range of TN, TP, or chlorophyll *a* concentrations observed in the available data for the estuary. In other words, in these situations, using statistical models to derive numeric nutrient criteria would require EPA to extrapolate the TN, TP, and chlorophyll *a* relationships beyond the range of available data. Because of the uncertainty inherent in conducting such extrapolations, EPA is proposing instead to set numeric nutrient criteria derived from these statistically modeled relationships at the 90th percentile or 10th percentile limit of the distribution of available data instead of deriving criteria outside the range of data observations.[186] For example, if the statistically modeled value for TP associated with achieving all water quality targets to meet the biological endpoints in an estuary segment was less than the 10th percentile of annual average values of TP observed in that segment, EPA is proposing to set the criterion value at the 10th percentile of annual average values of TP. This approach defines criterion values that maintain balanced natural populations of aquatic flora and fauna within the limits of available data and is consistent with EPA's reasoning for the selection of the 90th percentile when using the reference condition approach. EPA requests comment on whether to extrapolate stressor-response relationships beyond the range of available data. For further information on the use of statistical modeling approach, see the TSD (Volume 1: Estuaries, Section 1.4.2 and Appendix B).

(c) Mechanistic Modeling

EPA also quantified relationships between nitrogen and phosphorus loads and the three biological endpoints using a coupled system of watershed models and estuarine hydrodynamic and water quality models. These models simulated the physical, chemical, and biological processes in a watershed-estuarine system. EPA first used the watershed models to develop estimates of TN, TP, and freshwater inputs to the estuary. Next, EPA used the estuarine hydrodynamic and water quality models to simulate estuarine water quality responses to the watershed inputs, including changes in estuarine TN, TP, and chlorophyll *a* concentrations, water clarity, and DO. Then, EPA utilized these models to determine concentrations of TN and TP that would protect the most nutrient-sensitive biological endpoint to derive the numeric nutrient criteria.

To select the appropriate models, EPA developed an inventory of watershed and estuary models that have been applied previously to estuaries in Florida, including models developed by FDEP.[187] Based on the results of the review, EPA selected the Loading Simulation Program in C++ (LSPC)[188] to simulate freshwater flows and nutrient loading from watersheds, the Environmental Fluid Dynamics Code (EFDC)[189] to simulate estuarine hydrodynamics, and the Water Quality Analysis Simulation Program (WASP)[190] to simulate estuarine water quality.[191]

LSPC can continuously simulate the hydrologic and water quality processes on pervious and impervious land surfaces, in streams, and in well-mixed impoundments throughout the watershed and can provide daily estimates of stream flow, TN, and TP concentrations entering the estuary. In addition, LSPC is publicly available and has been peer reviewed.[192] LSPC has been successfully applied for water quality management purposes to many watersheds throughout the southeastern United States and Florida. Therefore, EPA is proposing to apply the LSPC model to the watersheds in Florida outside of the South Florida Nutrient Watershed Region.

EFDC and WASP have been applied in conjunction to simulate hydrodynamics and water quality (respectively) for many water quality management projects throughout the southeastern United States and Florida. EFDC and WASP are also publicly available and have undergone peer review.[193] Based on the extensive use of these models for similar applications and their acceptance in the scientific community, EPA is proposing to use the EFDC and WASP models to derive numeric nutrient criteria for Florida's estuaries.

For estuaries where monitoring data were insufficient to calculate criteria using the statistical models, EPA mechanistically modeled the conditions in each system and corresponding watershed that occurred from 2002–2009 using all available, screened data. EPA evaluated data over the historic period of record and is proposing to use 2002 through 2009 as a representative modeling period because complete, continuous flow and water quality data were available. This period also reflects the range of hydrology and meteorology observed over the historic period of record across the Florida estuaries.

EPA then used relationships between TN, TP, and biological endpoints quantified by the mechanistic models to derive numeric nutrient criteria. That is, EPA determined the concentrations of TN and TP that were associated with meeting all biological endpoints in each segment.

Because estuaries differ in their physical, chemical, and hydrological characteristics, EPA expected that differences would exist in the degree to which different biological endpoints respond to changes in nutrient concentration. For example, in certain estuaries, high concentrations of colored dissolved organic material (CDOM) occur naturally and reduce water clarity. Because of the influence of CDOM in these estuarine systems, changes in TN, TP, and chlorophyll *a* are not strongly associated with changes in water clarity. In these systems, the water clarity endpoint does not appear to be sensitive to changes in nutrients,

[186] USEPA. 2010. *Using Stressor-response Relationships to Derive Numeric Nutrient Criteria.* EPA–820–S–10–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[187] Wolfe, S.H. 2007. *An Inventory of Hydrodynamic, Water Quality, and Ecosystem Models of Florida Coastal and Ocean Waters.* Florida Department of Environmental Protection, Tallahassee, Florida.

[188] USEPA. 2011. *Loading Simulation Program in C++ (LSPC). http://www.epa.gov/athens/wwqtsc/html/lspc.html.* Accessed December 2011.

[189] USEPA. 2011. *Environmental Fluid Dynamics Code (EFDC). http://www.epa.gov/athens/wwqtsc/html/efdc.html.* Accessed December 2011.

[190] USEPA. 2011. *Water Quality Analysis Simulation Program (WASP). http://www.epa.gov/athens/wwqtsc/html/wasp.html.* Accessed December 2011.

[191] USEPA. 2010. *Methods and Approaches for Deriving Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[192] USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

[193] USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* EPA–SAB–11–010. U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

and therefore, the water clarity endpoint does not provide useful information for the purposes of deriving numeric nutrient criteria in these systems. In each estuarine system, EPA used output from mechanistic models and available monitoring data to evaluate the sensitivity of each endpoint measure to changes in nutrients. This analysis was used to determine which endpoints were most critical to determine protective nutrient concentrations. Endpoints that were found to be insensitive to changes in nutrient concentrations in a particular estuarine system were not considered further in deriving numeric nutrient criteria for a system. Numeric nutrient criteria for each system were based on the modeled scenario in which the remaining endpoint measures were met during the modeled period, calculated as annual geometric means for each year during the modeled period. Criteria were calculated using the 90th percentile of the annual geometric means from the modeled years for the model scenario meeting all appropriate endpoints. EPA selected the 90th percentile to account for natural variability in the data to represent the upper bound of conditions supporting designated uses. The selection of the 90th percentile is appropriate for the same reasons as when using the reference condition approach. For further information on the use of the mechanistic modeling approach, see the TSD (Volume 1: Estuaries, Section 1.4.1).

(d) Request for Comment on Analytical Methodologies

EPA believes that the three proposed analytical methodologies used in combination result in numeric nutrient criteria that are supportive of balanced natural populations of aquatic flora and fauna, and thus protect Class II and III estuarine and coastal waters in the State of Florida from nutrient pollution. These analytical methodologies utilized the latest scientific knowledge, nutrient sensitive endpoints, and the best available data. The Agency requests comment on the application of the proposed methodologies and whether these methodologies are appropriate to derive criteria protective of designated uses in Florida's estuaries and coastal waters. Specifically, EPA is soliciting comment and any scientific information on the use of these approaches in areas where there may be other factors present in addition to nutrients that may also affect the three biological endpoints by attenuating light in similar ways as chlorophyll *a* (e.g., colored dissolved organic matter (CDOM) or suspended sediments). EPA is also requesting comment on the procedures used to screen data to identify reference conditions that are supporting balanced natural populations of aquatic flora and fauna.

B. Proposed Numeric Criteria for Estuaries

1. Introduction

EPA is proposing to use a system-specific approach to derive numeric nutrient criteria for estuaries to ensure that the unique physical, chemical, and biological characteristics of each estuarine ecosystem are taken into consideration.[194]

2. Proposed Numeric Criteria (Estuaries)

EPA is proposing numeric TN, TP, and chlorophyll *a* criteria for 89 discrete segments within 19 estuarine systems in Florida (Table III.B–1). These include Class II and III waters under Florida law (Section 62–302.400, F.A.C.); EPA did not find any Class I estuarine waters in Florida. The 19 estuaries include seven systems in the Florida Panhandle region, four systems in the Big Bend region, and eight systems along the Atlantic coast. Maps showing the locations of these estuarine systems and EPA's proposed within-estuary segments are provided in the TSD (Volume 1: Estuaries, Section 1.3 and Section 2).

In some areas a gap may exist between maps used by Florida and EPA to show where criteria apply. In areas where a gap exists between EPA's proposed criteria and Florida's numeric criteria, EPA proposes that Florida's numeric criteria from the adjacent estuary or marine segment apply (see Section 62–302.532, F.A.C. for values). EPA proposes that Florida's criteria from the northernmost segment of Clearwater Harbor/St Joseph Sound (Subsection 62–302.532(a)1., F.A.C.) apply to the waters between that segment and the southernmost segment of EPA's Springs Coast estuary system. EPA proposes that Florida's numeric criteria from the northernmost segment of Biscayne Bay (Subsection 62–302.532(h)5., F.A.C.) apply to the waters of the intercoastal waterway between that segment and the southernmost segment of EPA's Lake Worth Lagoon estuary system.

In other areas a gap may exist within estuaries covered by Florida's numeric criteria. In these areas, EPA proposes that Florida's criteria from the adjacent estuary or marine segment to the south apply to that gap. EPA proposes that Florida's criteria from (1) the upper Lemon Bay segment (Subsection 62–302.532(d)2., F.A.C.) apply to the segment between the upper Lemon Bay segment and the Dona/Roberts Bay segment (Subsection 62–302.532(d)1., F.A.C.), (2) the Tidal Cocohatchee River segment (Subsection 62–302.532(e)1., F.A.C.) apply to the waters between the Tidal Cocohatchee River segment and the Estero Bay segment (Subsection 62–302.532(d)9., F.A.C.), (3) the Clam Bay segment (Subsection 62–302.532(j)., F.A.C.) apply between the Clam Bay segment and the Tidal Cocohatchee River segment (Subsection 62–302.532(e)1., F.A.C.), and (4) the Naples Bay segment (Subsection 62–302.532(e)4., F.A.C.) apply to the segment between the Naples Bay segment and the Clam Bay Segment (Subsection 62–302.532(j)., F.A.C.). For further information regarding the derivation and protectiveness of Florida's criteria, see *http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm*.

TABLE III.B–1—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA'S ESTUARIES

[In geographic order from northwest to northeast]

Segment	Segment ID	Proposed Criteria		
		TN* (mg/L)	TP* (mg/L)	Chl-*a** (µg/L)
Perdido Bay:				
Upper Perdido Bay	0101	0.59	0.042	5.2

[194] USEPA. 2001. *Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC. Glibert, P.M., C.J. Madden, W. Boynton, D. Flemer, C. Heil, and J. Sharp, eds. 2010. *Nutrients in Estuaries: A Summary Report of the National Estuarine Experts Workgroup, 2005–2007.* Report to U.S. Environmental Protection Agency, Office of Water, Washington DC.

TABLE III.B–1—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA'S ESTUARIES—Continued

[In geographic order from northwest to northeast]

Segment	Segment ID	Proposed Criteria		
		TN* (mg/L)	TP* (mg/L)	Chl-*a** (µg/L)
Big Lagoon	0102	0.26	0.019	4.9
Central Perdido Bay	0103	0.47	0.031	5.8
Lower Perdido Bay	0104	0.34	0.023	5.8
Pensacola Bay:				
Blackwater Bay	0201	0.53	0.022	3.9
Upper Escambia Bay	0202	0.43	0.025	3.7
East Bay	0203	0.50	0.021	4.2
Santa Rosa Sound	0204	0.34	0.018	4.1
Lower Escambia Bay	0205	0.44	0.023	4.0
Upper Pensacola Bay	0206	0.40	0.021	3.9
Lower Pensacola Bay	0207	0.34	0.020	3.6
Santa Rosa Sound	0208	0.33	0.020	3.9
Santa Rosa Sound	0209	0.36	0.020	4.9
Choctawhatchee Bay:				
Eastern Choctawhatchee Bay	0301	0.47	0.025	8.1
Central Choctawhatchee Bay	0302	0.36	0.019	3.8
Western Choctawhatchee Bay	0303	0.21	0.012	2.4
St. Andrews Bay:				
East Bay	0401	0.31	0.014	4.6
St. Andrews Sound	0402	0.14	0.009	2.3
Eastern St. Andrews Bay	0403	0.24	0.021	3.9
Western St. Andrews Bay	0404	0.19	0.016	3.1
Southern St. Andrews Bay	0405	0.15	0.013	2.6
North Bay 1	0406	0.22	0.012	3.7
North Bay 2	0407	0.22	0.014	3.7
North Bay 3	0408	0.21	0.016	3.4
West Bay	0409	0.23	0.022	3.8
St. Joseph Bay:				
St. Joseph Bay	0501	0.25	0.018	3.8
Apalachicola Bay:				
St. George Sound	0601	0.53	0.019	3.6
Apalachicola Bay	0602	0.51	0.019	2.7
East Bay	0603	0.76	0.034	1.7
St. Vincent Sound	0605	0.52	0.016	11.9
Apalachicola Offshore	0606	0.30	0.008	2.3
Alligator Harbor:				
Alligator Harbor	0701	0.36	0.011	2.8
Alligator Offshore	0702	0.33	0.009	3.1
Alligator Offshore	0703	0.33	0.009	2.9
Ochlockonee Bay+:				
Ochlockonee-St. Marks Offshore	0825	0.79	0.033	2.7
Ochlockonee Offshore	0829	0.47	0.019	1.9
Ochlockonee Bay	0830	0.66	0.037	1.8
St. Marks River Offshore	0827	0.51	0.022	1.7
St. Marks River	0828	0.55	0.030	1.2
Big Bend/Apalachee Bay+:				
Econfina Offshore	0824	0.59	0.028	4.6
Econfina	0832	0.55	0.032	4.4
Fenholloway	0822	1.15	0.444	1.9
Fenholloway Offshore	0823	0.48	0.034	10.3
Steinhatchee-Fenholloway Offshore	0821	0.40	0.023	4.1
Steinhatchee River	0819	0.67	0.077	1.0
Steinhatchee Offshore	0820	0.34	0.018	3.5
Steinhatchee Offshore	0818	0.39	0.032	4.8
Suwannee River+:				
Suwannee Offshore	0817	0.78	0.049	5.2
Springs Coast+:				
Waccasassa River Offshore	0814	0.38	0.019	3.9
Cedar Keys	0815	0.32	0.019	4.1
Crystal River	0812	0.35	0.013	1.3
Crystal-Homosassa Offshore	0813	0.36	0.013	2.1
Homosassa River	0833	0.47	0.032	1.9
Chassahowitzka River	0810	0.32	0.010	0.7
Chassahowitzka River Offshore	0811	0.29	0.009	1.7
Weeki Wachee River	0808	0.32	0.010	1.6
Weeki Wachee Offshore	0809	0.30	0.009	2.1
Pithlachascotee River	0806	0.50	0.022	2.4
Pithlachascotee Offshore	0807	0.32	0.011	2.5

TABLE III.B–1—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA'S ESTUARIES—Continued

[In geographic order from northwest to northeast]

Segment	Segment ID	Proposed Criteria		
		TN* (mg/L)	TP* (mg/L)	Chl-*a** (µg/L)
Anclote River	0804	0.48	0.037	4.7
Anclote Offshore	0805	0.31	0.011	3.2
Anclote Offshore South	0803	0.29	0.008	2.6
Clearwater Harbor/St. Joseph Sound:	See Section 62–302.532(1)(a) F.A.C.			
Tampa Bay:	See Section 62–302.532(1)(b) F.A.C.			
Sarasota Bay:	See Section 62–302.532(1)(c) F.A.C.			
Charlotte Harbor/Lemon Bay:	See Section 62–302.532(1)(d) F.A.C.			
Lake Worth Lagoon/Loxahatchee:				
North Lake Worth Lagoon	1201	0.55	0.067	4.7
Central Lake Worth Lagoon	1202	0.57	0.089	5.3
South Lake Worth Lagoon	1203	0.48	0.034	3.6
Lower Loxahatchee	1301	0.68	0.028	2.7
Middle Loxahatchee	1302	0.98	0.044	3.9
Upper Loxahatchee	1303	1.25	0.072	3.6
St. Lucie:				
Lower St. Lucie	1401	0.58	0.045	5.3
Middle St. Lucie	1402	0.90	0.120	8.4
Upper St. Lucie	1403	1.22	0.197	8.9
Indian River Lagoon:				
Mosquito Lagoon	1501	1.18	0.078	7.5
Banana River	1502	1.17	0.036	5.7
Upper Indian River Lagoon	1503	1.63	0.074	9.2
Upper Central Indian River Lagoon	1504	1.33	0.076	9.2
Lower Central Indian River Lagoon	1505	1.12	0.117	8.7
Lower Indian River Lagoon	1506	0.49	0.037	4.0
Halifax River:				
Upper Halifax River	1601	0.75	0.243	9.4
Lower Halifax River	1602	0.63	0.167	9.6
Guana, Tolomato, Matanzas, Pellicer:				
Upper GTMP	1701	0.77	0.144	9.5
Lower GTMP	1702	0.53	0.108	6.1
Lower St. Johns River:				
Lower St. Johns River	1801	0.75	0.095	2.5
Trout River	1802	1.09	0.108	3.6
Trout River	1803	1.15	0.074	7.7
Nassau River:				
Lower Nassau	1901	0.33	0.113	3.2
Middle Nassau	1902	0.40	0.120	2.4
Upper Nassau	1903	0.75	0.125	3.4
St. Marys River:				
Lower St. Marys River	2002	0.27	0.045	3.0
Middle St. Marys River	2003	0.44	0.036	2.7

[1] Chlorophyll *a* is defined as corrected chlorophyll, or the concentration of chlorophyll *a* remaining after the chlorophyll degradation product, phaeophytin *a,* has been subtracted from the uncorrected chlorophyll *a* measurement.

* For a given water body, the annual geometric mean of TN, TP, or chlorophyll *a,* concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

+ In these four areas (collectively referred to as the "Big Bend region"), coastal and estuarine waters are combined. Criteria for the Big Bend region apply to the coastal and estuarine waters in that region.

(a) Summary of Approaches (Estuaries)

(1) Proposed Approach (Estuaries)

In estuaries where sufficient monitoring data were available to statistically quantify relationships between TN, TP, chlorophyll *a,* and biological endpoints, and the endpoints available to derive criteria were shown to be sufficiently sensitive (i.e., Choctawhatchee Bay; St. Joseph Bay; Suwannee River; Indian River Lagoon; Halifax River; and the Guana, Tolomato, Matanzas, and Pellicer (GTMP) estuarine system), statistical models were used to derive the proposed numeric nutrient criteria. In three of the estuaries, Choctawhatchee Bay, St. Joseph Bay, and Indian River Lagoon, there were sufficient available data for water clarity associated with historic depth of seagrasses, and chlorophyll *a* concentrations associated with balanced phytoplankton biomass targets, and these biological endpoints were sensitive to changes in nutrients in most segments, so proposed criteria were derived that were protective of these endpoints. In the Suwannee River, the water clarity endpoint was not sensitive to changes in nutrients, so proposed criteria were derived that were protective of the chlorophyll *a* target

associated with balanced phytoplankton biomass. In the Halifax River and GTMP, seagrass has not been historically present, so the proposed criteria were derived that are protective of the chlorophyll *a* target associated with balanced phytoplankton biomass.

In all other estuaries mechanistic models were used to quantify the relationship between nutrient loads and biological endpoints. EPA then used the models to derive proposed numeric nutrient criteria that protect the endpoints. For each estuary, the endpoints that were shown to be sufficiently sensitive to nutrient changes above non-anthropogenic nutrient levels were used, as described in Section III.A.3.c. The endpoints for each of the estuaries where mechanistic models were used to derive criteria are noted in the following discussion.

In Perdido Bay, Apalachicola Bay, three segments in Lake Worth Lagoon/Loxahatchee (Lake Worth Lagoon, segments 1201, 1202, and 1203), and St. Lucie, all three biological endpoints were found to be sensitive to changes to nutrients, and so proposed criteria were derived that were protective of historic depth of seagrasses (water clarity), chlorophyll *a* concentrations associated with balanced phytoplankton biomass, and dissolved oxygen concentrations sufficient to maintain aquatic life.

In St. Andrews Bay, 2 segments in the Springs Coast (Anclote River/Anclote Offshore, segments 0804 and 0805) and 3 segments in Lake Worth Lagoon/Loxahatchee (Lower, Middle, and Upper Loxahatchee, segments 1301, 1302, and 1303), dissolved oxygen concentrations were found to be insensitive to changes in nutrients. Proposed criteria were derived that were protective of historic depth of seagrasses (water clarity) and chlorophyll *a* concentrations associated with balanced phytoplankton biomass.

In Pensacola Bay, 3 segments in Ochlockonee Bay (Ochlockonee-St. Marks Offshore/Ochlockonee Offshore/Ochlockonee Bay, segments 0825, 0829, and 0830), and 4 segments in Big Bend/Apalachee Bay (Econfina/Econfina Offshore, segments 0824, 0832; Steinhatchee-Fenholloway Offshore, segment 0821; Steinhatchee Offshore, segment 0818), and 1 segment in Springs Coast (Anclote Offshore South, segment 0803), water clarity was found to be insensitive to changes in nutrients. In Alligator Harbor and 2 segments in Springs Coast (Waccasassa River Offshore/Cedar Keys, segments 0814, 0815), there was not enough available information to derive seagrass depth targets. As a result, the proposed criteria were derived to be protective of water quality targets for chlorophyll *a* concentrations associated with balanced phytoplankton biomass and dissolved oxygen concentrations sufficient to maintain aquatic life.

In 2 segments in Ochlockonee Bay (St. Marks Offshore/St. Marks River, segments 0827, 0828), 2 segments in Big Bend/Apalachee Bay (Steinhatchee River/Steinhatchee Offshore, segments 0819, 0820), and 2 segments in Springs Coast (Pithlachascotee River/Pithlachascotee Offshore, segments 0806, 0807), dissolved oxygen and water clarity were both found to be insensitive to changes in nutrients. In 2 segments in Big Bend/Apalachee Bay (Fenholloway/Fenholloway Offshore, segments 0822, 0823) and 7 segments in Springs Coast (Crystal River/Crystal-Homosassa Offshore/Homosassa River, segments 0812, 0813, 0833; Chassahowitzka River/Chassahowitzka Offshore, segments 0810, 0811; and Weeki Wachee/Weeki Wachee Offshore, segments 0808, 0809), dissolved oxygen was found to be insensitive to changes in nutrients and there was not enough available information to derive seagrass depth targets. In Nassau River and St. Marys River, dissolved oxygen was found to be insensitive to changes in nutrients and seagrass has not been historically present. For all of these estuaries, proposed criteria were derived that were protective of chlorophyll *a* concentrations associated with balanced phytoplankton biomass.

In the Lower St. Johns River, seagrass has not been historically present, so proposed criteria were derived that were protective of chlorophyll *a* associated with balanced phytoplankton biomass and dissolved oxygen concentrations sufficient to maintain aquatic life. For this system, EPA used the dissolved oxygen from the Site-Specific Alternative Criteria, developed by FDEP and adopted for the marine portion of the Lower St. Johns River, as an additional DO endpoint with which to derive the proposed criteria to support dissolved oxygen concentrations sufficient to maintain aquatic life.[195] This DO criterion, adopted as a water quality standard specific to this system, was used as an alternative target to the daily water column average DO concentration of 5.0 mg/L.

EPA considered several alternative approaches for deriving estuarine numeric nutrient criteria, including approaches proposed by the St. Johns River Water Management District for estuaries within their jurisdiction (Lower St. Johns River, Mosquito Lagoon, Tolomato-Matanzas estuary, Halifax River estuary, Indian River Lagoon, and Banana River). While some of these approaches segmented Florida's estuaries differently than the segmentation approach EPA is proposing, all the alternative approaches used multiple biological endpoints and analytical methods to determine the health of each system and derive criteria. EPA solicits comments on the alternative approaches described in more detail in the following sections. Additional details on these approaches are provided in the TSD (Volume 1: Estuaries, Section 2).

(2) Alternative for St. Johns River Water Management District Waters

The St. Johns River Water Management District (SJRWMD) submitted proposed approaches to EPA for several estuaries within their jurisdiction. These included the St. Johns River, Mosquito Lagoon, Tolomato-Matanzas estuary, Halifax River estuary, Indian River Lagoon, and Banana River. In general, SJRWMD proposed a weight of evidence approach employing several analytical techniques to derive numeric nutrient criteria for each of the systems. The following paragraphs outline the methods proposed for each of these systems.

The SJRWMD has proposed the use of the values for TN, TP, and chlorophyll *a* for the Lower St. Johns River (LSJR) that have already been developed as part of an existing TMDL to support designated uses in the river. The LSJR is defined as the main stem segments of the river between the juncture with the Ocklawaha River and the river mouth at Mayport, with the marine portion occurring between Julington Creek and the mouth. A SSAC was developed for DO in the marine portion of the river. It was approved by EPA in 2006 and is in effect as a WQS. The TMDL contains TN and TP protective loads in the freshwater portion of the LSJR and a TN protective load in the saline portion of the LSJR. These loads are set at a level necessary to achieve the marine DO SSAC and protect the statewide standard for DO in the freshwater section. The TMDL also contains a water quality target for chlorophyll *a* that is intended to implement the State's narrative nutrient criterion.

Similar to the modeling approach proposed by EPA for Florida estuaries, TN, TP, and chlorophyll *a* criteria were derived for the LSJR using linked watershed, hydrodynamic, and water

[195] FDEP. 2006. Site Specific Alternative Dissolved Oxygen Criterion to Protect Aquatic Life in the Marine Portions of the Lower St. Johns River Technical Support Document. Appendix L In: FDEP. 2008. *TMDL Report: Total Maximum Daily Load for Nutrients for the Lower St. Johns River.* Florida Department of Environmental Protection, Tallahassee, FL.

quality models. Non-point nutrient inputs from the watershed to the river were determined for each sub-basin in the LSJR using the Pollutant Load Screening Model (PLSM), estimates of atmospheric deposition, and estimates of loading from tributaries and upstream. Within the river, hydrodynamics were modeled using the Environmental Fluid Dynamics Code (EFDC) model and water quality processes were modeled using the U.S. Army Corps of Engineers Quality Integrated Compartment Model (CE–QUAL–ICM), Version 2. The models were calibrated for the period from January 1, 1995 to November 30, 1998. TMDL model scenarios were assessed on an annual basis to determine if chlorophyll *a* levels exceeded the chlorophyll *a* threshold of 40 µg/L less than 10% of the time that was set as the water quality target to prevent undesirable shifts in algal community composition.

For Mosquito Lagoon, a suite of five approaches are considered to develop a weight of evidence by which numeric nutrient criteria can be developed. These approaches are based upon one of three relationships: (1) The link between nutrients, phytoplankton growth (as shown by chlorophyll *a*), and the trophic state of a system; (2) the link between nutrients, phytoplankton growth (as shown by chlorophyll *a*), the effects of phytoplankton on light attenuation in the water column, and the light requirements of seagrasses; or (3) the connection between TP and harmful algal bloom (HAB) occurrence. The first and primary approach uses a reference period from 2004–2008 to calculate annual median and maximum wet season medians of chlorophyll *a,* TN, and TP. The reference time period was selected because the TN, TP, and chlorophyll *a* observed during that period were low, the rainfall amounts during that period were representative of typical rainfall over time, and the Trophic State Index value for that time period was greater than 50, which is considered to be ''good'' (mesotrophy to oligo-mesotrophy).

The second approach draws upon an optical model linking chlorophyll *a* to previously established light attenuation targets as a way to predict annual median chlorophyll *a* in southern Mosquito Lagoon that would be protective of seagrass and serve as a basis for criteria derivation. A third approach derives a TP level that corresponds to minimum ''bloom'' levels of the dinoflagellate *Pyrodinium bahamense,* the common HAB species seen primarily in the southern Lagoon. A fourth line of evidence applied to the Mosquito Lagoon is multivariate geometric mean function regression models relating TN and TP to chlorophyll *a* on an annual basis and during the wet season. The final method is based on two general nutrient models.[196] Targets for chlorophyll *a* are set based on the reference period mentioned earlier for the north and central segments and the optical model for the southern segments. The reference method is used to derive the TN, TP, and chlorophyll *a* criteria for the Mosquito Lagoon with the other four methods providing supporting evidence. Two criteria magnitudes for TN, TP, and chlorophyll *a* are presented; one an annual median value and the other a wet season (July-September) median value.

The approaches used for the Indian River Lagoon (IRL) and Banana River Lagoon (BRL) are similar to those used for Mosquito Lagoon. The approaches are based upon a weight of evidence relying on two general ecological relationships: (1) The link between nutrients, phytoplankton growth (as shown by chlorophyll *a*), and the trophic state of a system; and (2) the link between nutrients, phytoplankton growth (as shown by chlorophyll *a*), the effects of phytoplankton on light attenuation in the water column, the light requirements of seagrasses, and the previously established depth limit for seagrasses. The influence of TP on HAB events is also discussed as an ancillary line of evidence. As a first line of evidence loading limits are derived based on analyses done for TMDLs in 2009. The loading limits were established using regression models that regress seagrass depth limit targets against loading of TN and TP.[197] The second method used annual medians of data from reference segments that meet desired depth thresholds established by the TMDL analyses. The third approach relies upon an optical model similar to the one described earlier for the Mosquito Lagoon using data from 1996–2007. A model was built for each of the sub-lagoons: The BRL, North IRL, and Central IRL (divided into Sebastian and South Central reaches). An optical model is in development for the North Central reach. The fourth approach also applies two general models to data specific to the IRL and BRL.[198] Where the Dettmann (2001) model could not be used to predict TN concentrations, a TN:TP ratio for the given sublagoon was applied to the TP limit to calculate TN limits. The fifth approach relies upon the relationship between HAB occurrence and TP concentrations. Targets for chlorophyll *a* are presented as a range of values established using the optical model approach and the reference segment approach. Proposed TN and TP loading criteria are based on the loading limits established using the TMDL analyses. Primary proposed TN and TP criteria concentrations are calculated based on the reference segment method. Alternate criteria are proposed using a convergence of the concentrations calculated by the reference segment method and general models. Two criteria magnitudes are proposed, one for an annual median and the other for a wet season (June–October) monthly maximum.

The SJRWMD proposed criteria for the Tolomato and Matanzas Estuary (TME) using a weight of evidence approach and methods similar to those used in the other estuaries. TN and TP concentrations and chlorophyll *a* target concentrations are based on an approach that analyzes water quality and estimated current loading during a reference period from 2000–2009. The period of reference was selected based on a desirable TSI score (<50), rainfall amounts typical of average conditions, and completeness of the data record. Criteria magnitudes are proposed as an annual median or mean and a maximum wet season (June–September) median or mean. The reference period approach of criteria derivation for the TME is supported by an additional line of evidence using regression analyses of chlorophyll *a* versus TN and TP. Target chlorophyll *a* values are based on the reference period analyses. The general nutrient models of Steward and Lowe (2010) and Dettmann (2001) are also used as an additional method by which to estimate loading limits and concentrations associated with those limits.

The SJRWMD also derived proposed criteria for the Halifax River Estuary. SJRWMD derived criteria using three methods. The first is a reference condition based on the period from 2000–2008. This period is selected because of the low TN levels compared

[196] Steward, J.S., and E.F. Lowe. 2010. General empirical models for estimating nutrient load limits for Florida's estuaries and inland waters. *Limnology and Oceanography* 55(1):433–445. Dettmann, E.H. 2001. Effect of water residence time on annual export and denitrification of nitrogen in estuaries: A model analysis. *Estuaries* 24(4):481–490.

[197] Steward J.S., R.V. Virnstein, L.J. Morris, and E.F. Lowe. 2005. Setting Seagrass Depth, Coverage, and Light targets for the Indian River Lagoon system, Florida. *Estuaries* 6:923–935.

[198] Steward, J.S., and E.F. Lowe. 2010. General empirical models for estimating nutrient load limits for Florida's estuaries and inland waters. *Limnology and Oceanography* 55(1):433–445. Dettmann, E.H. 2001. Effect of water residence time on annual export and denitrification of nitrogen in estuaries: A model analysis. *Estuaries* 24:481–490.

to the previous decade, the low chlorophyll *a* concentrations which are consistent with chlorophyll *a* targets established for other estuaries throughout the State, and the ''good'' trophic status shown by TSI values less than 50. Concentrations are calculated using annual median concentrations and maximum wet-season median concentrations (as the highest monthly values from July–September) of TN, TP, and chlorophyll *a*. Simple linear regressions are used as a second line of evidence to calculate TN and TP criteria based on chlorophyll *a* targets established by the reference period calculations. The general nutrient models of Steward and Lowe (2010) and Dettmann (2001) are used as a final method by which to estimate loading limits and concentrations associated with those limits. Proposed loading and concentration criteria for the North Halifax River Estuary are based on the loading and concentration estimates of the general nutrient models, with estimates of loadings from wastewater treatment facilities in the estuary removed to represent reference conditions. The current estimated concentrations (ca. 2004) of TN and TP based on the reference approach are proposed as criteria for the South Halifax River Estuary. Target chlorophyll *a* values for both segments are calculated using the reference period approach.

EPA is also considering the use of approaches outlined in Steward *et al.* (2005) to derive criteria in Indian River Lagoon. In particular EPA is considering using the depth of colonization within reference segments as ''upper restoration depths'' and the highest value observed for a specific segment as a minimum target for that segment. For more information regarding the derivation of these criteria, please see the TSD (Volume 1: Estuaries, Sections 2.18.9 (Indian River Lagoon), 2.19.9 (Halifax River), 2.20.9 (GTMP), and 2.21.9 (St Johns River)).

(3) Request for Comment on Proposed and Alternative Approaches

EPA believes that the proposed approach for each estuarine system is appropriate, scientifically defensible, and results in numeric nutrient criteria that protect the State's designated uses to ensure that nutrient concentrations of a body of water support balanced natural populations of aquatic flora and fauna. EPA requests comment on this system-specific approach and the resulting numeric nutrient criteria. EPA also solicits additional available scientific information that can be used to derive numeric nutrient criteria to provide protection of fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife and protect Florida's Class II and III estuarine waters from nitrogen and phosphorus pollution.

In addition, EPA requests comment on the alternative approaches developed by the St. Johns River Water Management District for waters under their jurisdiction. Specifically, EPA requests comment on the scientific defensibility of these approaches, as well as whether application of these approaches will result in numeric nutrient criteria that will protect Class II and III estuarine waters in the State of Florida. EPA also requests comment on promulgating the alternative criteria in lieu of EPA's proposed criteria.

(b) Proposed Criteria Duration and Frequency (Estuaries)

Aquatic life water quality criteria include magnitude, duration, and frequency components. For EPA's proposed TN, TP, and chlorophyll *a* criteria for estuarine waters, the criterion-magnitude values (expressed as concentrations) are provided in Table III.B–1, the criterion-duration (or averaging period) is specified as annual, and the criterion-frequency is specified as a no-more-than-once-in-three-years excursion frequency of the annual geometric mean. EPA is proposing a criteria-duration of one year, in which sampled nutrient concentrations are summarized as annual geometric means to be consistent with the data set used to derive these criteria, which relied on either annual average nutrient concentrations or annual nutrient loading to the water body. EPA's proposed excursion frequency of no-more-than-once-every-three-years is intended to minimize negative effects on designated uses as it will allow water bodies enough time to recover from occasionally elevated levels of nitrogen and phosphorus concentrations.[199] These duration and frequency components of the criteria are identical to those finalized in EPA's rule for Florida's lakes and flowing waters (40 CFR section 131.43), which will add consistency to the implementation of these criteria with those established in the previous rulemaking for upstream waters. Finally, the 3-year evaluation period provides a sufficient representation of average water body characteristics in the majority of cases, because it balances both short-term and long-term variation, while not imposing undue monitoring expectations. EPA requests comment on the frequency and duration components of these criteria and whether the three components of the criteria (magnitude, duration, and frequency) taken in combination will ensure protection of the designated uses of these waters.

(c) Proposed DPVs (Estuaries)

EPA is proposing a procedure to establish numeric TN and TP criteria for streams in Florida to protect the downstream estuarine water bodies that ultimately receive nitrogen and phosphorus pollution from these streams. These numeric nutrient criteria, which EPA refers to as Downstream Protection Values, or DPVs, would apply at each stream's point of entry into the downstream water, referred to as the pour point. However, as explained more fully in Section I.A, EPA does not intend to finalize these DPVs if the district court modifies the Consent Decree consistent with EPA's amended determination that numeric DPVs are not necessary to meet CWA requirements in Florida. EPA selected the pour point as the location to apply DPVs because the downstream waters respond to the nutrient inputs from the pour point, and all contributions from the network of flowing waters above this point affect the water quality at the pour point. If the DPV is not attained at the point of entry into the estuary, then the collective set of streams in the upstream watershed does not attain the DPV, for purposes of CWA section 303(d).

The Agency is proposing a hierarchical procedure that includes four approaches for setting TN and TP DPVs. EPA's intention in proposing the four approaches is to provide a range of methods for the State to derive TN and TP DPVs that reflect the data and scientific information available. Water quality modeling is the most rigorous and most data-demanding method, and will generally result in the most refined DPVs. Water quality modeling is EPA's preferred method for establishing DPVs and is listed first in the hierarchy. It is followed by less rigorous methods that are also less data-demanding. Using a procedure from a lower tier of the hierarchy requires less data, but also generally results in more stringent DPVs to account for the uncertainties associated with these less refined procedures. The methods available to derive DPVs should be considered in the following order:

1. Water quality simulation models to derive TN and TP values,

[199] Boynton, W.R., J.D. Hagy, L. Murray, C. Stokes, and W.M. Kemp. 1996. A comparative analysis of eutrophication patterns in a temperate coastal lagoon. *Estuaries* 19(2B):408–421.

2. Reference condition approach based on TN and TP concentrations at the stream pour point, coincident in time with the data record from which the downstream receiving estuary segment TN and TP criteria were developed using the same data quality screens and reference condition approach,

3. Dilution models based on the relationship between salinity and nutrient concentration in the receiving segment, and

4. The TN and TP criteria from the receiving estuary segment to which the freshwater stream discharges, in cases where data are too limited to apply the first three approaches.

All four approaches are briefly described in the following discussion. A more detailed description of the approaches, as well as the TN and TP DPVs that result from using each of the approaches, is provided in the technical support document (Volume 1: Estuaries, Section 1.6).

EPA believes that the first approach, the use of water quality simulation models, is the most refined method to define a DPV at the stream's pour point that will support balanced natural populations of aquatic flora and fauna in the downstream estuary. This approach may be appropriate when water quality simulation models are available, such as in the estuarine systems where mechanistic models were used to derive criteria. The modeled nutrient loads entering the estuaries that result in attainment of the biological endpoints within the estuaries can be used to derive DPVs by computing the annual geometric mean TN and TP concentrations that correspond with the modeled loads at the pour point of each stream for each of the years 2002 through 2009. Because EPA used coupled watershed and estuarine models to establish the estuary criteria (in some locations), EPA is confident that the watershed modeling provides concentrations that are protective of corresponding estuarine biological endpoints. Therefore EPA selected the 90th percentile from the distribution of annual geometric means of modeled loads as the DPV to be consistent with the use of the 90th percentile used to derive the criteria protective of the estuary using the mechanistic models (Volume 1: Estuaries, Section 1.6).

EPA is proposing the second DPV approach, a reference condition approach, for estuarine systems where water quality simulation models are not available, and where a reference condition approach is used to derive estuary TN, TP, and chlorophyll *a* criteria. Since the downstream estuary is supporting balanced natural populations of aquatic flora and fauna during the reference condition period, the nutrient loads passing through the pour points into the estuary during that same period should be protective of the estuary. Therefore, EPA believes it would be appropriate in these cases to derive reference condition-based DPVs using water quality data at the pour point of the freshwater streams, coincident in time with the data record from which EPA derived the downstream estuary segment TN and TP criteria. EPA proposes that the same data screens and reference condition approach be applied to the pour point data as were applied to the estuary data when deriving DPVs using this approach. This will prevent deriving a DPV using upstream water quality data that coincided with a documented downstream impact (e.g., CWA section 303(d) listing for nutrients in the estuary segment) and ensure mathematical consistency between the DPVs and estuarine criteria.

EPA is proposing the third DPV approach for estuarine systems where water quality simulation models are not available. For example, this approach may be appropriate in the Indian River Lagoon, the Halifax River, and the GTMP estuarine systems where EPA used statistical models to derive the criteria protective of the estuary. In these areas, EPA believes it would be appropriate to derive DPVs using dilution models based on the relationship between salinity and nutrient concentration. The concept is that the tidal mixing or dilution can be estimated from the estuarine salinity. By plotting observed estuarine TN or TP versus the estuarine salinity and fitting a linear regression, the TN or TP at various levels of salinity can be determined. This regression model can then be used to determine the TN or TP concentration at the pour point that will ensure attainment and maintenance of the estuarine numeric nutrient criteria concentration. The TN and TP DPV for the inflowing canal or stream can be determined from the point on the regression line having the same salinity as the pour point, which is by definition 2.7 psu.

EPA's fourth proposed approach for establishing DPVs is to apply the downstream receiving estuary segment TN and TP criteria as shown in Table III.B–1 to the pour point as the DPVs. This is the simplest approach and may be appropriate where data are too limited to apply the first three approaches. As noted in Table III.B–1, Florida derived numeric nutrient criteria for Clearwater Harbor, Tampa Bay, Sarasota Bay, and Charlotte Harbor estuaries that can be found in Section 62–302.532(a)-(d), F.A.C. Therefore, the applicable DPVs for those four estuaries would be Florida's estuary criteria in Section 62–302.532(a)-(d), F.A.C. if using this fourth proposed approach for establishing DPVs.

EPA believes the proposed approaches for deriving DPVs establish a decision-making framework that is binding, clear, predictable, and transparent. Therefore, EPA is proposing that DPVs derived using these approaches do not require EPA approval under Clean Water Act section 303(c) to take effect.[200] A DPV calculated under options 2, 3, and 4 may be more stringent than a DPV calculated using a water quality model. These alternative options are intended to ensure that water quality standards are not only restored when found to be impaired, but are maintained when found to be attained, consistent with the CWA. Higher levels of TN and/or TP may be allowed in watersheds where it is demonstrated that such higher levels will fully protect the estuary's WQS. To the extent that it is determined that the alternative option DPVs for a given estuary are over-protective, applying a water quality model as set out in EPA's option 1 would result in a more refined definition of the DPV for that estuary.

EPA believes that these proposed approaches to establish DPVs are appropriate, scientifically defensible, and result in numeric values that will ensure the attainment and maintenance of the downstream estuarine criteria. EPA requests comment on these approaches. EPA also requests comment on the alternative approach of finalizing the numeric TN and TP DPVs that EPA calculated using these approaches (as provided in Volume 1: Estuaries, Section 1.6 of the technical support document) in place of the proposed approaches. Finally, EPA solicits additional available scientific information that can be used to ensure attainment and maintenance of the downstream estuarine criteria. Commenters who submitted comments or scientific information related to DPVs for estuaries during the public comment period for EPA's proposed inland waters rule (75 FR 4173) should reconsider their previous comments in light of the new information presented in this proposal and must re-submit their comments during the public comment period for this rulemaking to receive EPA response.

[200] 65 FR 24641, 24648 (April 27, 2000).

(d) Proposed Approach and Criteria for Tidal Creeks

Tidal creeks are relatively small coastal tributaries that lie at the transition zone between terrestrial uplands and the open estuary. They are small sub-estuaries that exhibit a wide range of salinities typical of larger estuaries, but on a smaller scale. Tidal creeks are important spawning and nursery areas for aquatic life in adjacent estuary and coastal systems. They typically receive freshwater flow from streams and groundwater, similar to estuaries, but have less developed drainage systems. Alternatively, some tidal creeks are dominated by mangroves and other wetland vegetation with no freshwater stream inputs, and serve as conduits for tidal water to enter and leave wetland areas. Water quality and biological conditions are different in tidal creeks compared to estuarine systems due to relatively small drainage areas, narrow stream channels, shallow depths, and the influence of adjacent marsh and mangrove habitats.

EPA reviewed the available scientific information and has determined that there are insufficient data and research at this time to develop separate numeric nutrient criteria specifically for tidal creeks. EPA, therefore, proposes to apply the TN and TP criteria developed for either the adjacent freshwater or estuarine segments to each tidal creek in Florida, depending on the tidal creek's salinity levels. If the mean chloride concentration of the tidal creek is < 1,500 mg/L, EPA proposes to apply the TN and TP criteria from the adjacent freshwater segment (as defined in 40 CFR 131.43).[201] If the mean chloride concentration of the tidal creek is > 1,500 mg/L, EPA proposes to apply the chlorophyll *a,* TN, and TP criteria from the adjacent estuary segment (as defined in Section III.B of this proposed rulemaking). Alternatively, EPA requests comment on applying the more stringent of the two sets of criteria, freshwater or estuarine, to tidal creeks with varying salinity levels. For more information please see the TSD (Volume 1: Estuaries, Section 3.1).

As a second alternative option, EPA could use the mean salinities for each tidal creek to interpolate TN and TP concentrations between freshwater and estuarine criteria from adjacent freshwater and estuarine segments. TN and TP vary predictably along a salinity gradient, allowing for this interpolation where salinity data are available. The calculation EPA could use for this interpolation is provided in the TSD (Volume 1: Estuaries, Section 3.1).

EPA believes that the proposed approach for tidal creeks is appropriate, scientifically defensible, and results in numeric nutrient criteria that protect the State's designated uses and ensure that nutrient concentrations of a body of water support balanced natural populations of aquatic flora and fauna. EPA requests comment on the proposed option and the alternative. EPA also requests additional available scientific information that can be used to provide protection for fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife to protect Florida's tidal creeks from nitrogen and phosphorus pollution.

(e) Proposed Approach and Criteria for Marine Lakes

Marine lakes are coastal lakes and ponds with groundwater or intermittent surface water connections to marine water. They do not have a permanent surface connection to tidal waters. They are small and shallow, and generally round or elliptical in shape, as they were formed from depressions that became isolated from marine waters by sand and dune formation. Some marine lakes are stratified by a salinity gradient where a freshwater layer at the surface is separated from a denser saline layer below. Similar to inland lakes, marine lakes in Florida are generally oligotrophic under undisturbed conditions with low nitrogen and phosphorus concentrations and low productivity. Their oligotrophic nature and stratification make them susceptible to the adverse effects of nitrogen and phosphorus pollution. EPA analyzed the data from over 50 marine lakes in Florida and found that chlorophyll *a* responded to TN and TP in a similar fashion, based on color and alkalinity, as freshwater inland lakes. Details and supporting documentation are provided in the TSD (Volume 1: Estuaries, Section 3.2).

EPA is proposing to apply the criteria developed for freshwater inland lakes in EPA's December 6, 2010 rulemaking for Florida's lakes and flowing waters (40 CFR 131.43) to protect the designated uses in marine lakes since marine lakes have a similar trophic condition expectation and chlorophyll *a* response to nutrient concentrations. The criteria EPA proposes to apply to marine lakes are those found in 40 CFR 131.43 and replicated in Table III.B–2.

TABLE III.B–2—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA'S MARINE LAKES

Long term average lake color [a] and alkalinity	EPA final Chl-a [b,*] µg/L	EPA final TN and TP criteria [Range]	
		TN mg/L	TP mg/L
Colored lakes [c]	20	1.27 [1.27–2.23]	0.05 [0.05–0.16]
Clear lakes, high alkalinity [d]	20	1.05 [1.05–1.91]	0.03 [0.03–0.09]
Clear lakes, low alkalinity [e]	6	0.51 [0.51–0.93]	0.01 [0.01–0.03]

[a] Platinum-cobalt units (PCU) assessed as true color free from turbidity.
[b] Chl-a is defined as corrected chlorophyll, or the concentration of chl-a remaining after the chlorophyll degradation product, phaeophytin a, has been subtracted from the uncorrected chl-a measurement.
[c] Long-term color > 40 PCU and alkalinity > 20 mg/L $CaCO_3$.
[d] Long-term color ≤ 40 PCU and alkalinity > 20 mg/L $CaCO_3$.
[e] Long-term color ≤ 40 PCU and alkalinity ≤ 20 mg/L $CaCO_3$
* For a water body, the annual geometric mean of chl-a, TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

[201] EPA did not establish chlorophyll *a* criteria for freshwater streams due to lack of available approaches to interpret existing data to infer scientifically supported thresholds for these nutrient-specific response variables in Florida streams.

EPA believes that the proposed approach for marine lakes is appropriate, scientifically defensible, and results in numeric nutrient criteria that protect the State's designated uses and ensure that nutrient concentrations of a body of water support balanced natural populations of aquatic flora and fauna. EPA requests comment on the proposed approach. EPA also solicits additional available scientific information that can be used to provide protection for fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife to protect Florida's marine lakes from nitrogen and phosphorus pollution.

C. Proposed Numeric Criteria for Coastal Waters

1. Introduction

EPA is defining coastal waters in this proposed rulemaking as marine waters that start at the land margin and extend up to three nautical miles from shore, with chloride concentrations greater than 1,500 mg/L, excluding estuaries. Unlike estuaries, which are typically highly influenced by freshwater flows and can be organized within boundaries, coastal waters are less confined, with open connections to ocean waters, and have localized influences from freshwater sources near the estuary/coastal boundary (i.e., estuary pass).

EPA is proposing to derive chlorophyll *a* criteria for coastal waters using satellite remote sensing, where possible. This approach is possible for all coastal waters except those in the Big Bend Coastal region. In the Big Bend Coastal region (waters offshore of Apalachicola Bay, Alligator Harbor, Ochlockonee Bay, Big Bend/Apalachee Bay, Suwannee River, and Springs Coast), seagrass beds and CDOM export from rivers confound interpretation of satellite data and derivation of chl_{RS}-*a*. EPA's proposed approach and criteria for the Big Bend Coastal region is discussed in Section III.B.

2. Proposed Numeric Criteria (Coastal Waters)

EPA is proposing numeric chlorophyll *a* criteria, as measured by remotely sensed numeric chlorophyll *a* (chl_{RS}-*a*), for 71 segments in three coastal regions of Florida classified as Class III waters under Florida law (Section 62–302.400, F.A.C.). A map showing the locations of the coastal segments can be found in the TSD (Volume 2: Coastal Waters, Section 1.3). EPA's proposed coastal criteria are listed in Table III.C–1.

TABLE III.C–1—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA'S COASTAL WATERS

Coastal region	Coastal segment+	Approximate location	Chlorophyll$_{RS}$ - *a*[1]* (mg/m^3)
Panhandle	1	Alabama border	2.41
	2	Pensacola Bay Pass	2.57
	3		1.44
	4		1.16
	5		1.06
	6		1.04
	7		1.14
	8	Choctawhatchee Bay Pass	1.23
	9		1.08
	10		1.09
	11		1.11
	12		1.18
	13		1.45
	14	St. Andrews Bay Pass	1.74
	15	St. Joseph Bay Pass	2.75
	16		2.39
	17	Southeast St. Joseph Bay	3.47
West Florida Shelf	18		3.96
	19	Tampa Bay Pass	4.45
	20		3.37
	21		3.25
	22		2.95
	23		2.79
	24		2.98
	25		3.24
	26	Charlotte Harbor	4.55
	27		4.22
	28		3.67
	29		4.16
	30		5.70
	31		4.54
	32		4.03
	33	Fort Myers	4.61
Atlantic Coast	34	Biscayne Bay	0.92
	35		0.26
	36		0.26
	37		0.24
	38		0.21
	39		0.21
	40		0.20
	41		0.20
	42		0.21
	43		0.25
	44		0.57

TABLE III.C–1—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA'S COASTAL WATERS—Continued

Coastal region	Coastal segment+	Approximate location	Chlorophyll$_{RS}$ - *a*[1]* (mg/m^3)
	45	St. Lucie Inlet	1.08
	46		1.42
	47		1.77
	48		1.55
	49		1.44
	50		1.53
	51		1.31
	52		1.40
	53		1.80
	54	Canaveral Bight	2.73
	55		2.33
	56		2.28
	57		2.06
	58		1.92
	59		1.76
	60		1.72
	61		2.04
	62		1.92
	63		1.86
	64		1.95
	65		2.41
	66		2.76
	67		2.80
	68		3.45
	69	Nassau Sound	3.69
	70		3.78
	71	Georgia border	4.22

[1] Chlorophyll$_{RS}$-*a* is remotely sensed calculation of chlorophyll *a* concentrations.
* For a given water body, the annual geometric mean of the chlorophyll *a* concentration shall not exceed the applicable criterion concentration more than once in a three-year period.
+ Please see TSD for location of Coastal Segments (Volume 2: Coastal Waters, Section 1.3).

As discussed in Section III.A.1.b, EPA is not proposing TN and TP criteria for Florida's coastal waters.

(a) Summary of Approaches

(1) Proposed Approach (Coastal Waters)

EPA conducted a comprehensive review of water body-specific water quality and impairment information as detailed in Section III.A.3.a. EPA determined through this review that at most times, Florida coastal waters appear to be supporting balanced natural populations of aquatic flora and fauna. EPA removed data from criteria computations in the limited instances where the Agency found that coastal waters were listed on the State's CWA section 303(d) list to ensure the resulting dataset was representative of times and locations that these waters were supporting balanced natural populations of aquatic flora and fauna. Therefore, EPA is proposing to use a reference condition approach using data collected from satellite remote sensing of chlorophyll *a*.

To derive proposed criteria for coastal areas, EPA chose to use chl$_{RS}$-*a* measurements from the SeaWiFS satellite because it had the longest and earliest historical record.[202] From the satellite measurements, screened to reflect conditions supportive of balanced natural populations of flora and fauna, EPA calculated criteria as the 90th percentile of the annual geometric means of chl$_{RS}$-*a* values over the 1998–2009 period in each coastal segment (For a discussion of EPA's selection of the 90th percentile to derive the proposed coastal criteria, see Section III.A.3.a and the TSD (Volume 2: Coastal Waters)).

(b) Request for Comment on Proposed Approach

EPA believes that the proposed approach for coastal waters is appropriate, scientifically defensible, and results in numeric nutrient criteria that protect the State's designated uses and ensure that nutrient concentrations of a body of water support balanced natural populations of aquatic flora and fauna. EPA requests comment on this approach and the resulting numeric nutrient criteria. EPA also solicits additional available scientific information that can be used to provide protection of fish consumption, recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife and protect Florida's Class III coastal waters from nitrogen and phosphorus pollution.

(c) Proposed Criteria Duration and Frequency (Coastal Waters)

For EPA's proposed chlorophyll *a* criteria for coastal waters, the criterion-magnitude values (expressed as concentrations) are provided in Table III.C–1, the criterion-duration (or averaging period) is specified as annual, and the criterion-frequency is specified as no-more-than-once-every-three-years. EPA is proposing a criteria-duration of one year, in which sampled chlorophyll *a* concentrations are summarized as annual geometric means, to be consistent with the data set used to derive these criteria, which relied on annual average concentrations. EPA's proposed excursion frequency of no-more-than-once-every-three-years is intended to minimize negative effects on designated uses as it will allow water bodies enough time to recover from occasionally elevated chlorophyll *a*

[202] NOTE: SeaWiFS was replaced by MODIS and MERIS satellite generated data. EPA has developed an approach that can utilize any new satellite data sources for ongoing assessment purposes.

concentrations.[203] These duration and frequency components of the criteria are identical to those finalized in EPA's rule for Florida's lakes and flowing waters (40 CFR 131.43), which will add consistency to the implementation of these criteria with those established in the previous rulemaking. Finally, the 3-year evaluation period provides a sufficient representation of average water body characteristics in the majority of cases, because it balances both short-term and long-term variation, while not imposing undue monitoring expectations. EPA requests comment on the frequency and duration components of these criteria and whether the three components of the criteria (magnitude, duration and frequency) taken in combination will ensure protection of the designated uses of these waters.

D. Proposed Numeric Criteria for South Florida Inland Flowing Waters

1. Proposed Numeric Criteria (South Florida Inland Flowing Waters)

For purposes of this proposal, EPA is defining ''south Florida inland flowing waters'' as inland predominantly fresh surface waters that have been classified as Class I or Class III in the South Florida Nutrient Watershed Region, which encompasses the waters south of Lake Okeechobee, the Caloosahatchee River (including Estero Bay) watershed, and the St. Lucie watershed. This area contains more than 1,700 miles (2,736 km) of canals, dikes, and levees that control the movement of freshwater in south Florida. Some of the significant land management units within south Florida include the Everglades Agricultural Area, the Loxahatchee National Wildlife Refuge (Water Conservation Area 1), Water Conservation Areas 2 and 3, Big Cypress National Preserve, Everglades National Park, Biscayne Bay National Park, and the Florida Keys National Marine Sanctuary. A map showing this region is provided in the TSD (Volume 3: South Florida Inland Flowing Waters, Section 3).

EPA is proposing that TN and TP DPVs be derived using the approaches outlined in Section III.D.2 for 22 pour points in south Florida, outside of the Everglades Protection Area (EvPA) and Everglades Agricultural Area (EAA), where inland flowing waters discharge into south Florida marine waters (Biscayne Bay, Florida Bay, and marine waters on the southeast and southwest coasts). For south Florida, EPA is proposing the use of DPVs to manage nitrogen and phosphorus pollution in the inland flowing waters and protect the water quality of estuaries and coastal waters downstream. Therefore, the applicable numeric nutrient criteria for south Florida inland flowing waters, outside the lands of the Miccosukee and Seminole Tribes, EvPA, and the EAA, would consist solely of the south Florida marine water DPVs. The calculated DPVs using the approaches in Section III.D.2 for the 22 pour points are presented in the TSD (Volume 3: South Florida Inland Flowing Waters, Section 2).

The proposed approaches to derive DPVs that EPA is proposing for south Florida inland flowing waters do not apply to flowing waters (canals) within the EvPA or the EAA. There is an existing TP criterion of 0.010 mg/L (10 ppb) that currently applies to the marshes and adjacent canals within the EvPA (Section 61–302.540, F.A.C.). EPA approved that TP criterion in 2005 as protective of the waters in the EvPA. EPA's approval was upheld by the U.S. District Court in *Miccosukee Tribe of Indians of Florida, et al.* v. *U.S. EPA.*[204] For this proposal, EPA has determined that the existing TP criterion continues to be protective of the designated uses of the flowing waters in the EvPA and that no additional numeric nutrient criteria are necessary at this time for the EvPA. While the existing TP criterion does not apply directly to the flowing waters of the EAA, EPA has also determined that the TP criterion will serve to be protective of the designated uses of the flowing waters in the EAA. Most of the water flowing from the EAA currently passes through stormwater treatment areas (STAs) that have been specifically constructed to remove phosphorus from the water before it enters the EvPA. The waters discharging from the STAs are subject to CWA discharge permits that must include limits as stringent as necessary to meet the 10 ppb TP criterion in the EvPA. Efforts to reduce phosphorus upstream of the STAs (i.e., in the EAA) are currently underway to ensure the water discharged from the STAs will meet the TP criterion in the EvPA. Based on the combination of the actions that will be necessary to ensure that waters from the EAA do not cause an impairment of the downstream waters in the EvPA, EPA has determined that the existing TP criterion is the only numeric nutrient criterion that is necessary to protect the flowing waters of the EAA as well as the EvPA. Development of water quality standards for the EvPA and restoration actions within the EAA to attain the TP criterion have been and remain subject to the oversight of two federal district courts. EPA believes its decision not to propose additional numeric nutrient criteria for these areas is appropriate given the ongoing restoration efforts in the Everglades. For further information about ongoing EPA and FDEP actions related to Everglades restoration see: (1) *http://www.epa.gov/aboutepa/states/fl.html,* and (2) *http://depnewsroom.wordpress.com/hot-topics/everglades/.*

2. Proposed DPVs (South Florida)

EPA is proposing a procedure to establish numeric TN and TP criteria for south Florida inland flowing waters to protect the downstream marine waters that ultimately receive nitrogen and phosphorus pollution from upstream sources. However, as explained more fully in Section I.A, EPA does not intend to finalize these DPVs if the district court modifies the Consent Decree consistent with EPA's amended determination that numeric DPVs are not necessary to meet CWA requirements in Florida. Like the DPVs that EPA is proposing to protect estuaries in Florida, EPA is proposing the DPVs for south Florida inland flowing waters that will apply at each stream or canal's point of entry into the downstream south Florida marine water. If the DPV is not attained at the pour point into the applicable marine water segment, then the collective set of flowing waters, including canals, in the upstream watershed does not attain the DPV, for purposes of CWA section 303(d).

The Agency is proposing a hierarchical procedure that includes four approaches for setting TN and TP DPVs. These are the same approaches EPA is proposing for the State to derive DPVs for Florida estuaries to reflect the data and scientific information available. The methods available to derive DPVs should be considered in the following order:

1. Water quality simulation models to derive TN and TP values,

2. Reference condition approach based on TN and TP concentrations at the stream pour point, coincident in time with the data record from which the downstream receiving marine water segment TN and TP criteria were developed using the same data quality screens and reference condition approach,

3. Dilution models based on the relationship between salinity and

[203] Boynton, W.R., J.D. Hagy, L. Murray, C. Stokes, and W.M. Kemp. 1996. A comparative analysis of eutrophication patterns in a temperate coastal lagoon. *Estuaries* 19(2B):408- 421.

[204] *Miccosukee Tribe of Indians of Fla., et al.* v. *U.S. EPA,* No. 1:04-cv-21448 ASG, 2008 WL 2967654 (S.D. Fla. July 29, 2008).

nutrient concentration in the receiving segment, and

4. The TN and TP criteria from the receiving marine water segment to which the freshwater stream discharges, in cases where data are too limited to apply the first three approaches.

EPA's intention in proposing the four approaches is to provide a range of methods for deriving TN and TP DPVs that reflect the degree of data and scientific information available. Water quality modeling is the most rigorous and most data-demanding method, and will generally result in the most refined DPVs. Water quality modeling is EPA's preferred method for establishing DPVs and is listed first in the hierarchy. Due to the highly modified and managed canal systems in south Florida, EPA did not develop mechanistic models for the region, however, EPA is including the option for use if mechanistic models are developed for south Florida in the future. EPA's lead approach for calculating DPVs in south Florida is the reference condition approach. This approach is followed by less rigorous methods that are also less data-demanding. Using a procedure from a lower tier of the hierarchy requires less data, but also generally results in more stringent DPVs to account for the uncertainties associated with these less refined procedures.

All four approaches are briefly described in the following discussion. A more detailed description of the approaches, as well as the TN and TP DPVs that result from using the lead approach, the reference condition approach, is provided in the technical support document (Volume 3: South Florida Inland Flowing Waters, Section 2).

EPA believes that the first approach, the use of water quality simulation models, is the most refined method to define a DPV at the stream's pour point that will support balanced natural populations of aquatic flora and fauna in the downstream marine water. This approach may be appropriate when water quality simulation models are available, such as in the estuarine systems where mechanistic models were used to derive the criteria protective of the estuary.

EPA is proposing the second DPV approach, the reference condition approach, where a reference condition approach is used to derive TN, TP, and chlorophyll *a* criteria in the downstream marine water, as the lead approach for calculating DPVs in south Florida. Florida derived numeric nutrient criteria for TN, TP, and chlorophyll *a* in south Florida marine waters using a ''Maintain Healthy Conditions Approach,'' which derives criteria reflective of ambient water quality conditions (Section 62–302.532, F.A.C.). This approach is akin to EPA's reference condition approach, which is designed to develop numeric nutrient criteria that are protective of applicable designated uses by identifying numeric nutrient criteria concentrations occurring in least-disturbed waters that are supporting designated uses. Since the downstream marine water is supporting balanced natural populations of aquatic flora and fauna during the reference condition period, the nutrient loads passing through the pour points into the marine water during the same period should be protective of the marine water. Therefore, EPA believes it would be appropriate in these cases to derive reference condition-based DPVs using water quality data at the pour point of the freshwater streams, coincident in time with the data record from which the downstream marine water segment TN and TP criteria were derived. EPA proposes that water quality data used to calculate DPVs at each pour point be screened to prevent the use of upstream water quality data that coincided with a documented downstream impact. This will prevent deriving a DPV using upstream water quality data that coincided with a documented downstream impact (e.g., CWA section 303(d) listing for nutrients in the marine water segment) and ensure mathematical consistency between the DPVs and marine water criteria.

The third DPV approach is also available for south Florida marine systems where water quality simulation models are not available. In these areas, EPA believes it would be appropriate to derive DPVs using dilution models based on the relationship between salinity and nutrient concentration. The concept is that the tidal mixing or dilution can be estimated from the marine water salinity. By plotting observed marine water TN or TP versus the marine water salinity and fitting a linear regression, the TN or TP at various levels of salinity can be determined. This regression model can then be used to determine the TN or TP concentration at the pour point associated with the average marine water salinity that will ensure the attainment and maintenance of the marine water numeric nutrient criteria concentration.

EPA's fourth approach for establishing DPVs is to apply the downstream receiving marine water segment TN and TP criteria to the pour point as the DPVs. This is the simplest approach and may be appropriate where data are too limited to apply the first three approaches. Florida derived numeric nutrient criteria for south Florida marine waters that can be found in Section 62–302.532(e)–(h), F.A.C. Therefore, the applicable DPVs for those south Florida marine waters would be Florida's criteria in Section 62–302.532(e)–(h), F.A.C. if using this fourth proposed approach for establishing DPVs.

EPA believes the proposed approaches for deriving DPVs establish a decision-making framework that is binding, clear, predictable, and transparent. Therefore, EPA is proposing that DPVs derived using these approaches do not require EPA approval under Clean Water Act section 303(c) to take effect.[205] A DPV calculated under options 2, 3, and 4 may be more stringent than a DPV calculated using a water quality model. These alternative options are intended to ensure that water quality standards are not only restored when found to be impaired, but are maintained when found to be attained, consistent with the CWA. Higher levels of TN and/or TP may be allowed in watersheds where it is demonstrated that such higher levels will fully protect the marine water's WQS. To the extent that it is determined that the alternative option DPVs for a given marine water are over-protective, applying a water quality model as set out in EPA's option 1 would result in a more refined definition of the DPV for that marine water.

EPA believes that these proposed approaches to establish DPVs are appropriate, scientifically defensible, and result in numeric values that will ensure the attainment and maintenance of the downstream south Florida marine water criteria. EPA requests comment on these approaches. EPA also requests comment on the alternative approach of finalizing the numeric TN and TP DPVs that EPA calculated using these approaches (as provided in Volume 3: South Florida Inland Flowing Waters, Section 2 of the technical support document) in place of the proposed approaches. Finally, EPA solicits additional available scientific information that can be used to ensure attainment and maintenance of the downstream south Florida marine water criteria. Commenters who submitted comments or scientific information related to DPVs for estuaries during the public comment period for EPA's proposed inland waters rule (75 FR 4173) should reconsider their previous comments in light of the new information presented in this proposal and must re-submit their comments

[205] 65 FR 24641, 24647 (April 27, 2000).

during the public comment period for this rulemaking to receive EPA response.

(a) Alternative Approach (South Florida Inland Flowing Waters)

As an alternative to EPA's proposed DPV-only approach for south Florida inland flowing waters, EPA developed protective instream TN and TP criteria for Class I and III flowing waters (including canals and streams) in three inland subregions in south Florida (Biscayne, Palm Beach, and West) that are outside the lands of the Miccosukee and Seminole Tribes, EAA, and EvPA. EPA's alternative criteria for south Florida inland flowing waters are listed in Table III.D–1.

TABLE III.D–1—EPA'S ALTERNATIVE NUMERIC CRITERIA FOR SOUTH FLORIDA'S INLAND FLOWING WATERS

Subregion	TN (mg/L)	TP (mg/L)
Biscayne	2	0.052
Palm Beach	2	0.052
West	2	0.052

EPA defined the boundaries of these three subregions based on patterns in geology/soils, hydrology, and vegetation. EPA compiled data for these subregions from IWR Run 40 and the South Florida Water Management District's DBHydro database. EPA screened the data to include freshwater locations and Class III waters, resulting in 4,758 daily averages with matched chl-a, TN, and TP data.

Next, EPA chose to evaluate algal biomass, as indicated by chlorophyll *a* concentrations, as a sensitive endpoint for numeric nutrient criteria development. Nutrient pollution can increase biomass of primary producers, especially algae, and have subsequent negative impacts on recreation and aquatic life. The application of algal biomass as an endpoint for criteria derivation in south Florida inland flowing waters, including canals, might be appropriate given the following observations: (1) Flow in these water bodies is frequently reduced, leading to long residence times; (2) canopy cover is reduced both naturally and through manipulation, reducing light limitation; and (3) nutrient concentrations are elevated. Because both average chlorophyll *a* concentrations and instantaneous chlorophyll *a* concentrations (e.g. bloom conditions) can impact recreation and aquatic life, EPA chose to derive TN and TP criteria to reduce the likelihood of increased nuisance algal blooms by relating maximum chlorophyll *a* to average annual chlorophyll concentrations. EPA defined nuisance algal bloom conditions as concentrations above 30 µg/L using trophic state boundaries, user perception studies, and observed impacts. EPA evaluated existing scientific literature on the frequency of occurrence of chlorophyll *a* levels, and selected a 10 percent occurrence of nuisance algal blooms as the maximum allowable frequency to prevent impairment of recreation and aquatic life in the three south Florida inland subregions.[206]

EPA then used statistical models to derive TN and TP criteria to limit the frequency of occurrence of nuisance algal blooms in these waters, defined by chlorophyll *a* concentrations above 30 µg/L. The resulting TN and TP criteria represent the annual geometric mean of TN and TP concentrations from flowing waters in each of the three subregions that are associated with a 10 percent or lower frequency of nuisance algal bloom occurrence. If EPA were to finalize this alternative approach instead of EPA's lead approach, these TN and TP criteria would apply throughout the flowing waters in each of the three subregions, not just at the pour points. If criteria are calculated using this alternative approach, DPVs for protecting downstream south Florida marine waters will still be calculated using the hierarchical approach in Section III.D.2, unless, as described more in Section I.A, the district court modifies the Consent Decree consistent with EPA's amended determination that numeric DPVs are not necessary to meet CWA requirements in Florida. Additional details on this alternative approach are provided in the TSD (Volume 3: South Florida Inland Flowing Waters, Section 3).

(b) Request for Comment on Proposed and Alternative Approaches

EPA believes that the proposed approach for south Florida inland flowing waters is appropriate, scientifically defensible, and results in the protection of south Florida inland flowing waters. EPA requests comment on this approach. EPA also solicits additional available scientific information that can be used to provide protection of fish consumption, recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife in south Florida's Class I and III inland flowing waters from nitrogen and phosphorus pollution.

In addition, EPA requests comment on the alternative approach of deriving instream criteria for south Florida inland flowing waters outside of the lands of the Miccosukee and Seminole Tribes, EvPA, and EAA. Specifically, EPA requests comment on the scientific defensibility of this alternative approach as well as whether application of this approach will result in numeric nutrient criteria that protect the State's designated uses and ensure that nutrient concentrations of a body of water support balanced natural populations of aquatic flora and fauna.

Commenters who submitted comments or scientific information related to numeric nutrient criteria for south Florida inland flowing waters during the public comment period for EPA's proposed inland waters rule (75 FR 4173) should reconsider their previous comments in light of the new information presented in this proposal and must re-submit their comments during the public comment period for this rulemaking to receive EPA response.

F. Applicability of Criteria When Final

EPA proposes that the numeric nutrient criteria for Florida's estuaries, coastal waters, and south Florida inland flowing waters described in this rule be effective for CWA purposes 60 days after EPA publishes final criteria, and apply in addition to any other criteria for Class I, II, or Class III waters already adopted by the State and submitted to EPA (and for those adopted after May 30, 2000, approved by EPA). EPA requests comment on this proposed effective date.

Additionally, EPA also requests comment on the alternative of a delayed effective date, such as the 15-month delayed effective date that EPA promulgated in the final inland waters rule. EPA subsequently further extended the effective date of the 2010 rule to allow time for FDEP to finalize and EPA to review Florida's own numeric nutrient criteria rulemaking and reduce any administrative confusion and inefficiency that should occur if Federal criteria took effect while FDEP was finalizing or EPA was reviewing the State rulemaking. Florida's newly-approved State WQS include a schedule for future State rulemaking whereby they will develop numeric nutrient criteria for additional estuaries by June 30, 2013 and again by June 30, 2015. If Florida is on schedule toward adoption of protective and approvable standards for their additional waters, EPA may consider delaying the effective date of

[206] Havens, K.E. and W.W. Walker. 2002. Development of a total phosphorus concentration goal in the TMDL process for Lake Okeechobee, Florida (USA). *Lake and Reservoir Management* 18(3):227–238.

its final rule to after June 30, 2015 to allow time for Florida to finalize and EPA to review the State's numeric nutrient criteria.

For water bodies that Florida has designated as Class I, II, and III, any final EPA numeric nutrient criteria will be applicable CWA water quality criteria for purposes of implementing CWA programs including permitting under the NPDES program, as well as monitoring and assessment, and establishment of TMDLs. The proposed criteria in this rule, when finalized, would be subject to Florida's general rules of applicability to the same extent as are other State-adopted and/or federally-promulgated criteria for Florida waters. Furthermore, states have discretion to adopt general policies that affect the application and implementation of WQS (40 CFR 131.13). There are many applications of criteria in Florida's water quality programs. Therefore, EPA believes that it is not necessary for purposes of this proposed rule to enumerate each of them, nor is it necessary to restate any otherwise generally applicable requirements.

It is important to note that no existing TMDL for waters in Florida will be rescinded or invalidated as a result of finalizing this proposed rule, nor will this proposed rule when finalized have the effect of withdrawing any prior EPA approval of a TMDL in Florida. Neither the CWA nor EPA regulations require TMDLs to be completed or revised within any specific time period after a change in water quality standards occurs. TMDLs are typically reviewed as part of states' ongoing water quality assessment programs. Florida may review TMDLs at its discretion based on the State's priorities, resources, and most recent assessments. NPDES permits are subject to five-year permit cycles, and in certain circumstances are administratively continued beyond five years. In practice, States often prioritize their administrative workload in permits. This prioritization could be coordinated with TMDL review. Because current nutrient TMDLs were established to protect Florida's waters from the effects of nitrogen and phosphorus pollution, the same goal as EPA's numeric nutrient criteria, the Agency believes that, absent specific new information to the contrary, it is reasonable to presume that basing NPDES permit limits on those TMDLs will result in effluent limitations as stringent as necessary to meet the federal numeric nutrient criteria.

IV. Under what conditions will EPA either not finalize or withdraw these Federal standards?

Under the CWA, Congress gave states primary responsibility for developing and adopting water quality standards for their navigable waters (CWA section 303(a)–(c)). On June 13, 2012, FDEP submitted new and revised WQS for review by the EPA pursuant to section 303(c) of the CWA. On November 30, 2012, EPA approved the provisions of these rules submitted for review that constitute new or revised WQS (see Section II.F for additional information). Florida continues to have the option to adopt and submit to EPA numeric nutrient criteria for any of the State's Class I, Class II, and Class III waters that are not covered in their June 13, 2012 submission to EPA, consistent with CWA section 303(c) and implementing regulations at 40 CFR 131. Although EPA is proposing numeric nutrient criteria for Florida estuaries, coastal waters, and south Florida inland flowing waters, if EPA approves criteria that are legally effective under Florida law for any other waters covered in this proposed rule as fully satisfying the CWA before publication of the final rulemaking, EPA will not proceed with the final rulemaking for those waters. Also, EPA will not proceed with final rulemaking for numeric DPVs, provided that the district court modifies the Consent Decree consistent with EPA's amended determination that numeric DPVs are not necessary to meet CWA requirements in Florida (see Section I.A for more information).

Pursuant to 40 CFR 131.21(c), if EPA finalizes this proposed rule, EPA's promulgated WQS become applicable WQS for purposes of the CWA on their effective date unless or until EPA withdraws those federally-promulgated WQS. Withdrawing the Federal standards for the State of Florida would require rulemaking by EPA pursuant to the requirements of the Administrative Procedure Act (5 U.S.C.551 *et seq.*). EPA would undertake such a rulemaking to withdraw the Federal criteria if and when Florida adopts and EPA approves numeric nutrient criteria that fully meet the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR 131. If Florida adopts and EPA approves nutrient criteria that meet these requirements for a subset of waters, EPA would withdraw the Federal standards for that subset of waters.

V. Alternative Regulatory Approaches and Implementation Mechanisms

A. Designating Uses

Under CWA section 303(c)(2)(A), states shall adopt designated uses after taking ''into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish, and wildlife, recreation in and on the water, agricultural, industrial and other purposes including navigation.'' Designated uses ''shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of [the CWA].'' (CWA section 303(c)(2)(A)). EPA's regulation at 40 CFR 131.3(f) defines ''designated uses'' as ''those uses specified in water quality standards for each water body or segment whether or not they are being attained.'' A ''use'' is a particular function of, or activity in, waters of the United States that requires a specific level of water quality to support it. In other words, designated uses are a state's concise statements of its management objectives and expectations for individual surface waters.

In the context of designating uses, states often work with stakeholders to identify a collective goal for their waters that the state intends to strive for as it manages water quality. States may evaluate the attainability of these goals and expectations to ensure they have designated appropriate uses (40 CFR 131.10(g)). EPA's regulations at 40 CFR 131 interpret and implement CWA sections 101(a)(2) and 303(c)(2)(A) to require that states adopt designated uses that provide water quality for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water (referred to as uses specified in section 101(a)(2) of the Act), wherever attainable (40 CFR 131.2; 131.5(a)(4); 131.6(a),(f); 131.10(g),(j)). Where states do not designate uses specified in 101(a)(2) of the Act, or remove such uses, they must demonstrate that the uses are not attainable consistent with the use attainability analysis (UAA) provisions of 40 CFR 131.10, specifically 131.10(g). A state may remove protection for a use specified in CWA section 101(a)(2) if it can show, based on a UAA consistent with 131.10, that the use is not attainable. States may include waters located in the same watershed in a single UAA, provided that there is site-specific information to show how each individual water fits into the group in the context of any single UAA and how each individual water meets the applicable requirements of 40 CFR

131.10(g) for removing or modifying a use.

EPA's proposed numeric nutrient criteria for estuaries, coastal waters, and south Florida inland flowing waters will apply to those waters designated by Florida as Class I (Potable Water Supplies), Class II (Shellfish Propagation or Harvesting), and Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife). If Florida removes the Class I, Class II, and/or Class III designated use for any particular water body ultimately affected by this rule such that it is no longer designated as either Class I, II, or III, and EPA approves such a removal because it is consistent with CWA section 303(c) and regulations at 40 CFR 131, then the federally-promulgated numeric nutrient criteria would not apply to that water body. Only the water quality criteria associated with the revised designated use would apply to that water body.

B. Variances

A variance may be described as a time-limited designated use and criteria that target a specific pollutant(s), source(s), water body(ies) and/or water body segment(s). Variances constitute new or revised water quality standards subject to the procedural and substantive requirements applicable to removing a designated use.[207] Thus, EPA may only approve a variance if it is based on the same factors, set out at 40 CFR 131.10(g), that are required to revise a use specified in CWA section 101(a)(2) through a UAA.

Typically, variances are time-limited, but may be renewed. Temporarily modifying the designated use for a particular water body through a variance process allows a state to identify an interim designated use and associated criteria to serve as the basis for NPDES permit limits and certifications under CWA section 401 during the term of the variance while maintaining the designated use and associated criteria as the ultimate goal. A state should seek a variance instead of removing or revising the designated use where the state believes the designated use and associated criteria can be attained at some point in the future. By maintaining the designated use, and associated criteria, and by specifying a point in the future when the designated use will be fully applicable in all respects, the state ensures that further progress will be made in improving water quality and attaining the ultimate goal.

A variance may be written to address a specific geographic area, a specific pollutant or pollutants, and/or a specific discharger. All other applicable water quality standards not specifically modified by the variance, including any other criteria adopted to protect the designated use, remain applicable. State variance procedures, as part of state water quality standards, must be consistent with the substantive requirements of 40 CFR 131. Each variance must be submitted to EPA as a revised water quality standard for review and approval or disapproval pursuant to CWA section 303(c).

For purposes of this proposal, EPA is proposing criteria that apply to use designations that Florida has already established. EPA believes that the State continues to have sufficient authority under 131.10 to grant variances under its variance procedures to Class I, Class II or Class III uses and associated criteria. For this reason, EPA is not proposing a Federal variance procedure.

C. Site-Specific Alternative Criteria

Site-specific alternative criteria (SSAC) are alternative values to otherwise applicable water quality criteria that would be applied on a watershed, area-wide, or water body-specific basis that meet the regulatory test of protecting the water's designated use, having a basis in sound science, and ensuring the protection and maintenance of downstream water quality standards. SSAC may be more or less stringent than the otherwise applicable criteria. In either case, because the SSAC must protect the same designated use and must be based on sound science according to the requirements of 40 CFR 131.11(a), there is no need to modify the designated use or conduct a UAA. A SSAC may be appropriate when additional scientific data and analyses can bring increased precision or accuracy to expressing the concentration of a water quality parameter that is protective of the designated use.

In EPA's 2010 rulemaking for Florida's lakes and flowing waters outside of the South Florida Nutrient Watershed Region, EPA promulgated a procedure whereby EPA's Region 4 Regional Administrator may establish a SSAC after making available the proposed SSAC and supporting documentation for public comment (40 CFR 131.43(e)). This procedure became effective for CWA purposes on February 4, 2011. Under this provision, any entity, including the State, can submit a proposed Federal SSAC directly to EPA for the Agency's review and assessment as to whether an adjustment to the applicable Federal numeric nutrient criteria is warranted. The Federal SSAC process is separate and distinct from the State's SSAC processes in its water quality standards.

The current Federal SSAC procedure allows EPA to determine that a revised site-specific chlorophyll *a,* TN, TP, or nitrate+nitrite numeric criterion should apply in lieu of the generally applicable criteria promulgated in the final rule for Florida's lakes and flowing waters where that SSAC is demonstrated to be protective of the applicable designated use(s). The promulgated procedure provides that EPA will solicit public comment on its determination. Because EPA's rule established this procedure, implementation of this procedure does not require withdrawal of the associated federally-promulgated criteria for the Federal SSAC to be effective for purposes of the CWA. EPA has promulgated similar procedures for EPA's granting of variances and SSACs in other federally-promulgated water quality standards.[208]

As outlined in 40 CFR 131.43(e) and in the draft ''Technical Assistance for Developing Nutrient Site-Specific Alternative Criteria in Florida'' (June 2011), the process for obtaining a Federal SSAC includes the following steps. First, an entity seeking a SSAC compiles the supporting data, conducts the analyses, develops the expression of the criterion, and prepares the supporting documentation demonstrating that alternative numeric nutrient criteria are protective of the applicable designated use. The ''entity'' may be the State, a city or county, a municipal or industrial discharger, a permittee, a consulting firm acting on the behalf of a client, or any other individual or organization. The entity requesting the SSAC bears the burden of demonstrating that any proposed SSAC meets the requirements of the CWA and EPA's implementing regulations, specifically 40 CFR 131.11. Second, if the entity is not the State, the entity must provide notice of the proposed SSAC to the State, including all supporting documentation so that the State may provide comments on the proposal to EPA. Third, EPA's Region 4 Regional Administrator will evaluate the technical basis and protectiveness of the proposed SSAC and decide whether to publish a public notice and take

[207] *In re Bethlehem Steel Corporation,* General Counsel Opinion No. 58. March 29, 1977 (1977 WL 28245 (E.P.A. G.C.)). USEPA. 1994. *Water Quality Standards Handbook: Second Edition.* EPA–823–B–94–005a. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[208] See 40 CFR 131.33(a)(3), 40 CFR 131.34(c), 40 CFR 131.36(c)(3)(iii), 40 CFR 131.38(c)(2)(v), 40 CFR 131.40(c).

comment on the proposed SSAC. The Regional Administrator may decide not to publish a public notice and instead return the proposal to the entity submitting the proposal, with an explanation as to why the proposed SSAC application did not provide sufficient information for EPA to determine whether it meets CWA requirements or not. If EPA solicits public comment on a proposed SSAC, upon review of comments, the Regional Administrator may determine that the Federal SSAC is or is not appropriate to account for site-specific conditions and make that determination publicly available together with an explanation of the basis for the decision.

Since the SSAC provision in EPA's 2010 rule became effective, numerous entities have contacted EPA regarding a possible interest in obtaining a federal SSAC. However, following discussions with EPA, it became clear that a different water quality standards mechanism, such as a designated use change or variance, would be more appropriate in their particular situation. On March 9, 2011, EPA received a SSAC request from a pulp and paper mill that discharges to the Fenholloway River. Since the SSAC was derived from data in a nearby reference stream, the Econfina River, the TN and TP SSAC were requested to apply to both the Econfina and Fenholloway Rivers. Additional information was submitted by the requestor during 2011 and 2012 to address questions posed by EPA. At this time, EPA does not have sufficient information to move forward with proposing or establishing the TP or TN SSAC for the Fenholloway and Econfina Rivers.

EPA believes that there is benefit in extending this procedure for EPA adoption of Federal SSAC that will adjust the numeric nutrient criteria proposed in this rule. EPA is therefore proposing that a similar procedure promulgated in 40 CFR 131.43(e) apply to estuaries, coastal waters, and south Florida inland flowing waters. EPA requests comment on the following proposed application of the SSAC procedure.

To successfully develop a Federal SSAC for a given estuary, coastal water, or south Florida inland flowing water, a thorough analysis is necessary that indicates how the alternative concentration of TN, TP, or chlorophyll *a* supports both the designated use(s) of the water body itself, and provides for the attainment and maintenance of the WQS of downstream water bodies, where applicable. This analysis should have supporting documentation that consists of examining indicators of longer-term response to multiple stressors, such as seagrass health, as well as indicators of shorter-term response specific to nitrogen and phosphorus pollution, such as chlorophyll *a* concentrations associated with balanced phytoplankton biomass or sufficient dissolved oxygen to maintain aquatic life.

EPA is proposing seven approaches for developing SSAC for estuaries, coastal waters, and south Florida inland flowing waters that are similar to the four approaches EPA finalized in the 2010 rule for Florida's lakes and flowing waters. The first five proposed approaches are replicating the approaches EPA used to develop estuary, tidal creek, marine lake, coastal, and south Florida inland flowing water criteria, respectively, and applying these methods to a smaller subset of waters or water body segments. To understand the necessary steps in this analysis, interested parties should refer to the complete documentation of these approaches in the Technical Support Document for this proposed rule.

The sixth proposed approach for developing SSAC is to conduct a biological, chemical, and physical assessment of water body conditions. A detailed description of the supporting rationale must be included in the documentation submitted to EPA. The components of this approach could include, but are not limited to, evaluation of: seagrass health, presence or absence of native flora and fauna, chlorophyll *a* concentrations or phytoplankton density, average daily dissolved oxygen fluctuation, organic versus inorganic components of total nitrogen, habitat assessment, and hydrologic disturbance. This approach could apply to any water body type, with specific components of the analysis tailored for the situation.

The proposed seventh approach for developing SSAC is a general provision for using another scientifically defensible approach that is protective of the designated use. This provision allows applicants to make a complete demonstration to EPA using methods not otherwise described in the rule or its statement of basis, consistent with 40 CFR 131.11(b)(1)(iii). This approach could potentially include use of mechanistic models or other data and information.

D. Compliance Schedules

A compliance schedule, or schedule of compliance, refers to ''a schedule of remedial measures included in a 'permit,' including an enforceable sequence of interim requirements * * * leading to compliance with the CWA and regulations.'' (40 CFR 122.2, CWA section 502(17)). In an NPDES permit, Water Quality-Based Effluent Limitations (WQBELs) are effluent limits based on applicable water quality standards for a given pollutant in a specific receiving water (NPDES Permit Writers Manual, EPA–833–B–96–003, December, 1996). EPA regulations provide that schedules of compliance may only be included in permits if they are determined to be ''appropriate'' given the circumstances of the discharge and are to require compliance ''as soon as possible'' (40 CFR 122.47).[209]

Florida has adopted a regulation authorizing compliance schedules. That regulation, Subsection 62–620.620(6), F.A.C., is not affected by this proposed rule. The complete text of the Florida rules concerning compliance schedules is available at *https://www.flrules.org/gateway/RuleNo.asp?ID=62-620.620*. Florida is, therefore, authorized to grant compliance schedules, as appropriate, under its rule for WQBELs based on EPA's federally-promulgated numeric nutrient criteria.

VI. Economic Analysis

The CWA provides a comprehensive framework for the protection and restoration of the health of the Nation's waters. EPA determined in 2009 that addressing the significant number of Florida waters impaired by nitrogen and phosphorus required the establishment of numeric nutrient criteria as part of Florida water quality standards adopted under the CWA. State implementation of numeric nutrient criteria in the proposed rule may result in an incremental level of controls needed for compliance with CWA programs, or require them sooner than would occur under current CWA programs. These controls include new or revised National Pollutant Discharge Elimination System (NPDES) permit conditions for point source dischargers and controls on other sources of nitrogen and phosphorus (e.g., agriculture, urban runoff, and septic systems) through the development of Total Maximum Daily Loads (TMDLs) and Basin Management Action Plans (BMAPs).

EPA conducted an analysis to estimate both the increase in the number of impaired waters that may be identified as a result of the proposed rule, and the potential annual cost of CWA pollution control actions likely to

[209] Hanlon, Jim. USEPA Office of Wastewater Management. 2007, May 10. Memorandum to Alexis Stauss, Director of Water Division EPA Region 9, on ''Compliance Schedules for Water Quality-Based Effluent Limitations on NPDES Permits.''

be implemented by the State of Florida and private parties to assure attainment of applicable State water quality designated uses. It is important to note that the costs of pollution controls needed to attain water quality standards for nutrients for waters already identified as impaired by the State (including waters with and without TMDLs in place) are not included in EPA estimates of the cost of the rule. EPA's analysis is fully described in the document entitled *Economic Analysis of Proposed Water Quality Standards for the State of Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters* (hereinafter referred to as the Economic Analysis), which can be found in the docket and record for this proposed rule. This analysis shows that the incremental costs associated with the proposed rule range between $239.0 million and $632.4 million per year (2010 dollars) and monetized benefits may be in the range from $39.0 to $53.4 million annually.

1. NRC Review of Phase 1 Cost Estimates

On December 6, 2010 EPA published a final rule to set numeric nutrient criteria for lakes and streams in Florida designed to protect those waters for their State-designated uses, such as swimming, fishing, or as drinking water sources (Phase 1 rule). EPA developed an economic analysis to provide the public with information on potential costs and benefits that may be associated with Florida's implementation of EPA's rule. EPA's estimate of the annual costs of that rule ranged from $135.5 to $206.1 million; stakeholder estimates of the same cost categories ranged from $8 to $13 billion annually. While these costs are not directly related to today's proposed rule, EPA determined that an independent peer review of its economic analysis for the Phase 1 rule would provide important information on the disparity between EPA's cost estimates and those of some stakeholders, and would be helpful to inform and improve its analysis of today's proposed rule. Accordingly, EPA requested the National Research Council (NRC) of the National Academies to review EPA's economic analysis for the Phase 1 rule. The NRC Committee completed its ''Review of the EPA's Economic Analysis of Final Water Quality Standards for Nutrients for Lakes and Flowing Waters in Florida'' in June. The Committee was charged with reviewing and commenting on three specific areas:

(1) EPA's assumption that only newly impaired waters should be analyzed,

(2) EPA's decision to estimate costs associated only with sources affecting newly impaired waters, by sector, and

(3) EPA's assumptions about levels of control by point and nonpoint sources, including the use of variances and other flexibilities for more cost-effective approaches and whether to implement reverse osmosis and other stringent control technologies.

NRC answered the first charge, agreeing with EPA's assumption that only newly impaired waters should be analyzed. NRC also addressed the second charge, but took exception with EPA's approach to not estimating costs for unassessed waters or for septic systems affecting impaired springsheds. NRC also suggested that EPA underestimated the affected acres in agriculture. The Committee did not offer specific suggestions for how to compute the increased acreage that should be analyzed. However, on the cost side, they suggest including costs associated with installation of regional treatment systems on agricultural lands.

As for the third charge, the Committee largely addressed this by examining the details of EPA's unit costs, including comments suggesting ways in which EPA underestimated or overestimated costs. The Committee did not directly address EPA's assumptions regarding the use of SSACs, variances and use designations, except to propose an alternative cost estimating framework based on predicting the future time path of waters progressing through the stages of listing as impaired, TMDL development, and BMAP implementation, with and without the rule. The Committee generally concluded that EPA's cost estimates were likely too low, while the stakeholder estimates were too high.

In response to the NRC review, EPA has attempted to incorporate many of the recommendations and suggestions made throughout the NRC report including: Using the HUC–12 watershed unit of analysis; analyzing potential costs for unassessed waters that could be incrementally impaired; analyzing costs for each industrial plant rather than extrapolating the results from a small sample; reviewing actual experience from existing TMDLs to identify BMPs sufficient to meet numeric targets; considering permeable reactive barriers for septic systems and their installation costs; and considering uncertainty in government expenditures. EPA has addressed these recommendations and suggestions in this analysis of costs for the coastal and estuary criteria.

The NRC Committee also described an approach for EPA to consider in analyzing the impacts of its numeric nutrients criteria rules by tracing out two time-paths of costs and benefits: one time-path for the baseline and one reflecting the proposed rule. The costs and benefits of the proposed rule could then be analyzed as the present value of the difference in the two time-paths of costs and benefits, respectively. To execute this approach, EPA would need to model not just its projection of the eventual controls that would be implemented under the proposed rule, but its predictions of the prioritization of watersheds that Florida would adopt to determine the timing of controls. NRC suggested that EPA could engage external stakeholders in a collaborative process to determine a collective set of assumptions to use as part of this analytical approach (or at least to ''isolate and possibly reconcile'' areas of disagreement). EPA acknowledges the merit of this approach, and notes that it is consistent with EPA's intent that its numeric nutrients criteria simply interpret Florida's current narrative nutrient criterion, by providing the often time-consuming first step of the science-based modeling necessary for developing a TMDL. The ultimate effect of the EPA's proposal would be to improve the efficiency and effectiveness of Florida's WQS program with regard to nutrients. However, given the exigencies of the consent decree and the timing of the NRC review, EPA determined that it was not possible to adopt the NRC's alternative approach for this proposal. The NRC's alternative approach was presented as a finding, rather than a recommendation, because the NRC acknowledged that time and budget constraints might render this approach unworkable for the current rule.

Considering the exigencies, EPA took the approach of estimating costs and benefits for a representative future year, using current water quality data as a basis for projecting what incremental water quality controls would need to be implemented during this future year to meet the new criteria. An approach that compares two complete future time-paths (with and without the proposed rule) requires taking the difference between those two time-paths, discounting over time, and summing in order to express the impacts in present value terms. In contrast, EPA's approach identifies waters that would be newly identified as impaired and the controls that would be needed to meet the new criteria. EPA then annualizes the costs of these controls over an appropriate time horizon. As such, the two approaches are not directly comparable.

Nonetheless, EPA believes its approach sheds light on the costs and benefits associated with its numeric nutrients criteria rules and complies with the Executive Order requirements for conducting economic analysis of regulations. As noted above, EPA has made significant changes to its approach to address the NRC recommendations that are applicable to it.

2. Baseline for Cost Analysis

EPA is promulgating numeric nutrient criteria to supplement the State of Florida's current narrative nutrient criteria. The incremental impacts of the proposed rule are the potential costs and benefits associated with implementation of the proposed numeric criteria, including DPVs, for estuaries, coastal waters, and south Florida inland flowing waters, above and beyond the costs associated with State implementation of its current narrative nutrient criterion. The baseline incorporates requirements associated with restoration of already identified impaired waters, including waters for which TMDLs are approved and waters for which TMDLs are not yet developed. Because the numeric nutrients criteria proposed here interpret Florida's existing narrative criterion, which is also the basis for existing TMDLs, the analysis assumes that these TMDLs would be adopted as site-specific criteria. Thus, there would be no additional costs or benefits associated with the proposed rule for these waters. The baseline for this analysis also includes EPA's previously promulgated numeric nutrient criteria for Florida's lakes and flowing waters.

For waters that the State of Florida has already identified as impaired but for which it has not yet developed TMDLs, EPA expects that the effect of this proposed rule will be to shorten the time and reduce the resources necessary for the State of Florida to develop TMDLs and BMAPs. For waters that the State of Florida has developed TMDLs, EPA has looked at the proposed criteria to compare these to the target loadings in the TMDLs and has not found a consistent pattern of existing TMDLs being either more or less stringent than would be required to meet the criteria proposed in this rule. For already impaired waters and waters already under a TMDL, EPA assumed that no additional controls on nonpoint sources to these waters would be needed as a consequence of this rule. However, there may be an incremental impact of the proposed rule for any point source dischargers to these waters that have or may receive waste load allocations for just one nutrient pollutant if those waters are not attaining criteria for the other as a result of this proposed rule. These costs are included in this economic analysis.

For waters not currently impaired under the baseline, EPA uses current water quality measurements to predict which waters would be deemed unimpaired as a result of the proposed rule (and therefore need not be analyzed for nonpoint source control costs). EPA acknowledges that these conditions could change in the future. To the extent that the experience in implementation of the proposed rule deviates from these specific assumptions about the baseline, EPA's estimates of the costs and benefits may be under- or overestimated. See Section 2 of the Economic Analysis for a full description of the baseline. EPA requests comment on its assumptions regarding the baseline.

3. Incremental Costs

The likely effect of this proposed rule will be the assessment and identification of additional waters that are impaired and not meeting the numeric water quality criteria in the proposed rule. The incremental impact of the proposed rule includes the costs for controls on point and nonpoint sources, developing and implementing TMDLs to attain the proposed criteria, and the monetary value (benefits) of the resulting potential increase in water quality. The economic analysis describes these potential incremental impacts of the proposed rule. It is important to note that EPA took care not to include costs for the estuarine and coastal marine waters contained in Florida's newly-approved State WQS.

To develop these estimates, EPA first assessed State control requirements associated with current water quality, existing impaired waters, and existing TMDLs, as well as existing regulations specific to estuaries, coastal waters and south Florida inland flowing waters (the baseline). EPA then identified the costs and benefits associated with additional pollution controls to meet EPA's proposed numeric criteria, beyond pollution controls currently needed or in place. To estimate incremental costs to municipal and industrial dischargers, EPA gathered publicly available facility information and data on potential control technologies, and used Florida Department of Environmental Protection (FDEP) point source implementation procedures to estimate the change in WQBELs and treatment controls that could result from the proposed rule. EPA assessed potential non-point source control costs by using publicly available information and data to determine land uses near waters that would likely be identified as impaired under the proposed rule. EPA used current FDEP data on stormwater controls and Florida Department of Agricultural and Consumer Services (FDACS) manuals to estimate costs of implementing stormwater and agricultural best management practices (BMPs) to attain the proposed numeric criteria. EPA also estimated the potential costs associated with upgrades of homeowner septic systems and potential government costs of developing additional TMDLs for water identified as impaired under this rule. Finally, EPA qualitatively and quantitatively described and estimated some of the potential benefits of complying with the new water quality standards. Although it is difficult to predict with certainty how the State of Florida will implement these new water quality standards, the result of this analysis represent EPA's best estimates of costs and benefits of the State of Florida's likely actions to implement this proposed rule.

A. Incrementally Impaired Waters

Compared to current conditions, potentially incrementally impaired waters are those waters that exceed EPA's proposed criteria for which FDEP has not already developed a TMDL or listed as impaired for nutrients. To estimate incremental costs associated with attainment of criteria, EPA first removed any waters for which the State of Florida has already determined to be impaired or established a TMDL and/or BMAP, because it considers these waters part of the baseline for this analysis. BMAPs are iterative and are updated on a continual basis until the TMDL targets are met. EPA assumes that controls will be implemented through these mechanisms until the TMDLs are met. Although additional costs to address baseline impairments may be needed in the future (after this rule is promulgated), EPA does not believe that these costs should be attributed to this proposed rule, but are instead part of the baseline. As discussed above, the State of Florida is not required to revise any existing TMDL as a result of this rule, and WQBELs in NPDES permits that are consistent with an existing EPA approved TMDL meet the requirements of the CWA. TMDL nutrient criteria have been shown to be both more stringent and less stringent when compared to criteria under this proposed rule and EPA has provided SSACs as a mechanism to approve the standards in existing TMDLs and BMAPs. Thus, EPA does not anticipate that this rule will result in increased nonpoint source controls costs for

watersheds that already have an EPA-approved TMDL.

After excluding waters already identified as impaired under Florida's existing narrative criteria, EPA next identified estuarine and coastal segments that do not meet the numeric criteria of this proposed rule. EPA then assumed identified waterbodies (WBIDs [210]) that overlap those segments may be identified as incrementally impaired. EPA then identified the watersheds that contain or surround, in the case of coastal waters, those incrementally impaired WBIDs.

EPA analyzed FDEP's database of ambient water quality monitoring data and compared monitoring data for each segment with EPA's proposed criteria for TN and TP to identify incrementally impaired waters. EPA compiled the most recent five years of monitoring data and determined if there was sufficient data available to calculate more than one annual geometric mean in a consecutive three year period. With sufficient data, EPA calculated the annual geometric mean for each segment identified by EPA segment boundaries, and identified waters as incrementally impaired if they exceeded the applicable criteria in this proposed rule. The results of this analysis are shown in Table VI(A).

TABLE VI(A)(1)—NUMBER OF WBIDS SUMMARY OF DATA ANALYSIS FOR PROPOSED CRITERIA [1]

Criteria type	Baseline impaired [2]	Not currently impaired under the baseline		Total
		Data available [3]	Data not available	
Coastal	0	5	68	73
Estuaries	42	121	95	258
Total	42	126	163	331

Source: FDEP IWR run 44.

[1] Represents number of WBIDs, based on 10% of WBID area overlapping segments for which EPA is proposing numeric nutrient criteria.

[2] On 303(d) list as impaired for nutrients or covered under a nutrient-related TMDL. EPA did not assess these waters further for attainment of the proposed criteria.

[3] WBIDs in segments for which at least two geometric means in a consecutive three year period can be calculated based on having at least four samples in a given year, with one sample in winter and summer.

Controls may also be needed to meet the proposed criteria in a portion of the 163 WBIDs for which EPA does not have data if subsequent data would indicate impairment. These 163 WBIDs are variously located in the same watersheds as WBIDs that are baseline impaired or incrementally impaired by this proposed rule, or in watersheds either with no known impaired WBIDs or for which none of the WBIDs have sufficient data to determine impairment status. Without additional information about these waters, EPA determined the number of impaired-though-unassessed waters as a range. As a low estimate, it is possible that none of the unassessed waters would be impaired. Given the targeting scheme for Florida's IWR data, these unassessed waters likely have a lower probability of impairment than assessed waters, and zero represents the lower bound. For the high end of the range, EPA considered a proportional impairment rate of assessed waters. The impairment rate of unassessed waters may be anywhere in between.

While helpful in establishing the number of waterbodies that may be incrementally impaired, the assumption of proportional impairment does not produce information on location needed to estimate associated costs. The majority of unassessed waters lie along the coast and in close proximity to baseline impaired and impaired assessed waters. Hence, for this analysis, EPA assumed that impairment in unassessed waters would most likely be near baseline impairments and impaired assessed waters, since the loads causing impairment in these assessed waters could also affect the downstream unassessed waters. For coastal waters and south Florida waters, EPA used GIS to locate waters within or adjacent to the same watersheds associated with baseline impairments and impaired assessed waters. For estuaries, the number of unassessed waters estimated to be impaired (based on the assumption of proportional impairment) would not fit within the same watersheds associated with baseline impairments and impaired assessed waters. Therefore, EPA used GIS analysis to identify a buffer around the watersheds associated with baseline impairments and impaired assessed waters that would just include the estimated number of impaired unassessed waters. EPA found that a buffer size of 0.7 miles encompassed the estimated number of impaired unassessed waters. A smaller buffer (e.g., 0.5 mile) would not include enough unassessed waters. A larger buffer (e.g., 1 mile) would include too many unassessed waters. EPA then used this 0.7 mile buffer to identify the associated incremental watersheds that may need nonpoint source controls. EPA has estimated the acres of various land uses within these watersheds and reported as the upper bound in the Additional Unassessed Water column of Table VI(A)(2).

[210] WBID is a waterbody identification number assigned by Florida, in order to delineate the boundaries of Florida's waters.

TABLE VI(A)(2)—SUMMARY OF LAND USE IN INCREMENTALLY IMPAIRED WATERSHEDS FOR THE ANALYSIS OF COSTS UNDER THE PROPOSED RULE

[Acres]

Land use type	Assessed waters [1]	Additional unassessed water [2]	Total
Agriculture	15,312	0–22,828	15,312–38,140
Communications and Utilities	3,337	0–3,315	3,337–6,652
Forest	199,432	0–256,137	199,432–455,569
Industrial	2,025	0–6,703	2,025–8,729
Other	9,276	0–11,306	9,276–20,582
Transportation Corridors	9,177	0–3,636	9,177–12,813
Urban	128,787	0–86,508	128,787–215,295
Water	220,728	0–102,615	220,728–323,343
Wetlands	196,545	0–322,355	196,545–518,899
Total	784,619	0–815,403	784,619–1,600,022

[1] Total acreage of 12-digit HUC watersheds surrounding the incrementally impaired WBIDs based on sufficient data, excluding watersheds for which EPA has already estimated a need for controls.

[2] Acreage surrounding potential incrementally impaired unassessed waters not associated with baseline impairment or incremental impairment under the proposed rule based on sufficient data.

The costs associated with the additional controls that would be necessary in the watersheds not already included in the cost analysis because of known incremental impaired waters will be included in the remainder of this section.

B. Point Source Costs

Point sources of wastewater must have a National Pollution Discharge Elimination System (NPDES) permit to discharge into surface waters. EPA identified point sources potentially discharging nitrogen and phosphorus to estuaries, coastal waters, and south Florida inland flowing waters by evaluating the Integrated Compliance Information System-National Pollutant Discharge Elimination System (ICIS–NPDES) database. EPA identified all facilities with any permitted discharge to estuarine, coastal, and south Florida inland flowing waters with an existing effluent limit or monitoring requirement for nitrogen or phosphorus, as well as those with the same industry code as any point source with an identified nutrient monitoring requirement. This analysis identified 121 point sources as having the potential to discharge nitrogen and/or phosphorus. Table VI(B) summarizes the number of point sources with the potential to discharge nitrogen and/or phosphorus.

TABLE VI(B)—NPDES-PERMITTED WASTEWATER DISCHARGERS POTENTIALLY AFFECTED BY PROPOSED RULE

Discharger Category	Major Dischargers [a]	Minor Dischargers [b]	Total
Municipal Wastewater	53	31	84
Industrial Wastewater	19	18	37
Total	72	49	121

[a] Facilities discharging greater than one million gallons per day or likely to discharge toxic pollutants in toxic amounts.

[b] Facilities discharging less than one million gallons per day and not likely to discharge toxic pollutants in toxic amounts.

1. Municipal Waste Water Treatment Plant (WWTP) Costs

EPA considered the costs of known nitrogen and phosphorus treatment options for municipal WWTPs. Nitrogen and phosphorus removal technologies that are available can reliably attain annual average total nitrogen (TN) concentration of approximately 3.0 mg/L or less and annual average total phosphorus (TP) concentration of approximately 0.1 mg/L or less.[211] EPA considered wastewater treatment to these concentrations to be the target levels for the purpose of this analysis. The NRC suggested that there is uncertainty associated with this assumption because dischargers to impaired waters typically receiving WQBELs equal to the numeric water quality criteria (NRC, 2012; p. 48). However, procedures for determining appropriate WQBELs include an evaluation of effluent quality and assimilative capacity of the receiving water. Specifically for nutrients, EPA found no implementation evidence in Florida to support the assumption that the criteria would be adopted as end-of-pipe limits. Instead, based on the State of Florida protocol [212] and the examples from existing nutrient TMDLs, EPA assumed for this analysis that state implementation of the proposed rule will not result in criteria end-of-pipe effluent limitations for municipal WWTPs.

The NPDES permitting authority determines the need for WQBELs for point sources on the basis of determining their reasonable potential to exceed water quality criteria. To determine reasonable potential on a facility-specific basis, data such as instream nutrient concentrations and low flow conditions would be necessary. However, because most WWTPs are likely to discharge nutrients at concentrations above applicable TN and/or TP criteria, EPA assumed that all WWTPs have reasonable potential to exceed the numeric criteria. The NRC supported this assumption.

For municipal wastewater, EPA estimated costs to reduce effluent

[211] U.S. EPA, 2008, ''Municipal Nutrient Removal Technologies Reference Document. Volume 1—Technical Report,'' EPA 832–R–08–006.

[212] Florida Department of Environmental Protection (FDEP). 2006a. TMDL Protocol. Version 6.0. Task Assignment 003.03/05–003.

concentrations to 3 mg/L or less for TN and 0.1 mg/L or less for TP using advanced biological nutrient removal (BNR). Although reverse osmosis and other treatment technologies may have the potential to reduce nitrogen and phosphorus concentrations even further, EPA believes that implementation of reverse osmosis applied on such a large scale has not been demonstrated.[213] The NRC supported this assumption (NRC, 2012; p. 46) but said that in some instances, treatment to levels beyond the controls of advanced BNR would be required (NRC, 2012; p. 48). Such levels have not been required for WWTPs by the State of Florida in the past, including for those WWTPs under TMDLs with nutrient targets comparable to the criteria in this proposed rule. EPA believes that should state-of-the-art BNR technology, together with other readily available and effective physical and chemical treatment (including chemical precipitation and filtration), fall short of compliance with permit limits associated with meeting the new numeric nutrient criteria, then it is reasonable to assume that entities would first seek out alternative compliance mechanisms such as reuse, site-specific alternative criteria, variances, and designated use modifications. In addition, under a TMDL, FDEP could allocate greater load reductions to nonpoint sources based on baseline contributions and existing controls, thus resulting in fewer reductions required from point source dischargers. EPA acknowledges that if its assumptions about the availability of reuse, SSACs, variances and designated use changes are incorrect, then the costs presented here are underestimates.

To estimate compliance costs for WWTPs, EPA identified current WWTP treatment capabilities using FDEP's Wastewater Facility Regulation (WAFR) database, and information obtained from NPDES permits and/or water quality monitoring reports. Table VI(B)(1) summarizes EPA's best estimate of the number of potentially affected municipal WWTPs that may require additional treatment for nitrogen and/or phosphorus to meet the numeric criteria supporting State designated uses.

TABLE VI(B)(1)—SUMMARY OF POTENTIAL FOR ADDITIONAL NUTRIENT CONTROLS FOR MUNICIPAL WASTEWATER TREATMENT PLANTS [a]

Discharge type	Number of dischargers				
	Additional reduction in TN and TP [a]	Additional reduction in TN only [b]	Additional reduction in TP only [c]	No incremental controls needed [d]	Total
Major	7	0	22	22	51
Minor	17	0	1	10	28
Total	24	0	23	32	79

Source: Based on treatment train descriptions in FDEP's Wastewater Facility Regulation database [214] and permits, WLAs in TMDLs and existing regulations, assuming dischargers would have to install advanced BNR for compliance under the rule.

[a] Includes dischargers without treatment processes capable of achieving the target levels or existing WLA for TN and TP, or for which the treatment train description is missing or unclear.

[b] Includes dischargers with chemical precipitation only.

[c] Includes dischargers with Modified Ludzack-Ettinge (MLE), four-stage Bardenpho, and BNR specified to achieve less than 3 mg/L, or those with WLA under a TMDL for TN only.

[d] Includes dischargers with anaerobic-anoxic oxidation (A^2/O), modified Bardenpho, modified University of Cape Town (UCT), oxidation ditches, or other BNR coupled with chemical precipitation, those with WLAs under a TMDL for both TN and TP, those discharging to waters on the 303(d) list for nutrients or DO, and those ocean dischargers covered under the Grizzle-Figg Act that will cease discharge completely by 2025.

An EPA study provides unit cost estimates for BNR for various TN and TP performance levels.[215] To estimate costs for WWTPs, EPA used the average capital and average operation and maintenance (O&M) unit costs for technologies that achieve an annual average of 3 mg/L or less for TN and/or 0.1 mg/L or less for TP. NRC noted that these unit costs were significantly lower than those estimated by the Florida Water Environment Association Utility Council (FWEAUC) and suggested to verify the unit costs against FWEAUC's unit costs. Multiplying these unit costs by facility flow reported in EPA's PCS database, EPA estimated that total costs could be approximately $44.1 million per year (2010 dollars).[216]

EPA also conducted a sensitivity analysis to address the potential for dischargers under TMDLs that establish WLAs for TN or TP (and not both pollutants), such that incremental costs could be required under the proposed rule to control the other pollutant. The results of this analysis suggest a range of additional costs from $3.6 million to $5.6 million annually (see section 5.3 of the Economic Analysis). Thus, estimated total cost could range from approximately $47.7 million to $49.7 million per year.

2. Industrial Point Source Costs

Incremental costs for industrial dischargers are likely to be facility-specific and depend on process operations, existing treatment trains, and composition of waste streams. EPA identified 36 industrial dischargers potentially affected by the proposed rule. Of those, 4 are subject to an existing nutrient TMDL, and 4 discharge to waters currently listed as impaired. As with WWTPs, EPA assumed that costs to industrial dischargers under an existing nutrient TMDL with WLAs for both nitrogen and phosphorus and costs at facilities discharging to currently impaired waters are not attributable to this proposed rule because those costs would be incurred absent the rule (under the baseline).

To estimate potential costs to the remaining 28 potentially affected industrial facilities (Table VI(B)(2)), EPA used effluent data for flows, TN, and TP

[213] Treatment using reverse osmosis also requires substantial amounts of energy and creates disposal issues as a result of the large volume of concentrate generated.

[214] Florida Department of Environmental Protection (FDEP). 2009. Wastewater Facility Information: Wastewater Facility Regulation (WAFR) database. *http://www.dep.state.fl.us/water/wastewater/facinfo.htm.* Accessed June 2009.

[215] USEPA. 2008. *Municipal Nutrient Removal Technologies Reference Document. Volume 1—Technical Report.* EPA 832–R–08–006. U.S. Environmental Protection Agency, Office of Wastewater Management, Municipal Support Division.

[216] Estimated capital costs annualized at 7% over 20 years, plus estimated annual O&M.

from Discharge Monitoring Reports in EPA's ICIS–NPDES database and other information in NPDES permits to determine whether or not they have reasonable potential to cause or contribute to an exceedance of the proposed criteria in this proposed rule. Because the numeric nutrient criteria are annual geometric means, EPA assumed that any discharger with an average TN or TP concentration greater than the proposed criterion would have reasonable potential. For those facilities with reasonable potential, EPA further analyzed their effluent data and estimated potential revised water quality based effluent limits (WQBELs) for TN and TP. If the data indicated that the facility would not be in compliance with the revised WQBEL, EPA estimated the additional nutrient controls those facilities would likely implement to allow receiving waters to meet designated uses and the costs of those controls. Although reverse osmosis and other treatment technologies have the potential to reduce nitrogen and phosphorus concentrations even further, EPA believes that implementation of reverse osmosis applied on such a large scale has not been demonstrated as likely or necessary.[217] If BNR or other more conventional cost-effective treatment technologies would not meet the revised WQBELs, EPA believes it is reasonable to assume that entities would first seek out other available compliance mechanisms such as reuse, site-specific alternative criteria, variances, and designated use modifications. In addition, under a TMDL FDEP could allocate greater load reductions to nonpoint sources based on baseline contributions resulting in fewer reductions from point source dischargers.

Using this method, EPA estimated that the potential costs for industrial dischargers could be approximately $15.2 million annually (2010 dollars). Note that a number of the dischargers would not incur incremental costs, while others would incur costs of implementing controls such as chemical precipitation, filtration, and/or BNR. NRC said that the use of similar unit costs for industrial flows as EPA had used for municipal waste water treatment facilities did not capture the higher costs associated with lower flows and therefore industrial costs are underestimated. The source EPA used to find unit costs included plant costs with low flows that EPA was able to compare to plant costs with high flows, as NRC suggested. EPA found no pattern for higher or lower costs and therefore did not change its unit costs. The NRC also suggested EPA should include costs for flow equalization at some industrial facilities. EPA does not have enough flow data to estimate flow equalization costs, but did use the 90th percentile flows as the basis for costs for dischargers with variable flows (see Cost Calculations for Industrial Dischargers). EPA considers the use of the 90th percentile flow together with an allowance for contingencies to provide sufficient costs allowance to cover the cost of equalization should that be necessary at individual facilities.

TABLE VI(B)(2)—POTENTIAL INCREMENTAL COSTS FOR INDUSTRIAL DISCHARGERS [a]

Industrial category	Total number of facilities	Number of facilities with costs [b]	Total annual costs (million 2010$/yr)
Chemicals and Allied Products	1	0	$0.0
Electric Services	8	2	0.5
Food	2	1	0.2
Mining	0	0	0.0
Other	14	1	0.0
Pulp and Paper	3	3	14.5
Total	28	7	15.2

[a] May not add due to rounding.
[b] In most cases, only a few facilities are projected to incur costs; others do not.

C. Non-Point Source Costs

To estimate the potential incremental costs associated with controlling nitrogen and phosphorus pollution from non-point sources, EPA identified land areas near incrementally impaired waters using GIS analysis. EPA identified the 12-digit hydrologic units (HUC–12s) in Florida that contain, or in the case of coastal waters, surround an incrementally impaired WBID (WBIDs are GIS polygons for water assessment), and excluded those HUC–12s that are included in the baseline or cost analysis for in the Inland Rule. EPA then identified all the 12-digit HUCs that drain to any remaining unassessed WBIDs that may become incrementally impaired should they be assessed in the future. EPA then identified land uses in these HUCs using GIS analysis of data obtained from the State of Florida. By using the HUC–12 delineation, EPA has addressed the NRC recommendation that EPA use the more refined HUC–12 delineation instead of the larger HUC–10 delineation.

1. Costs for Urban Runoff

EPA's GIS analysis indicates that urban land (excluding land for industrial uses covered under point sources) accounts for approximately 128,800 acres to 215,300 acres of the land near incrementally impaired waters. EPA's analysis indicates that urban runoff is already regulated on a portion of this land under EPA's stormwater program requiring municipal separate storm sewer system (MS4) NPDES permits. Florida has a total of 27 large (Phase I) permitted MS4s serving greater than 100,000 people and 132 small (Phase II) permitted MS4s serving fewer than 100,000 people. MS4 permits generally do not have numeric nutrient limits, but instead rely on implementation of BMPs to control pollutants in stormwater to the maximum extent practicable. Even those MS4s in Florida discharging to impaired waters or under a TMDL currently do not have numeric limits for any pollutant.

In addition to EPA's stormwater program, several existing State rules are intended to reduce pollution from urban runoff and were included in the baseline for EPA's proposed rule. For

[217] Treatment using reverse osmosis also requires substantial amounts of energy and creates disposal issues as a result of the large volume of concentrate that is generated.

example, Florida's Urban Turf Fertilizer rule (administered by FDACS) requires a reduction in the amount of nitrogen and phosphorus that can be applied to lawns and recreational areas. Florida's 1982 stormwater rule (Chapter 403 of Florida statues) requires stormwater from new development and redevelopment to be treated prior to discharge through the implementation of BMPs. The rule also requires that older systems be managed as needed to restore or maintain the beneficial uses of waters, and that water management districts establish and implement other stormwater pollutant load reduction goals. In addition, the ''Water Resource Implementation Rule'' (Chapter 62–40, F.A.C.) establishes that stormwater design criteria adopted by FDEP and the water management districts shall achieve at least 80% reduction of the average annual load of pollutants that cause or contribute to violations of water quality standards (95% reduction for outstanding natural resource waters). This rule sets design criteria for new development that is not based on impairment status of downstream waters. For NPDES permits, reasonable potential exists for any effluent concentrations above the criteria even if the water is attaining standards. Therefore, EPA assumed that post-1982 developed land already has controls to meet 80% reductions and only older developed land would need an incremental level of control. The rule also states that the pollutant loadings from older stormwater management systems shall be reduced as necessary to restore or maintain the designated uses of waters. As the proposed numeric nutrients criteria interpret the existing narrative criterion, EPA assumes any such reductions requiring costs are not a consequence of the proposed criteria. The NRC suggested that existing State rules are not being fully complied with and EPA should not consider them to be part of the baseline. EPA's assumption of compliance with the 1982 Stormwater Rule is based on FDEP's economic analysis indicating that post-1982 development would not need additional controls. Given the State's cyclical monitoring schedule, existing ambient monitoring data may not yet fully reflect nutrient reductions because the rule has only been in effect since July 2009. Other controls that target the quantity of stormwater runoff from low-density residential land may not be as cost effective as the Urban Turf Fertilizer Rule. Thus, EPA did not estimate an incremental level of control to be needed for low-density residential land.

Identifying water as impaired under the proposed rule could result in changes to MS4 NPDES permit requirements for urban runoff, so that Florida waters meet the proposed criteria. However, the combination of additional pollution controls required will likely depend on the specific nutrient reduction targets, the controls already in place, and the relative amounts of nitrogen and phosphorus pollution contained in urban runoff at each particular location. Because stormwater programs are usually implemented using an iterative approach—with the installation of controls followed by monitoring and re-evaluation—estimating the complete set of pollution controls required to meet a particular water quality target would require detailed site-specific analysis.

Although it is difficult to predict the complete set of potential additional stormwater controls that may be required to meet the numeric criteria that supports State designated uses in incrementally impaired waters, EPA estimated potential costs for additional treatment by assessing the amount of urban land that may require additional stormwater controls. FDEP has previously assumed that all urban land developed after adoption of Florida's 1982 stormwater rule would be in compliance with the Phase 1 rule and EPA believes it is reasonable to make a similar assumption for this proposed rule.[218] Using this assumption, EPA used GIS analysis of land use data obtained from the State of Florida [219] to identify the amount of remaining urban land located near incrementally impaired waters. For Phase I MS4s, EPA used a range of acres with 46,700 acres as the upper bound and zero acres as the lower bound, because Phase I MS4 urban areas already must implement controls to the ''maximum extent practicable.'' As such, these municipalities may not need to achieve additional reductions if existing requirements are already fully implemented. EPA similarly estimated ranges of acreage needing stormwater controls for Phase II MS4 areas, and non-MS4 urban areas. GIS analysis of land use data indicates that land in Phase II MS4 and non-MS4 urban areas are low density residential. For the urban land that is not low density residential, some additional structural BMPs may be necessary to comply with EPA's numeric nutrient criteria. Because nutrient reductions from low density residential land under the existing Urban Turf Fertilizer Rule are likely sufficient, and the State of Florida asserts that urban land developed after 1982 (77.9% of urban land) would not need additional controls for compliance with EPA's numeric nutrient criteria, EPA estimated that approximately 27,700 to 43,100 acres of Phase II MS4 urban land and 19,600 to 28,900 acres of urban land outside of MS4 areas may require additional stormwater controls to meet EPA's numeric nutrient criteria. The actual acreage may be somewhere within the range. Using this procedure, EPA estimated that 47,300 to 118,700 acres may require additional stormwater controls.

The cost of stormwater pollution controls can vary widely. FDEP tracks the cost of stormwater retrofit projects throughout the State that it has provided grant funding for.[220] EPA estimated control costs based on the average unit costs, $19,300, across all projects from FDEP (2012c) to account for the mix of project types likely to be installed based on their current prevalence in grant funding throughout the state. The NRC suggested that higher pollutant removals may be obtained by more advanced stormwater control measures such as bioretention or other vegetated infiltration, which may be more costly than the current set of FDEP-funded projects. NRC (2009) indicates annual per-acre costs could range from $300 per acre to $3,500 per acre.[221] EPA does not have the necessary information to exactly compare this source with EPA's average unit costs of $19,300, but believes EPA's unit costs are captured within the higher end of the range. Given that the costs may be comparable to the NRC suggested projects and the retrofit data is specific to projects that Florida has already implemented therefore making them more likely to be implemented for future projects, EPA continues to use costs from the Florida specific retrofit project data.

[218] FDEP. 2010. *FDEP Review of EPA's ''Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida'': Prepared January 2010 by the Environmental Protection Agency.* Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration.

[219] Florida Geographic Data Library, 2009.

[220] FDEP. 2010. ''Appendix 3: Cost Analysis for Municipal Discharge using 30 Year Annualization and Florida MS4 Numeric Nutrient Criteria Cost Estimation,'' In: *FDEP Review of EPA's ''Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida'': Prepared January 2010 by the Environmental Protection Agency.* Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration.

[221] NRC (2009) does not provide the discount rate, useful life, or annual O&M costs it uses to estimate annual costs.

EPA multiplied the average capital costs per acre ($19,300) of the FDEP projects by the number of acres potentially requiring controls to estimate the potential incremental stormwater capital costs associated with the proposed rule. EPA then used FDEP's estimate of operation and maintenance (O&M) costs (at 5% of capital costs), and annualized capital costs using FDEP's discount rate of 7% over 20 years. This analysis indicates that urban runoff control costs could range from approximately $131.9 million to $330.9 million. Table VI(C)(2) summarizes these estimates.

TABLE VI(C)(1)—ESTIMATED INCREMENTAL URBAN STORMWATER COSTS

Urban land type	Estimated acres potentially needing controls [1]	Capital costs (million $) [2]	O&M costs (million $/yr) [3]	Annual costs (million $/yr) [4]
MS4 Phase I Urban	0–46,700	$0–$901.4	$0–$45.1	$0.0–$130.2
MS4 Phase II Urban	27,700–43,100	534.0–832.8	26.7–41.6	77.1–120.3
Non-MS4 Urban	19,600–28,900	379.2–557.5	19.0–27.9	54.8–80.5
Total	47,300–118,700	913.2–2,291.7	45.7–114.6	131.9–330.9

[1] Phase I MS4s range represents implementation of BMPs to the MEP resulting in compliance with EPA's rule or controls needed on all pre-1982 developed land that is not low density residential; Phase II MS4s and urban land outside of MS4s represent controls needed on all pre-1982 developed land that is not low density residential. Assumes that up to 46% of land associated with unassessed waters would require controls.
[2] Represents acres needing controls multiplied by median unit costs of stormwater retrofit costs from FDEP (2010b).
[3] Represents 5% of capital costs.
[4] Capital costs annualized at 7% over 20 years plus annual O&M costs.

2. Agricultural Costs

EPA's GIS analysis of land use indicates that agriculture accounts for about 15,312 to 38,140 acres of land near incrementally impaired waters. This differs substantially from the Inland Rule where over 800,000 acres of agricultural land use were identified in watersheds draining to potentially incrementally impaired WBIDs, because agriculture is a much more prevalent land use inland than near the coast. Agricultural runoff can be a source of nitrogen and phosphorus to estuaries, coastal waters and south Florida inland flowing waters through the application of fertilizer to crops and pastures and from animal wastes. For waters impaired by nitrogen and phosphorus pollution, the 1999 Florida Watershed Restoration Act established that agricultural BMPs should be the primary instrument to implement TMDLs. Thus, additional waters identified by the State as impaired under the proposed rule may result in State requirements or provisions to reduce the discharge of nitrogen and/or phosphorus to incrementally impaired waters through the implementation of BMPs. The NRC suggested that for Phase I, the incremental agricultural land area identified was likely underestimated. EPA addressed this finding by including land area associated with potentially impaired unassessed waters in this analysis.

EPA estimated the potential costs of additional agricultural BMPs by evaluating land use data. BMP programs designed for each type of agricultural operation and their costs were taken from a study of agricultural BMPs to help meet TMDL targets in the Caloosahatchee River, St. Lucie River, and Lake Okeechobee watersheds. Three types of BMP programs were identified in this study. The first program, called the ''Owner Implemented BMP program,'' consists of a set of BMPs that land owners might implement without additional incentives. The second program, called the ''Typical BMP program,'' is the set of BMPs that land owners might implement under a reasonably funded cost share program or a modest BMP strategy approach. The third program, called the ''Alternative BMP program,'' is a more expensive program designed to supplement the ''Owner Implemented BMP program'' and ''Typical BMP program'' if additional reductions are necessary.

The BMPs in the ''Owner Implemented BMP Program'' and ''Typical BMP Program'' are similar to the BMPs verified as effective by FDEP and adopted by FDACS. EPA did not find BMPs in the ''Alternative BMP Program'' similar to the BMPs in the FDACS BMP manual, despite the NRC suggestion that the ''Alternative BMP Program'' would be needed to meet NNC. EPA has also found no indication that the ''Alternative BMP Program,'' which includes edge-of-farm stormwater chemical treatment, has been implemented through TMDLs to meet water quality standards for nutrients in watersheds with significant contributions from agriculture (e.g., Lake Okeechobee). EPA also found that TMDLs cite the Florida Department of Agriculture and Consumer Services' (FDACS) BMP manual as a source of approved BMPs. Therefore, for purposes of this analysis, EPA believes it is reasonable to assume that nutrient controls for agricultural sources are best represented by the combination of the ''Owner Implemented BMP Program'' and ''Typical BMP Program'' and not the more stringent ''Alternative BMP Program'' controls. This assumption corroborates EPA's intent for the nutrient criteria to provide the same level of protection as Florida's narrative criteria.

Table VI(C)(2) summarizes the potential incremental costs of BMPs on agricultural lands in the watersheds of incrementally impaired estuaries, coastal waters and south Florida inland flowing waters for each agricultural category. This analysis indicates that incremental agricultural costs resulting from the proposed numeric nutrient criteria may be estimated at $0.3—$0.7 million per year.

TABLE VI(C)(2)—POTENTIAL INCREMENTAL AGRICULTURAL BMP COSTS

Agricultural category	Area potentially needing controls (acres) [a]	"Owner implemented BMP Program" plus "Typical BMP Program" Unit Costs (2010$/ac/yr) [b]	Total "Owner Implemented BMP Program" and "Typical BMP Program" costs (2010$/yr)
Animal Feeding	20–39	$18.56	$400–$700
Citrus	0	156.80	$0
Fruit Orchards [c]	0–7	156.80	$0–$1,100
Cow Calf Production, Improved Pastures	1,115–4,568	15.84	$17,700–$72,400
Cow Calf Production, Rangeland and Wooded Pasture	1,145–1,995	4.22	$4,800–$8,400
Cow Calf Production, Unimproved Pastures	299–1,346	4.22	$1,300–$5,700
Cropland and Pasture Land (general) [d]	10,195–18,467	27.26	$277,900–$503,300
Dairies	0	334.40	$0
Field Crop (Hayland) Production	479–1,397	18.56	$8,900–$25,900
Horse Farms	34–123	15.84	$500–$1,900
Ornamental Nursery	4–8	70.00	$300–$600
Floriculture [e]	0	70.00	$0
Row Crop	228–246	70.40	$16,100–$17,300
Sod/Turf Grass	0	35.20	$0
Other Areas [f]	565–1,069	18.56	$10,500–$19,800
Total [g]	14,085–29,265		$338,300–$657,200

Note: Detail may not add to total due to independent rounding.

[a.] Low end of range represents acres associated with impaired assessed waters assuming none of the unassessed waters would be impaired under the proposed rule; high end of range represent low end plus controls on the watersheds associated with impaired unassessed waters (estimated based on proportional impairment to assessed waters) for which EPA has not already identified a need for controls for baseline or impaired assessed waters. Based on GIS analysis of land use data from five water management districts (for entire State)

[b.] Cost estimates from SWET (2008); representative of 2010 prices (personal communication with D. Bottcher, 2010).

[c.] Owner/typical BMP unit costs based on costs for citrus crops.

[d.] Owner/typical BMP unit costs based on average costs for improved pastures, unimproved/wooded pasture, row crops, and field crops.

[e.] Owner/typical BMP unit costs based on costs for ornamental nurseries.

[f.] Includes FLUCCS Level 3 codes 2230, 2400, 2410, and 2540.

[g.] Excludes land not in production.

3. Septic System Costs

Some nutrient reductions from septic systems may be necessary for incrementally impaired waters to meet the numeric nutrient criteria in this proposed rule. Several nutrient-related TMDLs in Florida identify septic systems as a significant source of nitrogen and phosphorus pollution. Some of the ways to address pollution from septic systems may include greater use of inspection programs and repair of failing systems, upgrading existing systems to advanced nutrient removal, installation of decentralized cluster systems where responsible management entities would ensure reliable operation and maintenance, and connecting households and businesses to wastewater treatment plants. Because of the cost, time, and issues associated with new wastewater treatment plant construction, EPA assumed that the most likely strategy to reduce nutrient loads from septic systems would be to upgrade existing conventional septic systems to advanced nutrient removal systems.

Septic systems in close proximity to surface waters are more likely to contribute nutrient loads to waters than distant septic systems. Florida Administrative Code provides that in most cases septic systems should be at least 75 feet from surface waters (F.A.C. 64e-6.005(3)). In addition, many of Florida's existing nutrient-related TMDLs identify nearby failing septic systems as contributing to nutrient impairments in surface waters.

For this economic analysis, EPA assumed that some septic systems located near incrementally impaired waters may be required to upgrade to advance nutrient removal systems. However, the distance that septic systems can be safely located relative to these surface waters depends on a variety of site-specific factors. Because of this uncertainty, EPA assumed that septic systems located within 500 feet of any water (based on land use types) in watersheds containing or, in the case of coastal waters, surrounding incrementally impaired estuaries, coastal waters or south Florida inland flowing waters may need to be upgraded from conventional to advanced nutrient removal systems. The NRC agreed with the 500-ft threshold, but found that the exclusion of septic systems in springsheds is a deficiency of EPA's analysis. This proposed rule does not include criteria for springsheds.

EPA used GIS analysis of data obtained from the Florida Department of Health [222] that provides the location of active septic systems in the State to identify the potentially affected septic systems. This analysis yielded 5,952 to 10,784 active septic systems that may be affected by the proposed rule.

EPA evaluated the cost of upgrading existing septic systems to advanced nutrient removal systems. The NRC also recommended that EPA consider permeable reactive barriers (PRB) in their technology costs and take into account any additional Florida-specific costs related to septic system upgrades (e.g., performance-based treatment systems, under Florida regulations, need to be designed by Florida licensed professional engineers). EPA included this technology in the cost analysis, resulting in the range of upgrade capital costs from $3,300 to $8,800 per system. See the Economic Analysis for further detail. For O&M costs, EPA relied on a study that compared the annual costs associated with various septic system treatment technologies including conventional onsite sewage treatment and disposal system and fixed film activated sludge systems. Based on this study, EPA estimated the incremental

[222] FDOH. 2010. *Bureau of Onsite Sewage GIS Data Files.* Florida Department of Health, Division of Environmental Health. *http://www.doh.state.fl.us/Environment/programs/EhGis/EhGisDownload.htm.*

O&M costs for an advanced system to be $650 per year.[223] In addition, homeowners would also incur a biennial permit fee of $100 (or $50 per year) for the upgraded system. Thus, based on annual O&M costs of $700 and annualizing capital costs at 7% over 20 years, total annual costs could range from approximately $1,000 to $1,500 for each upgrade. EPA estimated the total annual costs of upgrading septic systems by multiplying this range of unit costs with the number of systems identified for upgrade. Using this method, total annual costs for upgrading septic systems in incrementally impaired watersheds could range from $6.0 million to $16.2 million.

D. Governmental Costs

The proposed rule may result in the identification of incrementally impaired waters that would require the development of additional TMDLs. As the principal State regulatory agency implementing water quality standard, FDEP may incur costs associated with developing additional TMDLs. EPA's analysis identified 95 (based on the analysis of assessed waters) to 183 (including potentially impaired unassessed waters) incrementally impaired waters (WBIDs).

Because current TMDLs for estuaries and coastal waters in Florida include an average of approximately four WBIDs each, EPA estimates that the State of Florida may need to develop and adopt approximately 24 to 46 additional TMDLs. The NRC recommended applying Florida-specific TMDL development costs from a FDEP report detailing FDEP TMDL program costs. EPA used a range of costs from a 2001 EPA study that found the cost of developing a TMDL at different levels of aggregation and the Florida-specific TMDL cost estimates are within this range of costs.[224, 225] For this analysis, EPA used the estimates for a single cause of impairment and adjusted the costs to account for the possibility that a TMDL may need to address more than one pollutant (because most of the incrementally impaired waters in EPA's analysis exceeded the criteria for more than one pollutant). Under this assumption, EPA estimated the average TMDL cost to be approximately $47,000 ($28,000 on average for one pollutant, plus $6,000 on average for the other pollutant and adjusted to 2010 dollars). EPA also estimated unit costs based on the high end of typical TMDL development costs, plus an additional $6,000 for the second nutrient. Escalating to 2010 dollars, the high range of TMDL development cost of $212,000. For 24 to 46 TMDLs, total costs for incremental TMDL development could be $1.1 million to $10.2 million.

FDEP currently operates its TMDL schedule on a five-phase cycle that rotates through Florida's five basins over five years. Under this schedule, completion of TMDLs for high priority waters will take 9 years; it will take an additional 5 years to complete the process for medium priority waters. Assuming all the incremental impairments are high priority and FDEP develops the new TMDLs over a 9-year period, annual costs could be $0.1 to $1.1 million.

Should the State of Florida submit current TMDL targets as Federal site specific alternative criteria (SSAC) for EPA review and approval, EPA believes it is reasonable to assume that information used in the development of the TMDLs will substantially reduce the time and effort needed to provide a scientifically defensible justification for such applications. If EPA's assumption is incorrect and there were to be increased costs for the SSAC process, EPA expects that such cost underestimation would be cancelled out by continuing to include the costs of developing the scientifically based numeric targets for new TMDLs. Thus, EPA did not separately analyze any incremental costs associated with SSAC.

Similarly, state and local agencies regularly monitor TN and TP in ambient waters. These data are the basis for the extensive IWR database maintained by the State of Florida. Because Florida is currently monitoring TN, TP, and chlorophyll-*a* concentrations in many waters, EPA assumed that the rule is unlikely to have a significant impact on costs related to water quality monitoring activities.

E. DPVs

EPA is proposing several options for DPVs. For this analysis, EPA assumed that the DPVs equal the numeric nutrient criteria for the segment to which the stream discharges. If the State of Florida were to choose any of the other three proposed options for DPVs, then these costs may be over- or underestimated. To estimate whether the DPVs are being met, EPA used the same minimum data requirements (e.g., four data points in one year with at least one data point each in summer and winter seasons) and attainment criteria (no more than one exceedance in a three-year period) for evaluating the criteria. EPA used data from estuary pour points from any station within 500 feet of and within the same WBID as the pour point. For south Florida pour points EPA did not use the data from the technical report, but used all data from the WBID in which the pour point is located to assess impairment.

For this analysis, EPA assumed that any WBID containing a pour point exceeding the criteria would be designated as impaired. EPA then identified the watersheds that contain or surround, in the case of coastal waters, those incrementally impaired WBIDs. See Appendix G of the economic analysis for more information.

TABLE VI(E). SUMMARY OF POTENTIAL INCREMENTAL COSTS ASSOCIATED WITH DPVS

Source category	Total potential incremental annual cost ($/year)
Municipal Wastewater	$29.4–$29.6
Industrial Dischargers	$0.0
Urban Stormwater	$9.5–$185.1
Agriculture	$0.5–$0.9
Septic Systems	$2.0–$3.0
Government/Program Implementation [1]	$0.0–$0.1
Total	$41.4–$218.6

[1] Assuming 3 TMDLs for 13 WBIDs (approximately 4 WBIDs per TMDL) over a 9-year period.

F. Summary of Costs

Table VI(F) summarizes EPA's estimates of potential incremental costs associated with additional State and private sector activities to meet the numeric criteria supporting State designated uses. Note, these total costs include costs associated with unassessed waters. Because of uncertainties in the pollution controls ultimately implemented by the State of Florida, actual costs may vary depending on the site-specific source reductions needed to meet the new numeric criteria.

[223] Chang, N., M. Wanielista, A. Daranpob, F. Hossain, Z. Xuan, J. Miao, S. Liu, Z. Marimon, and S. Debusk. 2010. *Onsite Sewage Treatment and Disposal Systems Evaluation for Nutrient Removal.* FDEP Project #WM 928. Report Submitted to Florida Department of Environmental Protection, by Stormwater Management Academy, Civil, Environmental, and Construction Engineering Department, University of Central Florida.

[224] USEPA. 2001. *The National Costs of the Total Maximum Daily Load Program (Draft Report).* EPA–841–D–01–003. U.S. Environmental Protection Agency, Office of Water, Washington DC.

[225] EPA did not adjust these estimates to account for potential reductions in resources required to develop TMDLs given that scientifically based numeric targets were developed as part of this proposed rule. Costs for these TMDLs are thus likely to be an overestimate.

TABLE VI(F)—SUMMARY OF POTENTIAL ANNUAL COSTS [1] (2010 DOLLARS)

Sector	Annual Cost (millions) [2]
Municipal Wastewater	$44.1–$49.7
Industrial Dischargers	$15.2
Urban Stormwater	$131.9–$330.9
Agriculture	$0.3–$0.7
Septic Systems	$6.0–$16.2
Government/Program Implementation (TMDLs)	$0.1–$1.1
Downstream Protection Values	$41.4–$218.6
Total	$239.0—$632.4

[1] Includes costs for assessed, unassessed, and DPVs.

[2] Low end of range represents estimated costs under the assumption that none of the unassessed waters would be impaired under the proposed rule; high end of range represents costs associated with the assumption of proportional impairment of unassessed waters.

EPA also calculated the potential costs to Florida households. Given the uncertainty regarding the magnitude of the estimated costs ultimately borne by households, EPA sought to minimize that uncertainty with a selective though matched set of potential costs and potentially affected households. Although GIS analysis could be used to overlay maps of affected populations and facilities with incrementally impaired watersheds, a simpler more direct approach is to assume that all households in Florida are either served by a wastewater treatment plant or septic system, and pay taxes that would support implementation programs conducted by the State. In addition, because the sector with the largest costs is urban stormwater, EPA decided to include this sector as well. Thus, EPA decided to look at the total costs of the two rules across all households in Florida. Also, given the cost-pass-through of agriculture costs and industrial costs to consumers outside the State of Florida, EPA did not consider them for the estimate of average costs per households in Florida. Therefore, EPA also calculated the total costs for municipal wastewater and stormwater controls, septic upgrades, and government/program implementation costs for both the proposed rule and the Inland rule and compared this sum to the total number of households in the State. This may underestimate actual household costs if some costs are not borne equally by households statewide, but instead are concentrated within the watersheds for which controls are needed. EPA's total estimated annual cost for compliance with this proposed rule, and the Inland rule, represents $44 to $108 per household per year for both rules across all households in Florida. This equals $3.60 to $9 per month per household in Florida. Please refer to Section 13 in the Economic Analysis for more information.

EPA also considered whether the potential costs of this proposed rule could result in employment impacts. Environmental regulations can both increase and decrease employment, and whether the net effect is positive or negative depends on many factors. See Chapter 13 of the Economic Analysis for further discussion.

G. Benefits

Since elevated concentrations of nutrients in surface waters can result in adverse ecological effects, human health impacts, and negative economic impacts, EPA expects the proposed numeric nutrient criteria to result in significant ecological, human health, and economic benefits to Florida. For example, excess nutrients in water can cause eutrophication, which can lead to harmful (sometimes toxic) algal blooms, loss of rooted plants, and decreased dissolved oxygen. In turn, these results can lead to adverse impacts on aquatic life, fishing, swimming, wildlife watching, camping, and drinking water. Excess nutrients can also cause: nuisance surface scum, reduced food for herbivorous wildlife, fish kills, alterations in fish communities, and unsightly shorelines that can decrease property values. Excessive nutrient loads can also lead to harmful algal blooms (HABs), which can cause a range of adverse human health effects including dermal, gastrointestinal, neurological, and respiratory problems, and in severe cases, may even result in fatalities.

Nutrient impairment is currently a major concern for many bays, estuaries, and coasts within the United States, and is particularly severe for many Florida waters. FDEP's 2010 report identifies approximately 569 square miles (364,160 acres) of estuaries (about 23 percent of assessed estuarine area) and 102 square miles (65,280 acres) of coastal waters (about 1.5 percent of assessed coastal waters) as impaired by nutrients. These impairments may have a significant impact on the value of environmental goods and services provided by the affected waterbodies. For example, the losses of submerged aquatic vegetation resulting from eutrophication can have significant economic impacts. In 2009, Florida seagrass communities supported an estimated harvest of $23 million for just six species of commercial fish and shellfish.[226]

In Florida's environment and economy, the tourism-focused goods and services provided by its bays, estuaries, and coastal waters are particularly valuable. The tourism industry of Florida's nearshore counties contributes approximately $12.4 billion (2004 dollars) to the State's economy annually.[227] Coral reefs are especially important contributors to Florida's tourism sector. Reef-related recreational expenditures on activities such as snorkeling, scuba diving, fishing, and glass bottom boating in four counties in southeastern Florida for a one year period in 2000–2001 totaled $5.4 billion.[228]

The proposed rule will help reduce nitrogen and phosphorus concentrations in Florida's estuaries, coastal waters and south Florida inland flowing waters. In turn, this reduction will improve ecological function and prevent further degradation that can result in substantial economic benefits to Florida citizens. EPA's economic analysis document describes in detail many of the potential benefits associated with meeting the numeric criteria in the proposed rule for nitrogen and phosphorus, including reduced human health risks, ecological benefits and functions, improved recreational opportunities, aesthetic enhancements and others.

1. Monetized Benefits Estimates

Reducing nutrient concentrations will increase services provided by water resources to recreational users. For example, some coastal waters that are not usable for recreation may become available following implementation of the rule, thereby expanding recreation options for residential users and tourists. Other waters that are available for recreation can become more attractive for users by making recreational trips more enjoyable. Individuals may also take trips more frequently if they enjoy their recreational activities more. In addition to recreational improvements, the

[226] Crist, C. 2010. *Seagrass Awareness Month.* Proclamation by the Governor Charlie Crist of the State of Florida. Florida Department of Environmental Protection.

[227] NOEP. 2006. *Coastal Economy Data.* National Ocean Economics Program. *www.oceaneconomics.org/Market/coastal/coastalEcon.asp.*

[228] Johns, G.M., V.R. Leeworthy, F.W. Bell, and M.A. Bonn. 2001. *Socioeconomic Study of Reefs in SoutheastFlorida.* Final Report prepared by Hazen and Sawyer, Hollywood, FL, for Broward County, Palm Beach County, Miami-Dade County, Monroe County, Florida Fish and Wildlife Conservation Commission, and National Oceanic and Atmospheric Administration.

proposed rule is expected to generate nonuse benefits from bequest, altruism, and existence motivations. Individuals may value the knowledge that water quality is being maintained, ecosystems are being protected, and populations of individual species are healthy, independently from any use value.

EPA used a benefits transfer function based on meta-analysis of surface water valuation studies to estimate both use and nonuse benefits from improvements in surface water. This approach is based on the method used to quantify nonmarket benefits in the 2009 *Environmental Impact and Benefits Assessment for Final Effluent Guidelines and Standards for the Construction and Development Category* (EPA, 2009), also used in the economic analysis of the Inland Rule. The approach quantifies benefits based on reach-specific baseline water quality and the estimated change in pollutant concentrations. The approach translates reductions in nutrients into an indicator of overall water quality (via a ''water quality ladder,'' or WQL) and values these improvements in terms of household willingness to pay (WTP) for the types of uses (e.g., as fishing and swimming) that are supported by different water quality levels.

EPA calculated the baseline WQL scores for incrementally affected waters by comparing the water quality observations to criteria. For coastal waters, only Chl-*a* criteria are applicable, and for these waters, EPA estimated baseline WQL scores based on Chl-*a* exceedances only. For other marine waters, EPA developed estimates of baseline water quality based on comparing the water quality observations to the applicable criteria in the following order: (1) Exceedances of proposed TN criteria; (2) exceedances of proposed TP criteria; and (3) exceedances of proposed Chl-*a* criteria. The baseline WQL score is based on the percent exceedance of the applicable criterion value. EPA assumes all incrementally impaired waters will meet the proposed criteria and estimated the potential changes for each waterbody. EPA estimated that up to 163 unassessed WBIDs may be incrementally impaired, but water quality data for these waters are not available. To estimate the potential benefits associated with these potentially impaired unassessed waters, EPA estimated the same percent exceedance of the potentially impaired assessed waters. Because EPA's estimates of monetized benefits only reflect the water quality improvements for WBIDs, and not HUC–12s, these potential benefits are underestimated and should not be directly compared to costs, which include HUC–12 costs. EPA then estimated monetized benefit values of these water quality improvements using benefits transfer based on a meta-regression of 45 studies that value water quality improvements in surface waters. Using the meta-analysis EPA estimated a household WTP function with independent variables that characterize (1) the underlying study and methodology used, (2) demographic and other characteristics of the surveyed populations, (3) geographic region and scale, and (4) resource characteristics and improvements. More details on the meta-analysis can be found in the Economic Analysis.

Using this function, EPA derived household WTP estimates for both full time and part time residents of the State. EPA estimated that seasonal residents live in the State for approximately four months of the year; therefore EPA weighted household WTP values for seasonal residents by one third. EPA then weighted household WTP estimates by the percentage of State water miles that are expected to improve. EPA estimated total benefits by multiplying the weighted household WTP value with the total number of benefiting households. EPA estimated the number of full time residents by dividing the total State population by average household size for the State as provided by the U.S. Census Bureau's 2010 American Community Survey (U.S. Census Bureau, 2010). The number of part-time households in Florida is based on Smith and House (2006), who used survey data to estimate the number, timing, and duration of temporary moves to Florida at peak seasons. EPA used the Smith and House (2006) results and U.S. Census Bureau (2010) statistics on household size to estimate the number of part-time households in Florida. Total monetized benefits, including monetized benefits of unassessed waters, may be in the range from $39.0 million to $53.4 million annually, as shown in Table VI(F). The range reflects EPA's assumptions regarding the location of unassessed waters that might be incrementally impaired.

Because EPA's estimates of monetized benefits only reflect use and nonuse values associated with water quality improvements to Florida residents (full and part time), these potential benefits are likely underestimated compared to costs. The population considered in the benefits analysis of the rule does not include households outside of Florida that may also hold values for water resources in the State of Florida. Even if per household values for out-of-State residents are small, they may be significant in the aggregate if these values are held by a substantial number of out-of-State households. EPA notes that four times as many out-of-State and foreign tourists visit the State's saltwater beaches each year as State residents do. Not including out-of-State residents in the analysis is likely to result in an underestimation of the total benefits of improved water quality. Although these monetized benefits estimates do not account for all potential economic benefits arising from the proposed rule, they help to demonstrate the economic importance of restoring and protecting Florida waters from the impacts of nitrogen and phosphorus pollution.

TABLE VI(F)—POTENTIAL ANNUAL STATE BENEFITS ASSOCIATED WITH THE PROPOSED CRITERIA INCLUDING UNASSESSED WATERS (2010 DOLLARS)

WTP estimate	Average benefit per mile [1]	Total benefits (millions) [2]
Lower 5% Bound	$8,200	$17.2–$23.6
Mean	18,500	$39.0–$53.4
Upper 95% Bound	34,500	$72.5–$99.4

[1] Total benefits divided by 2,102 incrementally impaired assessed miles.

[2] Benefits per mile times the number of incrementally impaired miles; based on between 2,102 and 2,882 potentially improved miles. The low end of the range represents assessed waters only, and the high end of the range includes unassessed waters.

VII. Statutory and Executive Order Reviews

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action. This proposed rule does not establish any requirements directly applicable to regulated entities or other sources of nitrogen and phosphorus pollution. Moreover, existing narrative water quality criteria in State law already require that nutrients not be present in waters in concentrations that cause an imbalance in natural populations of flora and fauna in estuaries and coastal waters in Florida and in south Florida inland flowing waters.

B. Paperwork Reduction Act

This action does not impose any direct new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Actions to implement these standards may entail additional paperwork burden. Burden is defined at 5 CFR 1320.3(b). This action does not include any information collection, reporting, or record-keeping requirements.

C. Regulatory Flexibility Act

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

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

Under the CWA water quality standards program, states must adopt water quality standards for their waters and must submit those water quality standards to EPA for review and approval or disapproval; if the Agency disapproves a state standard and the state does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory and regulatory requirements. EPA also has the authority to promulgate water quality standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the CWA. State standards approved by EPA (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State of Florida implements through the NPDES permit process. The State has discretion in developing discharge limits, as needed to meet the standards. This proposed rule does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Florida will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of choices associated with permit writing (e.g., relating to compliance schedules, variances, etc.). While Florida's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, EPA's action, by itself, does not impose any of these requirements on small entities; that is, these requirements are not self-implementing. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules that include a ''Federal mandate'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. A ''Federal mandate,'' is any provision in federal statute or regulation that would impose an enforceable duty on State, local or Tribal governments or the private sector.[229] Before promulgating an EPA rule for which a written statement is needed under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205(a) do not apply when they are inconsistent with law. Moreover, section 205(b) allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or Tribal governments or the private sector. As these water quality criteria are not self-implementing, EPA's proposed rule does not regulate or affect any entity. Because this proposed rule does not regulate or affect any entity, it therefore is not subject to the requirements of sections 202 and 205 of UMRA.

EPA determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

[229] A ''Federal mandate'' does not include conditions of Federal assistance and generally does not include duties arising from participation in a voluntary Federal program.

Moreover, water quality standards, including those promulgated here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA's authority and responsibility to promulgate Federal water quality standards when state standards do not meet the requirements of the CWA is well established and has been used on various occasions in the past. The proposed rule would not substantially affect the relationship between EPA and the States and Territories, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter Florida's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Florida from adopting water quality standards that EPA concludes meet the requirements of the CWA, either before or after promulgation of the final rule, which would eliminate the need for Federal standards. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this action, EPA communicated with the State of Florida to discuss the Federal rulemaking process. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. EPA has concluded that this action may have tribal implications. However, the rule will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with flowing waters. Both tribes have been approved for treatment in the same manner as a state (TAS) status for CWA sections 303 and 401 and have federally-approved water quality standards in their respective jurisdictions. These tribes are not subject to this proposed rule. However, this rule may impact the tribes because the numeric criteria for Florida will apply to waters adjacent to the tribal waters.

EPA consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. At a consultation teleconference held on March 1, 2012, EPA summarized the available information regarding this proposed rule, and requested comments on the proposal and its possible effects on tribal waters. Information relevant to this proposed action and the related Tribal consultation is posted on the EPA Tribal Portal site at *http://www.epa.gov/tribal/consultation/index.htm*. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency believes that this rule will result in the reduction of environmental health and safety risks that could present a disproportionate risk to children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act of 1995

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

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

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

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

EPA has determined that this proposed rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would afford a greater level of protection to both human health and the environment if these numeric nutrient criteria are promulgated for Class I, Class II and Class III waters in the State of Florida.

List of Subjects in 40 CFR Part 131

Environmental protection, Water quality standards, Nitrogen and phosphorus pollution, Nutrients, Florida.

Dated: November 30, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.45 is added to read as follows:

§ 131.45 Water Quality Standards for the State of Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters

(a) *Scope.* This section promulgates numeric criteria for nitrogen and phosphorus pollution for Class I, Class II, and Class III waters in the State of Florida. This section also contains provisions for site-specific alternative criteria.

(b) *Definitions.*—(1) *Canal* means a trench, the bottom of which is normally covered by water with the upper edges of its two sides normally above water.

(2) *Coastal water* means all marine waters that have been classified as Class II (Shellfish Propagation or Harvesting) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Section 62–302.400, F.A.C., extending to three nautical miles from shore that are not classified as estuaries.

(3) *Estuary* means predominantly marine regions of interaction between rivers and nearshore ocean waters, where tidal action and river flow mix fresh and salt water. Such areas include bays, mouths of rivers, and lagoons that have been classified as Class II (Shellfish Propagation or Harvesting) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Section 62–302.400, F.A.C., excluding wetlands.

(4) *Everglades Agricultural Area (EAA)* means those lands described in Florida Statute Section 373.4592 (1994) subsection (15).

(5) *Everglades Protection Area (EvPA)* means Water Conservation Areas 1 (which includes the Arthur R. Marshall Loxahatchee National Wildlife Refuge), 2A, 2B, 3A, and 3B, and the Everglades National Park.

(6) *Inland flowing waters* means inland predominantly fresh surface water streams that have been classified as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Section 62–302.400, F.A.C., excluding wetlands (e.g., sloughs).

(7) *Marine Lake* means a slow-moving or standing body of marine water that occupies an inland basin that is not a stream, spring, or wetland.

(8) *Predominantly fresh waters* means surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter.

(9) *Predominantly marine waters* means surface waters in which the chloride concentration at the surface is greater than or equal to 1,500 milligrams per liter.

(10) *South Florida inland flowing waters* means inland flowing waters in the South Florida Nutrient Watershed Region, which encompasses the waters south of Lake Okeechobee, the Caloosahatchee River (including Estero Bay) watershed, and the St. Lucie watershed.

(11) *State* means the State of Florida, whose transactions with the U.S. EPA in matters related to 40 CFR 131.45 are administered by the Secretary, or officials delegated such responsibility, of the Florida Department of Environmental Protection (FDEP), or successor agencies.

(12) *Stream* means a free-flowing, predominantly fresh surface water in a defined channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar water bodies.

(13) *Surface water* means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the Earth's surface.

(14) *Tidal creek* means a relatively small coastal tributary with variable salinity that lies at the transition zone between terrestrial uplands and the open estuary.

(c) *Criteria for Florida Waters.*

(1) *Criteria for Estuaries.*

The applicable total nitrogen (TN), total phosphorus (TP), and chlorophyll *a* criteria for estuaries are shown in Table 1.

TABLE 1—EPA'S NUMERIC CRITERIA FOR FLORIDA'S ESTUARIES

[In geographic order Northwest to Northeast]

Segment	Segment ID	Proposed Criteria		
		TN* (mg/L)	TP* (mg/L)	Chl-*a** (µg/L)
Perdido Bay:				
Upper Perdido Bay	0101	0.59	0.042	5.2
Big Lagoon	0102	0.26	0.019	4.9
Central Perdido Bay	0103	0.47	0.031	5.8
Lower Perdido Bay	0104	0.34	0.023	5.8
Pensacola Bay:				
Blackwater Bay	0201	0.53	0.022	3.9
Upper Escambia Bay	0202	0.43	0.025	3.7
East Bay	0203	0.50	0.021	4.2
Santa Rosa Sound	0204	0.34	0.018	4.1
Lower Escambia Bay	0205	0.44	0.023	4.0
Upper Pensacola Bay	0206	0.40	0.021	3.9
Lower Pensacola Bay	0207	0.34	0.020	3.6
Santa Rosa Sound	0208	0.33	0.020	3.9
Santa Rosa Sound	0209	0.36	0.020	4.9
Choctawhatchee Bay:				
Eastern Choctawhatchee Bay	0301	0.47	0.025	8.1
Central Choctawhatchee Bay	0302	0.36	0.019	3.8
Western Choctawhatchee Bay	0303	0.21	0.012	2.4
St. Andrews Bay:				
East Bay	0401	0.31	0.014	4.6
St. Andrews Sound	0402	0.14	0.009	2.3
Eastern St. Andrews Bay	0403	0.24	0.021	3.9

TABLE 1—EPA'S NUMERIC CRITERIA FOR FLORIDA'S ESTUARIES—Continued

[In geographic order Northwest to Northeast]

Segment	Segment ID	Proposed Criteria		
		TN* (mg/L)	TP* (mg/L)	Chl-*a** (µg/L)
Western St. Andrews Bay	0404	0.19	0.016	3.1
Southern St. Andrews Bay	0405	0.15	0.013	2.6
North Bay 1	0406	0.22	0.012	3.7
North Bay 2	0407	0.22	0.014	3.7
North Bay 3	0408	0.21	0.016	3.4
West Bay	0409	0.23	0.022	3.8
St. Joseph Bay:				
St. Joseph Bay	0501	0.25	0.018	3.8
Apalachicola Bay:				
St. George Sound	0601	0.53	0.019	3.6
Apalachicola Bay	0602	0.51	0.019	2.7
East Bay	0603	0.76	0.034	1.7
St. Vincent Sound	0605	0.52	0.016	11.9
Apalachicola Offshore	0606	0.30	0.008	2.3
Alligator Harbor:				
Alligator Harbor	0701	0.36	0.011	2.8
Alligator Offshore	0702	0.33	0.009	3.1
Alligator Offshore	0703	0.33	0.009	2.9
Ochlockonee Bay+:				
Ochlockonee-St. Marks Offshore	0825	0.79	0.033	2.7
Ochlockonee Offshore	0829	0.47	0.019	1.9
Ochlockonee Bay	0830	0.66	0.037	1.8
St. Marks River Offshore	0827	0.51	0.022	1.7
St. Marks River	0828	0.55	0.030	1.2
Big Bend/Apalachee Bay+:				
Econfina Offshore	0824	0.59	0.028	4.6
Econfina	0832	0.55	0.032	4.4
Fenholloway	0822	1.15	0.444	1.9
Fenholloway Offshore	0823	0.48	0.034	10.3
Steinhatchee-Fenholloway Offshore	0821	0.40	0.023	4.1
Steinhatchee River	0819	0.67	0.077	1.0
Steinhatchee Offshore	0820	0.34	0.018	3.5
Steinhatchee Offshore	0818	0.39	0.032	4.8
Suwannee River+:				
Suwannee Offshore	0817	0.78	0.049	5.2
Springs Coast+:				
Waccasassa River Offshore	0814	0.38	0.019	3.9
Cedar Keys	0815	0.32	0.019	4.1
Crystal River	0812	0.35	0.013	1.3
Crystal-Homosassa Offshore	0813	0.36	0.013	2.1
Homosassa River	0833	0.47	0.032	1.9
Chassahowitzka River	0810	0.32	0.010	0.7
Chassahowitzka River Offshore	0811	0.29	0.009	1.7
Weeki Wachee River	0808	0.32	0.010	1.6
Weeki Wachee Offshore	0809	0.30	0.009	2.1
Pithlachascotee River	0806	0.50	0.022	2.4
Pithlachascotee Offshore	0807	0.32	0.011	2.5
Anclote River	0804	0.48	0.037	4.7
Anclote Offshore	0805	0.31	0.011	3.2
Anclote Offshore South	0803	0.29	0.008	2.6
Lake Worth Lagoon/Loxahatchee:				
North Lake Worth Lagoon	1201	0.55	0.067	4.7
Central Lake Worth Lagoon	1202	0.57	0.089	5.3
South Lake Worth Lagoon	1203	0.48	0.034	3.6
Lower Loxahatchee	1301	0.68	0.028	2.7
Middle Loxahatchee	1302	0.98	0.044	3.9
Upper Loxahatchee	1303	1.25	0.072	3.6
St. Lucie:				
Lower St. Lucie	1401	0.58	0.045	5.3
Middle St. Lucie	1402	0.90	0.120	8.4
Upper St. Lucie	1403	1.22	0.197	8.9
Indian River Lagoon:				
Mosquito Lagoon	1501	1.18	0.078	7.5
Banana River	1502	1.17	0.036	5.7
Upper Indian River Lagoon	1503	1.63	0.074	9.2
Upper Central Indian River Lagoon	1504	1.33	0.076	9.2
Lower Central Indian River Lagoon	1505	1.12	0.117	8.7
Lower Indian River Lagoon	1506	0.49	0.037	4.0

TABLE 1—EPA'S NUMERIC CRITERIA FOR FLORIDA'S ESTUARIES—Continued

[In geographic order Northwest to Northeast]

Segment	Segment ID	Proposed Criteria		
		TN* (mg/L)	TP* (mg/L)	Chl-*a** (µg/L)
Halifax River:				
Upper Halifax River	1601	0.75	0.243	9.4
Lower Halifax River	1602	0.63	0.167	9.6
Guana, Tolomato, Matanzas, Pellicer:				
Upper GTMP	1701	0.77	0.144	9.5
Lower GTMP	1702	0.53	0.108	6.1
Lower St. Johns River:				
Lower St. Johns River	1801	0.75	0.095	2.5
Trout River	1802	1.09	0.108	3.6
Trout River	1803	1.15	0.074	7.7
Nassau River:				
Lower Nassau	1901	0.33	0.113	3.2
Middle Nassau	1902	0.40	0.120	2.4
Upper Nassau	1903	0.75	0.125	3.4
St. Marys River:				
Lower St. Marys River	2002	0.27	0.045	3.0
Middle St. Marys River	2003	0.44	0.036	2.7

[1] Chlorophyll *a* is defined as corrected chlorophyll, or the concentration of chlorophyll *a* remaining after the chlorophyll degradation product, phaeophytin *a,* has been subtracted from the uncorrected chlorophyll *a* measurement.

* For a given water body, the annual geometric mean of TN, TP, or chlorophyll *a,* concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

+ In these four areas (collectively referred to as the ''Big Bend region''), coastal and estuarine waters are combined. Criteria for the Big Bend region apply to the coastal and estuarine waters in that region.

(2) *Criteria for Tidal Creeks.*

The applicable total nitrogen (TN), total phosphorus (TP), and chlorophyll *a* criteria for predominantly marine tidal creeks are shown in § 131.45(c)(1), Table 1. The applicable TN and TP criteria for predominantly freshwater tidal creeks are shown in Table 2.

TABLE 2—EPA'S NUMERIC CRITERIA FOR FLORIDA'S PREDOMINANTLY FRESHWATER TIDAL CREEKS

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L) *	TP (mg/L) *
Panhandle West [a]	0.67	0.06
Panhandle East [b]	1.03	0.18
North Central [c]	1.87	0.30
West Central [d]	1.65	0.49

TABLE 2—EPA'S NUMERIC CRITERIA FOR FLORIDA'S PREDOMINANTLY FRESHWATER TIDAL CREEKS—Continued

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L) *	TP (mg/L) *
Peninsula [e]	1.54	0.12

Watersheds pertaining to each Nutrient Watershed Region (NWR) were based principally on the NOAA coastal, estuarine, and fluvial drainage areas with modifications to the NOAA drainage areas in the West Central and Peninsula Regions that account for unique watershed geologies. For more detailed information on regionalization and which WBIDs pertain to each NWR, see the Technical Support Document.

[a] Panhandle West region includes: Perdido Bay Watershed, Pensacola Bay Watershed, Choctawhatchee Bay Watershed, St. Andrews Bay Watershed, Apalachicola Bay Watershed.

[b] Panhandle East region includes: Apalachee Bay Watershed, and Econfina/Steinhatchee Coastal Drainage Area.

[c] North Central region includes the Suwannee River Watershed.

[d] West Central region includes: Peace, Myakka, Hillsborough, Alafia, Manatee, Little Manatee River Watersheds, and small, direct Tampa Bay tributary watersheds south of the Hillsborough River Watershed.

[e] Peninsula region includes: Waccasassa Coastal Drainage Area, Withlacoochee Coastal Drainage Area, Crystal/Pithlachascotee Coastal Drainage Area, small, direct Tampa Bay tributary watersheds west of the Hillsborough River Watershed, Sarasota Bay Watershed, small, direct Charlotte Harbor tributary watersheds south of the Peace River Watershed, Caloosahatchee River Watershed, Estero Bay Watershed, Kissimmee River/Lake Okeechobee Drainage Area, Loxahatchee/St. Lucie Watershed, Indian River Watershed, Daytona/St. Augustine Coastal Drainage Area, St. Johns River Watershed, Nassau Coastal Drainage Area, and St. Marys River Watershed.

* For a given water body, the annual geometric mean of TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

(3) *Criteria for Marine Lakes.*

The applicable total nitrogen (TN), total phosphorus (TP) and chlorophyll *a* criteria for marine lakes are shown in Table 3.

TABLE 3—EPA'S NUMERIC CRITERIA FOR FLORIDA'S MARINE LAKES

Long term average lake color [a] and alkalinity	EPA final Chl-a [b,*] µg/L	EPA final TN and TP criteria [range]	
		TN mg/L	TP mg/L
Colored lakes [c]	20	1.27 [1.27–2.23]	0.05 [0.05–0.16]

TABLE 3—EPA'S NUMERIC CRITERIA FOR FLORIDA'S MARINE LAKES—Continued

Long term average lake color [a] and alkalinity	EPA final Chl-a [b,*] µg/L	EPA final TN and TP criteria [range]	
		TN mg/L	TP mg/L
Clear lakes, high alkalinity [d]	20	1.05 [1.05–1.91]	0.03 [0.03–0.09]
Clear lakes, low alkalinity [e]	6	0.51 [0.51–0.93]	0.01 [0.01–0.03]

[a] Platinum-cobalt units (PCU) assessed as true color free from turbidity
[b] Chl-a is defined as corrected chlorophyll, or the concentration of chl-a remaining after the chlorophyll degradation product, phaeophytin a, has been subtracted from the uncorrected chl-a measurement.
[c] Long-term color > 40 PCU and alkalinity > 20 mg/L $CaCO_3$
[d] Long-term color ≤ 40 PCU and alkalinity > 20 mg/L $CaCO_3$
[e] Long-term color ≤ 40 PCU and alkalinity ≤ 20 mg/L $CaCO_3$
* For a water body, the annual geometric mean of chl-a, TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

(4) *Criteria for Coastal Waters.* The applicable chlorophyll *a* criteria for coastal waters are shown in Table 4.

TABLE 4—EPA'S NUMERIC CRITERIA FOR FLORIDA'S COASTAL WATERS

Coastal region	Coastal segment +	Approximate location	$Chlorophyll_{RS}$-*a* [1*] (mg/m³)
Panhandle	1	Alabama border	2.41
	2	Pensacola Bay Pass	2.57
	3		1.44
	4		1.16
	5		1.06
	6		1.04
	7		1.14
	8	Choctawhatchee Bay Pass	1.23
	9		1.08
	10		1.09
	11		1.11
	12		1.18
	13		1.45
	14	St. Andrews Bay Pass	1.74
	15	St. Joseph Bay Pass	2.75
	16		2.39
	17	Southeast St. Joseph Bay	3.47
West Florida Shelf	18		3.96
	19	Tampa Bay Pass	4.45
	20		3.37
	21		3.25
	22		2.95
	23		2.79
	24		2.98
	25		3.24
	26	Charlotte Harbor	4.55
	27		4.22
	28		3.67
	29		4.16
	30		5.70
	31		4.54
	32		4.03
	33	Fort Myers	4.61
Atlantic Coast	34	Biscayne Bay	0.92
	35		0.26
	36		0.26
	37		0.24
	38		0.21
	39		0.21
	40		0.20
	41		0.20
	42		0.21
	43		0.25
	44		0.57
	45	St. Lucie Inlet	1.08
	46		1.42

TABLE 4—EPA'S NUMERIC CRITERIA FOR FLORIDA'S COASTAL WATERS—Continued

Coastal region	Coastal segment +	Approximate location	Chlorophyll$_{RS}$-*a* [1]* (mg/m^3)
	47		1.77
	48		1.55
	49		1.44
	50		1.53
	51		1.31
	52		1.40
	53		1.80
	54	Canaveral Bight	2.73
	55		2.33
	56		2.28
	57		2.06
	58		1.92
	59		1.76
	60		1.72
	61		2.04
	62		1.92
	63		1.86
	64		1.95
	65		2.41
	66		2.76
	67		2.80
	68		3.45
	69	Nassau Sound	3.69
	70		3.78
	71	Georgia border	4.22

[1] Chlorophyll$_{RS}$-*a* is remotely sensed calculation of chlorophyll *a* concentrations.
* For a given water body, the annual geometric mean of the chlorophyll *a* concentration shall not exceed the applicable criterion concentration more than once in a three-year period.
+ Please see TSD for location of Coastal Segments (Volume 2: Coastal Waters, Section 1.3).

(5) *Criteria for South Florida Inland Flowing Waters.*

The applicable criteria for south Florida inland flowing waters that flow into downstream estuaries include the downstream protection value (DPV) for total nitrogen (TN) and total phosphorus (TP) derived pursuant to the provisions of § 131.45(c)(6). These criteria are not applicable to waters within the lands of the Miccosukee and Seminole Tribes, the Everglades Protection Area (EvPA), or the Everglades Agricultural Area (EAA).

(6) *Criteria for Protection of Downstream Estuaries and South Florida marine waters.* (i) A downstream protection value (DPV) for stream tributaries that flow into a downstream estuary or south Florida marine water (i.e., downstream water) is the allowable concentration of total nitrogen (TN) and/or total phosphorus (TP) applied at the point of entry into the downstream water. The applicable DPV for any stream flowing into a downstream water shall be determined pursuant to paragraphs (c)(6)(ii), (iii), (iv), or (v) of this section. The methods available to derive DPVs should be considered in the order listed. Contributions from stream tributaries upstream of the point of entry location must result in attainment of the DPV at the point of entry into the downstream water. If the DPV is not attained at the point of entry into the downstream water, then the collective set of streams in the upstream watershed does not attain the DPV, which is an applicable water quality criterion for the water segments in the upstream watershed. The State or EPA may establish additional DPVs at upstream tributary locations that are consistent with attaining the DPV at the point of entry into the downstream water. The State or EPA also have discretion to establish DPVs to account for a larger watershed area (i.e., include waters beyond the point of reaching water bodies that are not streams as defined by this rule).

(ii) In instances where available data and/or resources provide for use of a scientifically defensible and protective system-specific application of water quality simulation models with results that protect the designated uses and meet all applicable numeric nutrient criteria for the downstream water, the State or EPA may derive the DPV for TN and TP from use of a system-specific application of water quality simulation models. The State or EPA may designate the wasteload and/or load allocations from a TMDL established or approved by EPA as DPV(s) if the allocations from the TMDL will protect the downstream water's designated uses and meet all applicable numeric nutrient criteria for the downstream water.

(iii) When the State or EPA has not derived a DPV for a stream pursuant to paragraph (c)(6)(ii) of this section, and where a reference condition approach is used to derive the downstream water's TN, TP and chlorophyll *a* criteria, then the State or EPA may derive the DPV for TN and TP using a reference condition approach based on TN and TP concentrations from the stream pour point, coincident in time with the data record from which the downstream receiving water segment TN and TP criteria were developed, and using the same data screens and reference condition approach as were applied to the downstream water's data.

(iv) When the State or EPA has not derived a DPV pursuant to paragraph (c)(6)(ii) or (c)(6)(iii) of this section, then the State or EPA may derive the DPV for TN and TP using dilution models based on the relationship between salinity and nutrient concentrations.

(v) When the State or EPA has not derived a DPV pursuant to paragraph (c)(6)(ii), (c)(6)(iii), or (c)(6)(iv) of this section, then the DPV for TN and TP is the applicable TN and TP criteria for the receiving segment of the downstream water as described in § 131.45(c)(1), or as described in Section 62–302.532(a)–(h), F.A.C. for downstream waters where EPA-approved State criteria apply.

(vi) The State and EPA shall maintain a record of DPVs they derive based on the methods described in paragraphs (c)(6)(ii), (iii), (iv), and (v) of this section, as well as a record supporting their derivation, and make such records available to the public. The State and EPA shall notify one another and provide a supporting record within 30 days of derivation of DPVs pursuant to paragraphs (c)(6)(i), (ii), (iii), (iv), or (v) of this section. DPVs derived pursuant to these paragraphs do not require EPA approval under Clean Water Act § 303(c) to take effect.

(d) *Applicability.* (1) The criteria in paragraphs (c)(1) through (6) of this section apply to certain Class I, Class II, and Class III waters in Florida, and apply concurrently with other applicable water quality criteria, except when:

(i) State water quality standards contain criteria that are more stringent for a particular parameter and use;

(ii) The Regional Administrator determines that site-specific alternative criteria apply pursuant to the procedures in paragraph (e) of this section; or

(iii) The State adopts and EPA approves a water quality standards variance to the Class I, Class II, or Class III designated use pursuant to § 131.13 that meets the applicable provisions of State law and the applicable Federal regulations at § 131.10.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are the other Federally-adopted and State-adopted numeric criteria when applied to the same use classifications.

(e) *Site-specific Alternative Criteria.*

(1) The Regional Administrator may determine that site-specific alternative criteria shall apply to specific surface waters in lieu of the criteria established in paragraph (c) of this section. Any such determination shall be made consistent with § 131.11.

(2) To receive consideration from the Regional Administrator for a determination of site-specific alternative criteria, an entity shall submit a request that includes proposed alternative numeric criteria and supporting rationale suitable to meet the needs for a technical support document pursuant to paragraph (e)(3) of this section. The entity shall provide the State a copy of all materials submitted to EPA, at the time of submittal to EPA, to facilitate the State providing comments to EPA. Site-specific alternative criteria may be based on one or more of the following approaches.

(i) Replicate the process for developing the estuary criteria in paragraph (c)(1) of this section.

(ii) Replicate the process for developing the tidal creek criteria in paragraph (c)(2) of this section.

(iii) Replicate the process for developing the marine lake criteria in paragraph (c)(3) of this section.

(iv) Replicate the process for developing the coastal criteria in paragraph (c)(4) of this section.

(v) Replicate the process for developing the south Florida inland flowing water criteria in paragraph (c)(5) of this section.

(vi) Conduct a biological, chemical, and physical assessment of water body conditions.

(vii) Use another scientifically defensible approach protective of the designated use.

(3) For any determination made under paragraph (e)(1) of this section, the Regional Administrator shall, prior to making such a determination, provide for public notice and comment on a proposed determination. For any such proposed determination, the Regional Administrator shall prepare and make available to the public a technical support document addressing the specific surface waters affected and the justification for each proposed determination. This document shall be made available to the public no later than the date of public notice issuance.

(4) The Regional Administrator shall maintain and make available to the public an updated list of determinations made pursuant to paragraph (e)(1) of this section as well as the technical support documents for each determination.

(5) Nothing in this paragraph (e) shall limit the Administrator's authority to modify the criteria in paragraph (c) of this section through rulemaking.

(f) *Effective date.* This section is effective [date 60 days after publication of final rule].

[FR Doc. 2012–30117 Filed 12–17–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2009–0596; FRL#9678–6]

RIN 2040–AF39

Water Quality Standards for the State of Florida's Streams and Downstream Protection Values for Lakes: Remanded Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing a rule that addresses an order by the U.S. District Court for the Northern District of Florida from February 18, 2012, which remanded to EPA two portions of its numeric water quality standards for nutrients in Florida that were promulgated and published on December 6, 2010. For this proposal, EPA is re-proposing the same numeric nutrient criteria for total nitrogen (TN) and total phosphorus (TP) for Florida streams not covered by EPA-approved State rulemaking, as included in EPA's final rule, with further explanation of how the proposed numeric streams criteria will ensure the protection of the Florida's Class I and III designated uses. EPA is also proposing default approaches available for use when modeling cannot be performed to derive downstream protection values (DPVs) that will ensure the attainment and maintenance of the numeric nutrient criteria that protect Florida's lakes. The default approaches would be applicable to streams that flow into unimpaired lakes, but could also be used for streams that flow into impaired lakes.

DATES: EPA will accept public comments on this proposed rule until February 1, 2013. Because of EPA's obligation to sign a notice of final rulemaking on or before August 31, 2013 under Consent Decree, the Agency regrets that it will be unable to grant any requests to extend this deadline.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0596, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: ow-docket@epa.gov.*
3. *Mail to:* Water Docket, U.S. Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2009–0596.
4. *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2009–0596. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0596. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at a docket facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. 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.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact Mario Sengco, U.S. EPA Headquarters, Office of Water, Mailcode: 4305T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone numbers: 202–566–2676 or 202–564–1649; fax number: 202–566–9981; email address: *sengco.mario@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

Table of Contents

I. General Information
A. Executive Summary
B. Which water bodies are affected by this rule?
C. What entities may be affected by this rule?
D. How can I get copies of this document and other related information?
II. Background
A. Nitrogen and Phosphorus Pollution in the United States and the State of Florida
B. Statutory and Regulatory Background
C. Water Quality Criteria
D. EPA Determination Regarding Florida and EPA's Rulemaking
E. EPA Promulgation of the Final Rule and Subsequent Litigation
F. Florida Adoption of Numeric Nutrient Criteria and EPA Approval
III. Numeric Criteria for Flowing Waters and Downstream Protection of Lakes in the State of Florida
A. Introduction
B. EPA Derivation of Numeric Nutrient Criteria for Streams
C. Reference Condition Approach for Developing Numeric Nutrient Criteria for Streams
D. Proposed Numeric Criteria for the State of Florida's Streams
E. Proposed Numeric Criteria To Ensure the Downstream Protection of the State of Florida's Lakes
F. Applicability of Criteria When Final
IV. Under what conditions will Federal standards be either not finalized or withdrawn?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
I. National Technology Transfer Advancement Act of 1995
J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

I. General Information

A. Executive Summary

Florida is known for its abundant and aesthetically beautiful natural resources, in particular its water resources. Florida's water resources are very important to its economy, for example, its $6.5 billion freshwater fishing industry.[1] However, nitrogen and phosphorus pollution has contributed to severe water quality degradation in the State of Florida. In the most recent Florida Department of Environmental Protection (FDEP) water quality assessment report, the *Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update,*[2] FDEP describes widespread water quality impairment in Florida due to nitrogen and phosphorus pollution. FDEP's 2012 report identifies approximately 1,918 miles of rivers and streams (about 14 percent of assessed river and stream miles), 378,435 acres of lakes (about 31 percent of assessed lake acres), 754 square miles (482,560 acres) of estuaries (about 14 percent of assessed estuarine area) and 102 square miles (65,280 acres) of coastal waters (about 1.6 percent of assessed coastal waters) as impaired by nutrients. Despite FDEP's intensive efforts to diagnose, evaluate and address nitrogen and phosphorus pollution, substantial and widespread water quality degradation from nitrogen and phosphorus pollution has continued and remains a significant problem.

On January 14, 2009, EPA determined under Clean Water Act (CWA) section 303(c)(4)(B) that new or revised water quality standards (WQS) in the form of numeric water quality criteria are necessary to protect the designated uses from nitrogen and phosphorus pollution that Florida has set for its Class I and Class III waters.[3] The Agency considered (1) the State's documented unique and threatened ecosystems, (2) the large number of impaired waters due to existing nitrogen and phosphorus pollution, and (3) the challenge associated with growing nitrogen and phosphorus pollution associated with expanding urbanization, continued agricultural development, and a significantly increasing population that the U.S. Census estimates is expected to grow over 75% between 2000 and

[1] Florida Fish and Wildlife Conservation Commission. 2010. *The economic impact of freshwater fishing in Florida. http://www.myfwc.com/CONSERVATION/Conservation_ValueofConservation_EconFreshwaterImpact.htm.* Accessed August 2010.

[2] FDEP. 2012. *Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update.* (May 2012). Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration, Tallahassee, FL. *http://www.dep.state.fl.us/water/docs/2012_integrated_report.pdf.* Accessed August 2012.

[3] Class I is designated for potable water supplies. Class III is designated for recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife. F.A.C. Section 62–302.400.

2030.[4] EPA also reviewed the State's regulatory accountability system, which represents a synthesis of both technology-based standards and point source control authority, as well as authority to establish enforceable controls for nonpoint source activities.

In December 2009, EPA entered into a Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper, which established a schedule for EPA to propose and promulgate numeric nutrient criteria for Florida's lakes, springs, flowing waters, estuaries, and coastal waters, as well as downstream protection values (DPVs) to protect downstream lakes and estuaries. The Consent Decree provided that if Florida submitted and EPA approved numeric nutrient criteria for the relevant water bodies before the dates outlined in the schedule, EPA would no longer be obligated to propose or promulgate criteria for those water bodies.

On December 6, 2010 (75 FR 75762), EPA's final rule [5] was published in the **Federal Register** and codified at 40 CFR 131.43. The final rule established numeric nutrient criteria, or numeric limits on the amount of nitrogen and phosphorus allowed in Florida's waters (i.e., lakes, streams and springs) while still protecting applicable designated uses.

Following the rule's publication, EPA soon received 12 challenges from a range of plaintiffs that included environmental groups, the State Department of Agriculture, the South Florida Water Management District and several industry/discharger groups. The challenges alleged that EPA's determination and final rule were arbitrary, capricious, an abuse of discretion, and not in accordance with the law. The U.S. District Court for the Northern District of Florida consolidated the suits and held oral argument on January 9, 2012.

On February 18, 2012, the court issued its ruling.[6] While upholding EPA's determination and much of its rule, the court invalidated EPA's numeric nutrient criteria for Florida's streams because it found that EPA had either ''aimed for the wrong target'' or not sufficiently explained what it did in aiming for the right target. The court observed that Florida's existing narrative criterion states, in relevant part, that ''nutrient concentrations of a body of water [must not] be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.'' Fla. Admin. Code r. 62–302.530(47)(b). Based on that narrative criterion, as implemented by FDEP, the court found that the correct target would be to avoid any *harmful* increase in nutrient levels, as opposed to *any* increase in nutrient levels. The court found that EPA had apparently derived stream numeric nutrient criteria to prevent *any* increase in nutrient levels, and had thus aimed at the wrong target. If EPA had derived stream numeric nutrient criteria to prevent any harmful increase, the court found that EPA had not provided a sufficient explanation for its action. For similar reasons, the court also invalidated EPA's default DPV for streams where the downstream lake is attaining its lake numeric nutrient criteria. Hence, the court ordered EPA to either ''sign for publication a proposed rule, or sign for publication a final rule, that sets numeric nutrient criteria for Florida streams'' by May 21, 2012. As to the DPV where a lake is attaining its lake numeric criteria, the same order applies unless EPA files a notice by May 21, 2012 that it has decided not to propose or adopt such DPV, with an explanation of that decision.

On May 30, 2012, the court granted EPA's request to extend the deadline for signing a proposed rule to November 30, 2012. The court also ordered that the final rule must be signed for publication by August 31, 2013.

For this proposal, EPA is re-proposing the same numeric nutrient criteria for TN and TP published in EPA's final rule on December 6, 2010 (75 FR 75762), with further explanation on how the proposed streams criteria will ensure the protection of Florida's Class I and III designated uses and how the criteria are an appropriate translation of Florida's narrative nutrient criterion. This proposal also is consistent with the objective and requirements of the CWA and EPA's implementing regulations at 40 CFR part 131. EPA is also proposing default approaches available for use when modeling cannot be performed to derive DPVs that will ensure the attainment and maintenance of the numeric nutrient criteria that protect the designated uses of Florida's downstream lakes. These default approaches are applicable to streams that flow downstream into unimpaired lakes, but could also be used for streams that flow downstream into impaired lakes.

On June 13, 2012, FDEP submitted new and revised water quality standards for review by the EPA pursuant to section 303(c) of the CWA. These new and revised water quality standards are set out primarily in Rule 62–302 of the Florida Administrative Code (F.A.C.) [Surface Water Quality Standards]. FDEP also submitted amendments to Rule 62–303, F.A.C. [Identification of Impaired Surface Waters], which sets out Florida's methodology for assessing whether waters are attaining State water quality standards. On November 30, 2012, EPA approved the provisions of these rules submitted for review that constitute new or revised water quality standards (hereafter referred to as the ''newly-approved state water quality standards'').

Among the newly-approved state water quality standards are numeric criteria for nutrients that apply to a set of streams, as that term is specifically defined in the newly-approved state water quality standards. Under the Consent Decree, EPA is relieved of its obligation to propose numeric criteria for nutrients for any waters for which FDEP submits and EPA approves new or revised water quality standards before EPA proposes. Thus, under normal circumstances, EPA would be clearly relieved of its obligation to propose numeric criteria for nutrients in streams Florida covered in its newly-approved state water quality standards.

However, another provision included in Florida's Rule, specifically subsection 62–302.531(9), F.A.C., casts some doubt as to whether the newly approved state water quality standards will go into effect if EPA proposes and promulgates numeric nutrient criteria for streams not covered by the newly-approved State water quality standards. Therefore, it is unclear whether an EPA proposal to ''gap fill'', or establish numeric criteria for nutrients for Florida streams that FDEP does not cover in its Rule, would trigger 62–302.531(9), F.A.C. and result in Florida's streams criteria not taking effect.

In addition, due to a recent administrative challenge filed in the State of Florida Department of Administrative Hearings, there is uncertainty as to whether FDEP will be able to implement its newly approved state water quality standards consistent with FDEP's ''Implementation of Florida's Numeric Nutrient Standards'' (Implementation Document). Thus, EPA approved portions of Florida's new or revised water quality standards subject to the State being able to implement them as provided in its Implementation Document. If, as a result of legal challenge, FDEP is unable to implement

[4] U.S. Census Bureau, Population Division, Interim State Population Projections, 2005. *http://www.census.gov/population/projections/SummaryTabA1.pdf.*

[5] **Federal Register**, Vol. 75, No. 233, 75762, December 6, 2010. Water Quality Standards for the State of Florida's Lakes and Flowing Waters.

[6] *Florida Wildlife Federation, Inc., et. al.* v. *Jackson,* Case 4:08–cv–00324–RH–WCS, Doc. 351 (N.D.Fla. February 18, 2012).

its Rule as provided in its Implementation Document, EPA would intend to revisit its November 30, 2012 approval of Florida's new or revised water quality standards. EPA has therefore reserved its authority to withdraw or modify that approval.

In light of the above, EPA seeks comment on finalizing a rule that applies EPA's streams criteria to streams meeting EPA's definition of ''stream'' that are not covered under Florida's numeric interpretation of narrative nutrient criteria at 62–302.531(2)(c), F.A.C. This would serve to fill gaps in coverage if Florida's streams criteria are in effect, or apply to all streams if Florida's streams criteria are not in effect for any reason, including those mentioned above.

Finally, as described in EPA's November 30, 2012 approval of Florida's new or revised water quality standards, while EPA believes that the provisions addressing downstream protection will provide for quantitative approaches to ensure the attainment and maintenance of downstream waters consistent with 40 CFR 131.10(b), the provisions themselves, however, do not consist of numeric values. Because EPA is currently subject to a Consent Decree deadline to sign a rule proposing numeric downstream protection values (DPVs) for Florida by November 30, 2012, EPA is proposing numeric DPVs to comply with the Consent Decree. However, EPA has amended its January 2009 determination to specify that numeric criteria for downstream protection are not necessary and that quantitative approaches designed to ensure the attainment and maintenance of downstream water quality standards, such as those established by Florida, are sufficient to meet CWA requirements. As such, EPA will ask the court to modify the Consent Decree consistent with the Agency's amended determination, i.e., to not require EPA to promulgate numeric DPVs for Florida. Accordingly, EPA approved the State's downstream protection provisions subject to the district court modifying the Consent Decree to not require EPA to promulgate numeric DPVs for Florida. If the district court agrees to so modify the Consent Decree, EPA will not promulgate numeric DPVs for Florida. However, if the district court declines to so modify the Consent Decree, EPA would intend to promulgate numeric DPVs for Florida and would also expect to revisit its November 30, 2012 approval of the State Rule's downstream protection provisions to modify or withdraw its approval. Therefore, EPA has also reserved its authority to do so in its approval document.

A full description of all of EPA's recent actions on Florida numeric nutrient criteria and related implications for EPA's own rules can be found at *http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm.*

B. Which water bodies are affected by this rule?

The criteria in this proposed rulemaking apply to a group of inland waters of the United States within Florida. Specifically, these criteria apply to flowing waters (i.e., streams) located outside of the South Florida Region that are designated as either Class I or Class III not covered by the State of Florida's Rule.[7] EPA notes if Florida's Rule will not take effect due to subsection 62–302.531(9), F.A.C., EPA would expect to finalize the criteria in this proposed rulemaking for all flowing waters (i.e., streams) located outside of the South Florida Region that are designated as either Class I or Class III. EPA solicits comment on this potential outcome.

Class I and Class III streams share water quality criteria established to ''protect recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife'' pursuant to Subsection 62–302.400(4), F.A.C.[8] ''Stream'', as defined at 40 CFR 131.43(b)(12) means a free-flowing, predominantly fresh surface water in a defined channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar water bodies. EPA notes that as defined at 40 CFR 131.43(b)(8) and consistent with Section 62–302.200, F.A.C., ''predominantly fresh waters'' means surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter (mg/L).

The definition of stream in the approved water quality standards for purposes of applying the numeric interpretation of the narrative nutrient criterion to streams is less inclusive than as defined at 40 CFR 131.43(b)(12). Florida's stream definition for purposes of applying the numeric interpretation of the narrative nutrient criterion (see Subsection 62–302.200(36), F.A.C.) specifically excludes non-perennial water segments; tidally influenced segments; and ditches, canals and other conveyances that are man-made or predominantly channelized or physically altered, are used primarily for water management purposes, and have marginal or poor stream habitat components. Inland flowing waters that meet EPA's definition of stream yet do not meet Florida's definition of stream for purposes of applying the numeric interpretation of the narrative nutrient criterion are designated Class I or Class III waters in Florida water quality standards. If they are not Class I or Class III waters, then this proposed rule would not apply. Additionally, this rule does not apply to wetlands, including non-perennial stream segments that function as wetlands because of fluctuating hydrologic conditions that typically result in the dominance of wetland taxa.

C. What entities may be affected by this rule?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to flowing waters of Florida could be indirectly affected by this rulemaking because WQS are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging nitrogen and phosphorus to flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging nitrogen and phosphorus to flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

[7] For purposes of this rule, EPA has distinguished South Florida as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee, hereinafter referred to as the South Florida Region.

[8] Class I waters also include an applicable nitrate limit of 10 mg/L and nitrite limit of 1 mg/L for the protection of human health in drinking water supplies. The nitrate limit applies at the entry point to the distribution system (i.e., after any treatment); see Chapter 62–550, F.A.C., for additional details.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen and phosphorus pollution in Florida's waters may be affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of flowing waters of Florida, may be affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in this proposal. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

D. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket Id. No. EPA–HQ–OW–2009–0596. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket telephone number is 202–566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.regulations.gov.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified earlier.

II. Background

A. Nitrogen and Phosphorus Pollution in the United States and the State of Florida

Excess loading of nitrogen and phosphorus compounds [9] is one of the most prevalent causes of water quality impairment in the United States. Nitrogen and phosphorus pollution problems have been recognized for decades in the U.S. For example, a 1969 report by the National Academy of Sciences noted that ''*[t]he pollution problem is critical because of increased population, industrial growth, intensification of agricultural production, river-basin development, recreational use of waters, and domestic and industrial exploitation of shore properties. Accelerated eutrophication causes negative changes in plant and animal life—harmful, adverse changes that often interfere with use of water, detract from natural beauty, and reduce property values.*'' [10] Inputs of nitrogen and phosphorus lead to over-enrichment in many of the Nation's waters and constitute a widespread, persistent, and growing problem.[11] Nitrogen and phosphorus pollution in fresh water systems can significantly negatively impact aquatic life and long-term ecosystem health, diversity, and balance.[12] More specifically, high nitrogen and phosphorus loadings can result in harmful algal blooms (HABs), reduced spawning grounds and nursery habitats, fish kills, and oxygen-starved hypoxic or ''dead'' zones.[13] Public health concerns related to nitrogen and phosphorus pollution include methanoglobanemia due to impaired drinking water sources from high levels of nitrates, increase in bladder cancer due to possible formation of disinfection byproducts in drinking water, and neurotoxicity and kidney damage due to increased exposure to cyanotoxins produced by harmful algae and cyanobacteria.[14] [15] Degradation of water bodies from nitrogen and phosphorus pollution can result in economic costs. For example, given that freshwater fishing in Florida is a significant recreational and tourist attraction generating over six billion dollars annually,[16] degradation of water quality in Florida to the point that sport fishing populations are negatively affected will also negatively affect this important part of Florida's economy. Elevated nitrogen and phosphorus levels can occur locally in a stream or ground water, or can accumulate downstream leading to degraded lakes, reservoirs, and estuaries where fish and aquatic life can no longer survive or spawn and the

[9] To be used by living organisms, nitrogen gas must be fixed into its reactive forms; for plants, either nitrate or ammonia (Boyd, C.E. 1979. *Water Quality in Warmwater Fish Ponds.* Auburn University: Alabama Agricultural Experiment Station, Auburn, AL). Eutrophication is defined as the natural or artificial addition of nitrogen and phosphorus to bodies of water and to the effects of added nitrogen and phosphorus (National Academy of Sciences (U.S). 1969. *Eutrophication: Causes, Consequences, Correctives.* National Academy of Sciences, Washington, DC.)

[10] National Academy of Sciences (U.S). 1969. *Eutrophication: Causes, Consequences, Correctives.* National Academy of Sciences, Washington, DC.

[11] GulfBase. 2009. *Bays and Estuaries. http://www.gulfbase.org/bay/.* Accessed April 2009.; NSTC. 2003. *An Assessment of Coastal Hypoxia and Eutrophication in U.S. Waters.* National Science and Technology Council, Committee on Environment and Natural Resources, Washington, DC. *http://coastalscience.noaa.gov/documents/hypoxia.pdf.* Accessed July 2009; USEPA, 2009. National Summary of State Information. U.S. Environmental Protection Agency, Washington, DC, *http://iaspub.epa.gov/waters10/attains_nation_cy.control.* Accessed June 2009.

[12] USEPA, 2006. USEPA. 2006b. *Wadeable Streams Assessment.* EPA 841–B–06–002. U.S. Environmental Protection Agency, Washington, DC; Chesapeake Bay Program, 2009. *Underwater Bay Grasses. http://www.chesapeakebay.net/baygrasses.aspx?menuitem=14621.* Accessed July 2009.

[13] NOAA, 2009. *Harmful Algal Blooms.* National Oceanic and Atmospheric Administration, Silver Spring, MD. *http://oceanservice.noaa.gov/topics/coasts/hab/.* Accessed April 2009; Tomasko et al., 2005. Spatial and temporal variation in seagrass coverage in Southwest Florida: assessing the relative effects of anthropogenic nutrient load reductions and rainfall in four contiguous estuaries. *Marine Pollution Bulletin* 50: 797–805.; Selman *et al.,* 2008. *Eutrophication and Hypoxia in Coastal Areas: A Global Assessment of the State of Knowledge.* WRI Policy Note No. 1 World Resources Institute, Washington, DC; Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, 2008. *Gulf Hypoxia Action Plan 2008 for Reducing, Mitigating and Controlling Hypoxia in the Northern Gulf of Mexico and Improving Water Quality in the Mississippi River Basin.* Washington, DC.

[14] Villanueva, C.M. *et al.,* 2006. Bladder Cancer and Exposure to Water Disinfection By-Products through Ingestion, Bathing, Showering, and Swimming in Pools. *American Journal of Epidemiology* 165(2):148–156.

[15] USEPA. 2009. *What is in Our Drinking Water?* United States Environmental Protection Agency, Office of Research and Development. < *http://www.epa.gov/extrmurl/research/process/drinkingwater.html*>. Accessed December 2009.

[16] Florida Fish and Wildlife Conservation Commission. 2010. *The economic impact of freshwater fishing in Florida. <http://www.myfwc.com/CONSERVATION/Conservation_ValueofConservation_EconFreshwaterImpact.htm>.* Accessed August 2010.

designated use is no longer supported. For additional information on the sources, impacts (e.g., human health, aquatic life, environmental) and economic implications of nitrogen and phosphorus pollution, please refer to the December 6, 2010 final rule.[17]

Florida's flat topography causes water to move slowly over the landscape, allowing ample opportunity for nitrogen and phosphorus to be transported offsite and result in eutrophication. Florida's warm and wet, yet sunny, climate further contributes to increased run-off and ideal temperatures for subsequent eutrophication responses.[18] As outlined in EPA's January 2009 determination, water quality degradation resulting from excess nitrogen and phosphorus loadings is a documented and significant environmental issue in Florida. For example, the Florida Department of Environmental Protection (FDEP) *2008 Integrated Water Quality Assessment* notes: ''the close connection between surface and ground water, in combination with the pressures of continued population growth, accompanying development, and extensive agricultural operations, present Florida with a unique set of challenges for managing both water quality and quantity in the future. After trending downward for 20 years, phosphorus levels again began moving upward in 2000, likely due to the cumulative impacts of nonpoint source pollution associated with increased population and development. Increasing pollution from urban stormwater and agricultural activities is having other significant effects. In many springs across the State, for example, nitrate levels have increased dramatically (two-fold to three-fold) over the past 20 years, reflecting the close link between surface and ground water.'' [19] To clarify current nitrogen and phosphorus pollution conditions in Florida, EPA analyzed recent STORET (Storage and Retrieval) data pulled from Florida's Impaired Waters Rule (IWR),[20] which are the data Florida uses to create its integrated reports, and found increasing levels of nitrogen and phosphorus compounds in Florida waters over 12 years (1996–2008). Florida's IWR STORET data indicates that levels of total nitrogen (i.e., State-wide average) have increased by 20% from 1996 to 2008, and total phosphorus levels (i.e., State-wide average) have increased by 40% over the same time period.

The combination of the factors reported by FDEP and listed earlier (including population increase, climate, stormwater runoff, agriculture, and topography) has contributed to significant harmful, adverse effects from nitrogen and phosphorus pollution (nutrient pollution) to Florida's waters.[21] In the most recent Florida Department of Environmental Protection (FDEP) water quality assessment report, the *Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update,* FDEP describes widespread water quality impairment in Florida due to nitrogen and phosphorus pollution. FDEP's 2012 report [22] identifies approximately 1,918 miles of rivers and streams (about 14 percent of assessed river and stream miles), 378,435 acres of lakes (about 31 percent of assessed lake acres), 754 square miles (482,560 acres) of estuaries (about 14 percent of assessed estuarine area) and 102 square miles (65,280 acres) of coastal waters (about 1.6 percent of assessed coastal waters) as impaired by nutrients. In addition, the same report indicates that 1,108 miles of rivers and streams (about 8 percent of assessed river and stream miles) and 107 square miles (68,480 acres) of lakes (about 5 percent of assessed lake square miles) are impaired due to nutrient pollution.

For additional information regarding the prevalence of nutrient pollution in various water bodies in Florida and negative implications of nutrient pollution in State waters, please refer to the December 6, 2010 final rule.[23]

B. Statutory and Regulatory Background

Section 303(c) of the CWA (33 U.S.C. 1313(c)) directs states to adopt WQS for their navigable waters. Section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other things, that state WQS include the designated use or uses to be made of the waters and criteria that protect those uses. EPA regulations at 40 CFR 131.11(a)(1) provide that states shall ''adopt those water quality criteria that protect the designated use'' and that such criteria ''must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.'' In addition, 40 CFR 131.10(b) provides that ''[i]n designating uses of a waterbody and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.''

States are required to review their WQS at least once every three years and, if appropriate, revise or adopt new standards. (*See* CWA section 303(c)(1)). Any new or revised WQS must be submitted to EPA for review and approval or disapproval. (*See* CWA section 303(c)(2)(A) and (c)(3)). In addition, CWA section 303(c)(4)(B) authorizes the Administrator to determine, even in the absence of a state submission, that a new or revised standard is needed to meet CWA requirements. The EPA approved the State of Florida's rules on November 30, 2012. The criteria proposed in this rulemaking protect the uses designated by the State of Florida and implement Florida's narrative nutrient provision at Subsection 62–302–530(47)(b), F.A.C. for the purposes of the CWA, into numeric values that apply to flowing waters not covered by the State's Rule outside of the South Florida Region and DPVs to ensure the attainment and maintenance of the water quality standards of downstream lakes.[24] For a thorough review of the statutory and regulatory background for this proposed rule, refer to the December 6, 2010 final rule.

C. Water Quality Criteria

Under CWA section 304(a), EPA periodically publishes criteria recommendations (guidance) for use by states in setting water quality criteria for particular parameters to protect recreational and aquatic life uses of waters. Where EPA has published recommended criteria, states have the option of adopting water quality criteria based on EPA's CWA section 304(a) criteria guidance, section 304(a) criteria guidance modified to reflect site-specific conditions, or other scientifically defensible methods. (*See* 40 CFR 131.11(b)(1)). For nutrient

[17] 75 FR 75762, December 6, 2010. Water Quality Standards for the State of Florida's Lakes and Flowing Waters.

[18] Perry, W.B. 2008. Everglades restoration and water quality challenges in south Florida. *Ecotoxicology* 17:569–578.

[19] FDEP. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update.

[20] IWR Run 40. Updated through February 2010.

[21] FDEP. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update.

[22] FDEP. 2012. Integrated Water Quality Assessment for Florida: 2012 305(b) Report and 303(d) List Update. (May 2012). Florida Department of Environmental Protection, Division of Environmental Assessment and Restoration, Tallahassee, FL. <*http://www.dep.state.fl.us/water/docs/2012_integrated_report.pdf*>. Accessed August 2012.

[23] 75 FR 75762, December 6, 2010. Water Quality Standards for the State of Florida's Lakes and Flowing Waters.

[24] The criteria finalized in this rulemaking do not address or implement Florida's narrative nutrient provision at Subsection 62–302.530(47)(a), F.A.C. Subsection 62–302.530(47)(a), F.A.C., remains in place as an applicable WQS for CWA purposes.

pollution, EPA has published under CWA section 304(a) a series of peer-reviewed, national technical approaches and methods regarding the development of numeric nutrient criteria for lakes and reservoirs,[25] rivers and streams,[26] and estuarine and coastal marine waters.[27] For an overview of EPA's recommended approaches for deriving numeric nutrient criteria in Florida lakes and flowing waters, please refer to the December 6, 2010 final rule.[28] EPA believes that numeric nutrient criteria will expedite and facilitate the effective implementation of Florida's existing point and non-point source water quality programs under the CWA in terms of timely water quality assessments, TMDL development, NPDES permit issuance and, where needed, Basin Management Action Plans (BMAPs) to address nitrogen and phosphorus pollution.

D. EPA Determination Regarding Florida and EPA's Rulemaking

On January 14, 2009, EPA determined under Clean Water Act (CWA) section 303(c)(4)(B) that new or revised water quality standards (WQS) in the form of numeric water quality criteria are necessary to protect the designated uses from nitrogen and phosphorus pollution that Florida has set for its Class I and Class III waters. EPA's determination is available at the following Web site: *http://www.epa.gov/waterscience/standards/rules/fl-determination.htm.*

On August 19, 2009, EPA entered into a Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper, committing to the schedule stated in EPA's January 14, 2009 determination to propose numeric nutrient criteria for lakes and flowing waters in Florida by January 14, 2010, and for Florida's estuarine and coastal waters by January 14, 2011, unless the State submits and EPA approves new or revised water quality standards pursuant to section 303(c)(3).[29] The Consent Decree also required that EPA sign a notice of final rulemaking for the respective proposals by October 15, 2010, for lakes and flowing waters, and by October 15, 2011, for estuarine and coastal waters, unless the State submits and EPA approves new or revised water quality standards pursuant to section 303(c)(3). The Consent Decree, which became effective on December 30, 2009, also included a commitment to develop numeric DPVs to protect downstream lakes and estuaries. To review the bases for EPA's determination, and the information it considered in making its determination, please see the December 6, 2010 final rule.

E. EPA Promulgation of the Final Rule and Subsequent Litigation

In accordance with the January 14, 2009 determination, the August 19, 2009 Consent Decree, and subsequent revisions to that Consent Decree, EPA signed a notice of final rulemaking establishing numeric nutrient criteria for streams, lakes, and springs in the State of Florida[30] on November 14, 2010. As stated in the final rule at 40 CFR § 131.43(f), the rule was scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. EPA selected the March 6, 2012 effective date for the criteria part of the rule to allow time for EPA to work with stakeholders and the Florida Department of Environmental Protection (FDEP) on important implementation issues, to help the public and all affected parties better understand the final numeric nutrient criteria and the basis for those criteria, and for EPA to engage and support, in full partnership with FDEP, the general public, stakeholders, local governments, and sectors of the regulated community across the State in a process of public outreach education, discussion, and constructive planning. 75 FR 75787. The effective date was subsequently extended (77 FR 13497 and 77 FR 39949) such that the current effective date of the rule is January 6, 2013. In addition to this proposal, EPA has proposed to stay the December 6, 2010 Final Rule (75 FR 75762) to November 15, 2013 (See *http://water.epa.gov/lawsregs/rulesregs/florida_inland.cfm*).

Following the publication of the rule in the **Federal Register** on December 6, 2010, 12 cases were filed in the U.S. District Court for the Northern District of Florida challenging the rule. The cases, consolidated before Judge Robert Hinkle in the Tallahassee Division of the Northern District, were filed by environmental groups, Florida's State Department of Agriculture, the South Florida Water Management District, and various industry/discharger groups. The challenges alleged that EPA's determination and final rule were arbitrary, capricious, an abuse of discretion, and not in accordance with the law for a variety of reasons. Oral argument in the case was held on January 9, 2012 before Judge Hinkle.

On February 18, 2012, the Court upheld EPA's January 2009 determination and the final numeric nutrient criteria for Florida's lakes and springs, as well as the site-specific alternative criteria (SSAC) provisions and the provisions for calculating DPVs using either modeling or a default option for an impaired lake that is not attaining its numeric nutrient criteria. See February 18, 2012 Court Order. For EPA's numeric nutrient criteria for flowing waters (i.e., streams) and the default option to calculate DPVs for unimpaired lakes based on ambient stream nutrient concentrations at the point of entry to the lake, the Court found that EPA had not provided sufficient information in its final rule explaining why or how the criteria or DPV protect against harmful increases, as opposed to any increase, in nutrients. The Court observed that EPA's scientific approach to deriving streams criteria (i.e., the reference condition approach), including the criteria's duration and frequency components, ''are matters of scientific judgment on which the rule would survive arbitrary-or-capricious review.'' Order at 63. The Court also found, however, that EPA had not explained in sufficient detail how the streams criteria would prevent a ''harmful increase in a nutrient level''. Order at 63. In addition, the Court found that EPA had not explained in sufficient detail how exceedances of the default DPV for unimpaired lakes would lead to ''harmful effects'' in the downstream lake. Order at 63. Thus, the Court invalidated these two aspects of EPA's final rule and remanded them to the Agency for further action.

The Court ordered that the upheld portions of EPA's final rule be codified at 40 CFR 131.43 with the exceptions of the streams criteria and the default DPV for unimpaired lakes. Order at 85. For

[25] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[26] USEPA. 2000b. *Nutrient Criteria Technical Guidance Manual:Rivers and Streams.* EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[27] USEPA. 2001. *Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters.* EPA–822–B–01–003. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[28] 75 FR, 75762, December 6, 2010. Water Quality Standards for the State of Florida's Lakes and Flowing Waters.

[29] *Florida Wildlife Federation, Inc., et. al.* v. *Jackson,* Case 4:08-cv-00324–RH–WCS, Doc. 90–2 (N.D.Fla. August 25, 2009).

[30] For purposes of this rule, EPA has distinguished South Florida as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee, hereinafter referred to as the South Florida Region. Numeric criteria applicable to flowing waters in the South Florida Region will be addressed in the second phase of EPA's rulemaking regarding the establishment of estuarine and coastal numeric criteria. (Please refer to Section I.B for a discussion of the water bodies affected by this rule).

the exceptions, the Court ordered: ''By May 21, 2012, the Administrator must sign for publication a proposed rule, or sign for publication a final rule, that sets numeric nutrient criteria for Florida streams that are not in the South Florida region. By May 21, 2012, the Administrator must sign for publication a proposed rule, or sign for publication a final rule, that sets default downstream-protection criteria for unimpaired lakes, unless by that date the Administrator has filed a notice that she has decided not to propose or adopt such criteria, together with an explanation of the decision.'' Order at 85. After the May 21, 2012 deadline was jointly extended by the parties to June 4, 2012, on May 30, 2012, the court granted EPA's request to further extend the deadline for signing a proposed rule to November 30, 2012. The court also ordered that EPA must sign a notice of final rulemaking by August 31, 2013. In accordance with the Court's Order, EPA is proposing numeric nutrient criteria for Florida's streams and three default approaches for deriving DPVs for unimpaired lakes (and impaired lakes) with this proposed rule.

F. Florida Adoption of Numeric Nutrient Criteria and EPA Approval

On June 13, 2012, the Florida Department of Environmental Protection (FDEP) submitted new and revised water quality standards for review by the EPA pursuant to section 303(c) of the CWA. These new and revised water quality standards are set out primarily in Rule 62–302 of the Florida Administrative Code (F.A.C.) [Surface Water Quality Standards]. FDEP also submitted amendments to Rule 62–303, F.A.C. [Identification of Impaired Surface Waters], which sets out Florida's methodology for assessing whether waters are attaining State water quality standards. On November 30, 2012, EPA approved the provisions of these rules submitted for review that constitute new or revised water quality standards (referred to in this preamble as the ''newly approved state water quality standards''). These newly-approved state water quality standards include provisions that set forth numeric interpretations of the narrative nutrient criterion in paragraph 62–302.530(47)(b), F.A.C. for streams (Subsection 62–302.531(2)(c), F.A.C) that meet a specific definition (Section 62–302.200(36), F.A.C.).

The numeric interpretation for stream protection in Florida's newly approved water quality standards uses biological information in combination with nutrient thresholds. Stream protection is achieved if (1) various measures of aquatic plant growth (e.g., ''floral metrics'') indicate ''no imbalances'' and EITHER (2) a measure of the faunal stream community health called the Stream Condition Index (SCI) is above a certain threshold OR (3) the nutrient thresholds for total phosphorus (TP) and total nitrogen (TN) for the relevant region are met. The nutrient thresholds in Florida's newly approved water quality standards are identical to the ''stand-alone'' streams criteria in this proposed rule. EPA's approval document is included in the set of materials provided in the docket for this proposed rule (Docket number EPA–HQ–OW–2009–0596, *www.regulations.gov*).

III. Numeric Criteria for Flowing Waters and Downstream Protection of Lakes in the State of Florida

A. Introduction

In the December 2010 final rule, using the reference condition approach, EPA promulgated numeric nutrient criteria for Florida's streams based on the concentrations of total nitrogen (TN) and total phosphorus (TP) observed in a sample of least-disturbed streams. EPA set the numeric nutrient criteria so that the annual average concentrations of TN and TP most often observed in reference sites that are known to support the designated uses would not exceed the criteria. The court, however, found that EPA failed to explain ''how the 90% mark correlates with a *harmful* increase in nutrients'' (as opposed to *any* increase in nutrients). Order at 65. The court noted that it ''may well be that there is a sufficient correlation'' that above the criteria concentrations ''harmful change is likely.'' Order at 66. However, the court found that EPA had not adequately explained its decision and remanded to EPA for further action.[31]

In response to the court's remand, EPA has conducted a comprehensive review of available scientific data and information to more fully document the likelihood of harmful change occurring in the natural populations of aquatic flora and fauna of Florida streams at TN and TP concentrations above the proposed numeric nutrient criteria in today's proposal. EPA conducted this review to confirm whether its proposed numeric nutrient criteria are established at TN and TP concentrations sufficient (i.e., necessary) to protect against ''harmful'' change in the biota.

EPA's review confirmed its original decision that the criteria the Agency published in December 2010 were set at the appropriate levels to protect the applicable designated uses and translate Florida's narrative nutrient criterion for the purposes of the CWA. EPA has re-selected the upper percentile of annual average TN and TP concentrations from its sample of reference sites as the level that the Agency is confident will avoid ''harmful'' increases in TN and TP, and thus a level at which designated uses are protected in Florida's streams. The reference sites (described more fully in the following sections) are least-disturbed and more closely represent minimally-impacted conditions associated with a natural population of flora and fauna. By selecting a criterion-magnitude that was exceeded only 10% of the time[32] on an annual average basis in the reference sites that were determined to support designated uses, EPA is confident that other streams attaining and maintaining those levels of TN and TP would also support applicable designated uses and not experience harmful change in the biota. EPA is, therefore, proposing TN and TP criteria at the same levels as EPA promulgated in the December 2010 final rule.

In its decision, the court, in discussing numeric criteria translating Florida's narrative criterion, stated that ''the right target was a criterion that would identify a *harmful* increase in a nutrient level—an increase that, in the language of Florida's narrative criterion, would create an 'imbalance' in flora and fauna.'' Order at 63. That language could be read as requiring identification of the exact point where harmful change, or imbalance of flora or fauna, occurs as the appropriate level for numeric nutrient criteria. EPA evaluated whether available data allow derivation of criteria with such precision to set the criteria at a level where any increase at all would result in an imbalance of flora and fauna, and therefore impairment of Florida's designated uses. As set out more fully in subsequent sections, EPA concluded the data did not allow derivation of criteria with such

[31] As set out more fully in a subsequent section, EPA set criteria concentrations at the 90th percentile of the reference condition distribution in four of the five nutrient watershed regions defined in Florida. In the fifth region, known as the West Central region, EPA set criteria concentrations at the 75th percentile of the reference distribution. For ease of reference, where EPA refers to the ''upper percentile'' or the ''90th percentile'' in this preamble, unless the reference relates specifically to the basis for the criteria in the four nutrient watershed regions where EPA selected the 90th percentile, EPA is referring to both the 90th percentile that was applied in four regions and the 75th percentile that was applied in the West Central region.

[32] In the West Central Region, EPA selected a criterion-magnitude that was exceeded only 25% of the time on an annual average basis across all sites.

precision. In order to derive criteria with such precision, it would be necessary to have sufficient data to precisely model (either statistically or mechanistically) the stressor-response relationship in each stream reach within the State, due to the various confounding factors that introduce variability into that relationship within a given stream reach. Because EPA did not have such data available, EPA was not able to pinpoint the exact level at which any increase in nitrogen and phosphorus concentrations at all would result in such imbalance and designated use impairment.

In determining appropriately protective criteria, EPA must ensure that such criteria comply with the CWA. The CWA envisions that water quality standards will be developed, based on available scientific knowledge and information, at levels that are sufficient to protect designated uses. See CWA section 303(c)(2)(A). 40 CFR 131.11(a)(1). The record supports EPA's conclusion that its proposed numeric streams criteria are based on sound scientific rationale and will protect Florida's designated uses. If commenters are aware of available data and/or information demonstrating that setting criteria at less stringent levels than those in this proposed rule would be protective of designated uses and protect against harmful increases of TN and TP, or that criteria must be set at more stringent levels in order to protect designated uses and protect against harmful increases of TN and TP, commenters should submit such scientific information and analyses to EPA during the comment period for EPA's consideration.

Finally, EPA's approach to deriving numeric nutrient criteria is consistent with FDEP's approach to interpreting its narrative nutrient criterion and deriving numeric thresholds at the State level. FDEP recently established numeric interpretations of the State's narrative nutrient criterion.[33] FDEP has approached the derivation of numeric TN and TP threshold values for streams in much the same way as EPA by aiming to prevent adverse effects to natural populations of aquatic flora and fauna.[34] To set protective numeric threshold values for streams for TN and TP where the data were not available to ascertain an accurate quantifiable stressor-response relationship for streams, FDEP utilized a reference condition approach similar to the reference condition approach that EPA utilized in the December 2010 final rule. In the absence of a positive showing that some higher level of nutrients still protects designated uses and against harmful change in the biota in a particular stream, or a showing that some lower level of nutrients is needed to protect designated uses and natural populations of biota in a particular stream, both FDEP and EPA have determined that the upper percentile of reference streams is an appropriate and protective level of nutrients to properly protect designated uses and avoid any adverse change in natural populations of aquatic flora or fauna. In addition, EPA included a Site Specific Alternative Criteria (''SSAC'') provision in its December 2010 final rule for adoption of alternative criteria if a demonstration could be made that more or less stringent criteria are warranted for individual waters. Similarly, FDEP included a provision in its rule for adoption of SSAC, as well as a provision for adoption of other site-specific interpretations for individual waters.

Along with this proposed rule, EPA is providing a technical support document that discusses in more detail the scientific basis for the proposed criteria for streams and the default options to determine DPVs for unimpaired lakes. The technical support document helps explain how EPA's proposed numeric streams criteria would prevent harmful increases in TN and TP concentrations, which was specifically discussed by the Court in its decision invalidating EPA's numeric streams criteria and default DPV for unimpaired lakes.[35]

B. EPA Derivation of Numeric Nutrient Criteria for Streams

1. Components of Water Quality Criteria

Water quality criteria include three components. The first component is ''magnitude,'' the concentration of a pollutant that can be maintained over time in the ambient receiving water without adversely affecting the designated use that the criteria is intended to support. The second component is ''duration,'' or the time period over which exposure is averaged (i.e., the averaging period) to limit the duration of exposure to elevated concentrations. This accounts for the variability in the quality of the ambient water due to variations of constituent inputs, stream flow, and other factors. The third component is ''frequency'', or how often the magnitude/duration condition may be exceeded, and still protect the designated use. Combining the criterion-magnitude with the duration and frequency prevents the allowance of harmful effects by ensuring compensating periods of time during which the concentration is below the criterion-magnitude. Where criterion-magnitudes are exceeded for short periods of time or infrequently, water bodies can typically recover; that is, designated uses are typically protected. Designated uses are typically not protected when criteria-magnitudes are exceeded for longer periods of time (i.e., for longer than the specified duration) or more frequently (i.e., more often than the allowed frequency).[36]

Use of this magnitude-duration-frequency format allows for some exceedances of the criteria-magnitude concentrations while still protecting applicable designated uses, which is important for pollutants such as nitrogen and phosphorus because their concentrations can vary naturally in the environment. The duration and frequency values associated with the numeric streams criteria EPA is proposing today are the same as those associated with the numeric criteria in EPA's December 2010 rule. For more information on the basis for these duration and frequency components, see 75 Fed. Reg. 75776–77.

2. Selection of Target for Numeric Nutrient Criteria

In evaluating the appropriate endpoint for deriving numeric nutrient criteria, EPA first looked at Florida's applicable designated uses since, as mentioned in the previous sections, water quality criteria must be sufficient to protect the designated uses. CWA 303(c)(2)(A); 40 CFR 131.11(a)(1). The designated uses established by Florida for its streams include Class I (for potable water supply) and Class III

[33] See FDEP's Rule 62–302.531, F.A.C. at: *http://www.dep.state.fl.us/water/wqssp/nutrients/docs/meetings/62_302_final.pdf*, accessed on April 27, 2012.

[34] *State of Florida Numeric Nutrient Criteria Development Plan*, Prepared by: Bureau of Assessment and Restoration Support, Division of Environmental Assessment and Restoration, Florida Department of Environmental Protection Tallahassee, FL, March 2009; *Technical Support Document: Development of Numeric Nutrient Criteria for Florida Lakes and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section, June 2009; *Technical Support Document: Development of Numeric Nutrient Criteria for Florida Lakes, Spring Vents and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section, 2012.

[35] ''Technical Support Document for EPA's Proposed Rule for Numeric Nutrient Criteria to Protect Florida's Streams and the Downstream Protection of Unimpaired Lakes'' (''EPA Proposed Rule TSD for Florida's Streams and DPV for Unimpaired Lakes'').

[36] Water Quality Standards Handbook: Second Edition, Chapter 3—Water Quality Criteria. EPA–823–B–94–005a. USEPA. 1994; Technical Support Document for Water Quality-based Toxics Control. Appendix D—Duration and Frequency. EPA/505/2–90–001. USEPA 1991.

(recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife). Fla. Admin. Code 62–302.400. EPA next looked to Florida's narrative nutrient criterion, which represents Florida's determination of what is protective of the Class I and III designated uses.[37] That criterion provides that ''in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance of natural populations of aquatic flora and fauna.'' Fla. Admin. Code 62–302.530(47)(b). As set out more fully in subsequent sections, in deriving the numeric nutrient criteria to protect against concentrations of TN and TP that will create an imbalance of natural populations of aquatic flora and fauna and, thus, ensure the protection of the designated uses in Florida's streams, EPA used the reference condition approach.

Unlike for streams, for Florida's lakes the Agency was able to accurately quantify a stressor-response relationship between TN and TP concentrations and harmful, adverse effects in those waters. EPA used that stressor-response information to derive numeric nutrient criteria, promulgated in the December 2010 final rule, to protect designated uses for Florida's lakes. EPA did not establish the numeric lake criteria exactly at the point where nutrient pollution is demonstrated to adversely affect all lakes at all times, as that would not be protective of all lakes. Rather, EPA established the numeric lake criteria at concentrations that were known to protect against harmful, adverse effects by protecting and maintaining the expected trophic state[38] (by meeting protective chlorophyll-*a* concentrations for either oligotrophic or mesotrophic conditions) for the majority of lakes. At the same time, EPA allows higher concentrations within a given range if there is a positive showing that some higher concentrations of TN and TP still maintain the protective chlorophyll-*a* concentrations, and thus still protect the designated uses in a particular lake.[39] The court upheld EPA's numeric nutrient criteria for Florida's lakes in its February 18, 2012 Order.

For Florida's streams, as stated in the previous section, EPA determined that the scientific data and information available were insufficient to establish accurate quantifiable relationships between TN and TP concentrations and harmful, adverse effects in streams due to confounding factors that affect the chemical and biological responses to nutrient pollution in streams, such as shading from canopy and stream velocity. Thus, in spite of the substantial data collected over many years, EPA could not use the stressor-response approach to establish the numeric streams criteria at concentrations that protect against harmful adverse effects by protecting and maintaining a given biological response at a protective level measured in streams. Therefore, EPA relied upon the reference condition approach as described in more detail in Section III.C of this preamble to identify TN and TP concentrations that protect the designated uses, and above which harmful, adverse effects are likely to occur in the majority of Florida streams. At the same time, EPA allows alternative criteria be set at higher or lower concentrations through the use of the SSAC provision, if there is a positive showing that higher or lower concentrations of TN and TP are sufficient or necessary to protect the designated uses in a particular stream. The following sections set forth how EPA determined that the numeric streams criteria in today's proposal are set at the appropriate level to protect against a harmful, adverse effects due to increased TN and TP concentrations.

C. Reference Condition Approach for Developing Numeric Nutrient Criteria for Streams

The reference condition approach, a long-standing peer-reviewed methodology published by EPA, was designed to develop protective numeric nutrient criteria where reference conditions can be confidently defined.[40] The reference condition approach, which has been well documented, peer reviewed, and developed in a number of different contexts,[41 42 43 44 45 46] is used to derive numeric nutrient criteria that are protective of applicable designated uses by identifying TN and TP concentrations occurring in least-disturbed, healthy streams that are supporting designated uses. The core scientific basis for EPA's use of the reference condition approach to derive the proposed numeric nutrient criteria for Florida's streams is outlined in EPA's December 2010 final rule[47] and final December 2010 rule TSD.[48] Briefly, EPA screened and evaluated water chemistry data from more than 11,000 samples from over 6,000 sites Statewide. EPA also evaluated biological data consisting of more than 2,000 samples from over 1,100 Florida streams. EPA then selected a reference set of streams where the Agency was confident that designated uses are protected. Finally, EPA selected an upper percentile of the data distribution associated with those reference streams as the stream criterion-magnitude. While developing the December 2010 final rule, EPA met and consulted with FDEP expert scientific and technical staff on numerous occasions as part of an ongoing collaborative process. EPA carefully considered and evaluated the technical approaches and scientific analysis that FDEP presented as part of its July 2009 draft numeric nutrient criteria,[49] as well as FDEP's numerous

[37] Florida's narrative nutrient criterion also serves to protect their Class II waters for propagation and harvesting of shellfish, which will be covered under EPA's forthcoming rulemaking efforts for estuarine and coastal waters.

[38] Tropic state describes the nitrogen and phosphorus levels and algal state of an aquatic system: Oligotrophic (low nitrogen/phosphorus and algal productivity), mesotrophic (moderate nitrogen/phosphorus and algal productivity), and eutrophic (high nitrogen/phosphorus and algal productivity).

[39] Additionally, the SSAC provision at § 131.43(e) is also available if it determined that concentrations outside of the range are necessary to protect the designated uses in a particular lake.

[40] USEPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.; USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

[41] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[42] USEPA. 2000b. *Nutrient Criteria Technical Guidance Manual: Rivers and Streams.* EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[43] Stoddard, J. L., D. P. Larsen, C. P. Hawkins, R. K. Johnson, and R. H. Norris. 2006. Setting expectations for the ecological condition of streams: the concept of reference condition. *Ecological Applications* 16:1267—1276.

[44] Herlihy, A. T., S. G. Paulsen, J. Van Sickle, J. L. Stoddard, C. P. Hawkins, L. L. Yuan. 2008. Striving for consistency in a national assessment: the challenges of applying a reference-condition approach at a continental scale. *Journal of the North American Benthological Society* 27:860—877.

[45] U.S. EPA. 2001. Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters. Office of Water, Washington, DC. EPA–822–B–01–003.

[46] USEPA–SAB. 2011. *Review of EPA's draft Approaches for Deriving Numeric Nutrient Criteria for Florida's Estuaries, Coastal Waters, and Southern Inland Flowing Waters.* U.S. Environmental Protection Agency, Science Advisory Board, Washington, DC.

[47] Final rule can be found at: *http://edocket.access.gpo.gov/2010/pdf/2010–29943.pdf* or 75 **Federal Register** 75762 (December 6, 2010).

[48] Final rule TSD can be found at: *www.regulations.gov*, Docket # EPA–HQ–OW–2009–0596.

[49] FDEP. 2009. *Draft Technical Support Document: Development of Numeric Nutrient Criteria for Florida's Lakes and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section. Available electronically at: *http://www.dep.state.fl.us/water/wqssp/nutrients/*

comments on different aspects of EPA's proposed January 2010 final rule.

In addition, the Agency also received and carefully considered substantial stakeholder input from 13 public hearings in six Florida cities during the 2010 comment period. EPA reviewed and evaluated further analysis and information included in the more than 22,000 comments on the January 2010 proposal and an additional 71 comments on the August 2010 supplemental notice and request for comment. Finally, in reviewing its 2010 application of the reference condition approach for purposes of this proposal, EPA also considered FDEP's current rule, along with the technical approaches and scientific analysis supporting that rule, submitted to EPA on June 13, 2012.[50]

1. Selection of Reference Sites

This section summarizes how EPA applied the reference condition approach in developing the December 2010 rule, including how EPA selected the set of reference sites and how it aggregated data associated with those stream segments. EPA classified Florida streams into five stream regions based on similar geographical and watershed characteristics. The proposed numeric streams criteria would apply to five separate stream Nutrient Watershed Regions (NWRs): Panhandle West, Panhandle East, North Central, West Central and Peninsula (north of Lake Okeechobee, including the Caloosahatchee River Watershed to the west and the St. Lucie Watershed to the east).

To derive numeric nutrient criteria for streams, EPA first identified biologically healthy sites that exhibited the least amount of human disturbance and that were known to support designated uses, i.e., support natural populations of aquatic flora and fauna. EPA applied several screening factors to ensure these sites reflected least-disturbed, biologically healthy conditions. The screening factors included landscape development intensity index (LDI) scores less than 2.0 (an indicator of lower impact surrounding land use), average nitrate concentrations less than 0.35 mg/L (an indicator of lower anthropogenic nitrogen concentrations), exclusion of waters that are identified as water quality-limited for nutrients and/or dissolved oxygen on Florida's EPA-approved CWA section 303(d) list, and an FDEP-derived index of the stream macroinvertebrate community (stream condition index, or SCI) where average scores are greater than 40 (an indicator of a healthy macroinvertebrate community). The result of this rigorous analysis was a set of reference sites that, although not pristine, reflected healthy conditions that were supporting designated uses, and thus free from harmful, adverse effects on natural populations of aquatic flora and fauna due to nutrient pollution. EPA has confidence that these reference sites are supporting designated uses and natural populations of flora and fauna, and, as set out more fully in Section III.C.2, has confidence that if the TN and TP concentrations are attained or maintained at the concentrations that are among the highest observed at these sites, then designated uses and natural populations of aquatic flora and fauna will be protected in other streams. Additionally, as discussed further in Section III.C.3, additional lines of evidence from the available scientific data and information support EPA's conclusion in that they indicate that harmful, adverse effects are likely to occur to natural populations of aquatic flora and fauna at levels higher than these concentrations.

In remanding EPA's streams criteria, the Court preliminarily concluded that EPA's technical and scientific approaches in deriving streams criteria based on the reference condition approach were defensible. Specifically, the Court reasoned: ''Each side criticizes the Administrator's implementation of this approach. Thus, for example, each side criticizes the Administrator's selection of sample streams. The environmental parties criticize the duration and frequency components. These are matters of scientific judgment on which the rule would survive arbitrary-or-capricious review.'' Order at 63.

2. Selection of Stream Criterion-Magnitude

After selecting the reference set of streams, EPA then examined the statistical distributions of the data associated with stream sites that passed all of the screening factors in order to identify an appropriate criterion-magnitude to protect designated uses and natural populations of aquatic flora and fauna. EPA organized the data (TN and TP values) and calculated the geometric mean of the annual geometric mean of TN and TP concentrations for each stream segment that contained reference sites. EPA used all samples from reference sites within a given stream segment in a given year to calculate the annual geometric mean for that stream segment. EPA used the geometric mean of these annual geometric means for each stream segment so that each stream segment represents one average concentration in the distribution of concentrations for each NWR. EPA used geometric means for all averages because concentrations were log-normally distributed. EPA then identified specific statistics, or percentiles, associated with each stream NWR reference condition data distribution as the stream criterion-magnitude for that region.[51] Based on the effectiveness of the data quality screens in four of five NWRs, EPA has concluded that the 90th percentile of annual average concentrations would be protective. EPA could not use all of the screening factors outlined in Section III.C.1. in order to identify reference sites in the remaining region, the West Central Region, because the use of those screens resulted in the identification of only one stream segment as a reference site. For this reason, EPA utilized only the SCI and 303(d) listed screens to identify reference conditions in the West Central NWR, and this approach does not rely on a quantitative assessment of potential human disturbance through the use of surrounding land cover analysis of stream corridor and watershed land development indices. Because of the use of fewer data screens to identify reference conditions in that NWR and EPA's attendant lower confidence that these sites are least-disturbed conditions that support designated uses and natural populations of aquatic flora and fauna, EPA has determined the 75th percentile of annual average concentrations, rather than the 90th percentile, is the protective criterion-magnitude for that region. For the remaining stream regions, EPA considers the 90th percentile of the annual average

docs/tsd_nutrient_crit.docx. Accessed October 2010.

[50] *State of Florida Numeric Nutrient Criteria Development Plan,* Prepared by: Bureau of Assessment and Restoration Support, Division of Environmental Assessment and Restoration, Florida Department of Environmental Protection Tallahassee, FL, March 2009; *Technical Support Document: Development of Numeric Nutrient Criteria for Florida Lakes, Spring Vents and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section, 2012.

[51] For the West Central region, where reference sites were identified using only the SCI approach, there is less confidence that these sites are least-disturbed and represent minimally-impacted conditions. Unlike in the other NWRs, this approach does not rely on a quantitative assessment of potential human disturbance through the use of surrounding land cover analysis of stream corridor and watershed land development indices, among other things. Therefore, because of the lower confidence level, EPA is proposing the streams criteria in the West Central region using a more conservative percentile of 75% rather than the upper end percentile of 90% of the distribution from the SCI sites.

concentrations observed in the reference condition distribution as an appropriate concentration to specify the criterion-magnitude because the Agency is confident that theses least-disturbed sites more closely represent minimally-impacted, biologically healthy reference conditions, which support the State's Class I and III designated uses.

However, the Court found that EPA did not provide sufficient rationale explaining why it chose the 90th percentile (75th percentile in the West Central) of the reference site data distribution as the stream criterion-magnitude. That is, EPA did not explain why increasing nutrient levels above the upper percentile of annual average concentrations measured in reference condition streams would result in harmful, adverse effects on natural populations of aquatic flora and fauna in Florida's streams. The Court reasoned: ''The Administrator apparently concluded only that an increase above this level ordinarily causes a change in flora and fauna—not that it causes a harmful change. If there is a basis in sound science for disapproving a nutrient increase that causes any increase in flora and fauna, not just a harmful increase, the Administrator did not cite it. And even if the Administrator's conclusion was that an increase in nutrients to a level above the 90th percentile ordinarily causes a harmful change in flora and fauna, the Administrator again did not cite a sound science basis for the conclusion.'' Order at 7.

For all stream regions, EPA could have selected a criterion-magnitude at the 75th percentile of the frequency distribution of concentrations at reference sites, or any lower percentile of the frequency distribution of the general population of a stream class (i.e., ''all-streams'' population from impaired to least-impacted), to derive the numeric criteria as recommended by EPA's published streams criteria guidance.[52] EPA selected the 90th percentile. EPA found support in an EPA nutrient criteria guidance manual that recommends percentiles from the 75th to the 95th percentile of the frequency distribution of the reference population, where the higher percentile values are ''best used to define the criteria when there is great confidence that the group of reference waters truly reflects reference conditions as opposed, for example, to best available condition.'' [53]

The selection of the 90th percentile reflects EPA's level of confidence that these least-disturbed sites more closely represent minimally-impacted conditions, while not set at the extreme upper end of the distribution (95th or 100th percentile). This is because these highest observed annual average concentrations (i.e., 95th or 100th percentile) have rarely been observed at any reference site and are most likely to be heavily influenced by extreme event factors (e.g., hurricanes, droughts). Thus these highest observed concentrations could be outliers that are not representative of conditions that would typically support designated uses and natural populations of aquatic flora and fauna. Therefore, EPA has less confidence that such highest observed concentrations would continue to be supportive of designated uses and natural populations of aquatic flora and fauna if maintained in all streams at all times.

Alternatively, the selection of a much lower percentile, such as a representation of the central tendency of the distribution (i.e., 50th percentile), would not be appropriate because it would imply that half of the conditions observed at reference sites would not support designated uses and natural populations of aquatic flora and fauna, when EPA's analysis indicates that they do. For the West Central Region, EPA relied on the75th percentile due to the Agency's lower level of confidence as discussed in more detail in the previous section. By setting the criteria at these concentrations, EPA believes the designated uses, i.e., natural populations of aquatic flora and fauna, will be protected when these concentrations are attained in the majority of the streams in the regions. For those streams that are shown to accommodate or require higher or lower concentrations, the SSAC provision is provided in EPA's rule as discussed in Section III.C.5.

EPA has concluded, after its reevaluation of the reference condition data set and the resulting reference site data distributions of annual average TN and TP concentrations that EPA continues to have confidence that the upper percentile of annual average nutrient concentrations observed in the reference sites will support designated uses and natural populations of aquatic flora and fauna. As explained in the prior section, based on its evaluation of available scientific data and information, EPA used its best professional judgment and published guidance to conclude that TN and TP concentrations in excess of these values are not likely to protect designated uses and natural populations of aquatic flora and fauna. Additionally, as discussed in a subsequent section, EPA's review of additional lines of evidence from the available scientific data and information, including past scientific analyses, new analyses, and the peer-reviewed scientific literature, all support the conclusion that harmful, adverse effects on natural populations of aquatic flora and fauna from excess nitrogen and phosphorus are more likely to occur if concentrations increase above the proposed streams criteria set at these upper percentiles of reference conditions.

3. Harmful, Adverse Effects Due to Exceedence of EPA's Proposed Streams Criteria

Additional lines of evidence from empirical stressor-response analyses and the peer-reviewed scientific literature, which indicate that harmful, adverse effects are likely to occur to natural populations of aquatic flora and fauna due to exceedances of the proposed streams criteria,[54] support EPA's conclusion that the upper percentile of the reference condition data distribution is the appropriate nutrient criterion-magnitude for Florida's streams.

In developing this proposal, EPA reviewed the empirical, stressor-response analyses between nutrients and different biological response indicators (e.g., algal biomass, SCI) conducted prior to promulgation of the December 2010 final rule, and also reviewed any new analyses. The results of these analyses support the Agency's conclusion that harmful, adverse effects to natural populations of aquatic flora and fauna are likely to occur if TN and TP concentrations increase above the proposed streams criteria.[55]

Three technical support documents [56] in the Agency's original rulemaking

[52] U.S. EPA. 2000b. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[53] U.S. EPA. 2007. Nutrient Criteria Technical Guidance Manual: Wetlands. EPA–822–R–07–004. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[54] U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[55] *Technical Support Document for EPA's Proposed Rule for Numeric Nutrient Criteria to Protect Florida's Streams and Downstream Lakes.* U.S. EPA, 2012.

[56] *Technical Support Document: Development of Numeric Nutrient Criteria for Florida Lakes and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section, June 2009; *Proposed Methods and Approaches for Developing Numeric Nutrient Criteria for Florida's*

record and the technical support document associated with this proposed rule include scientific analyses demonstrating that harmful changes or adverse effects are more likely to happen as TN and TP concentrations increase above EPA's proposed streams criteria.

The effects of TN and TP on an aquatic ecosystem are well understood and documented. There is a substantial and compelling scientific basis for the conclusion that excess TN and TP will have adverse effects on streams.[57 58 59 60 61 62 63 64 65 66 67 68 69 70 71] As discussed in Section II, excess nitrogen and phosphorus in streams, like other aquatic ecosystems, increase vegetative growth (plants and algae), and change the assemblage of plant and algal species present in the system. Notwithstanding the difficulty associated with identifying the TN and TP concentrations that are known to protect against harmful effects by protecting and maintaining a given biological response at a protective level measured in Florida's streams, the available science clearly indicates that adverse responses to nutrient pollution occur.

For example, excess nitrogen and phosphorus promote the increased growth of opportunistic and short-lived plant species that die quickly, leaving more dead vegetative material available for consumption by lower tropic levels. Excess nitrogen and phosphorus can promote the increased growth of less palatable nuisance algae species that result in less food available for filter feeders. These negative changes can alter the habitat structure by covering the stream or river bed with periphyton (attached algae), and/or clogging the water column with phytoplankton (floating algae), both of which can adversely affect natural or desirable aquatic life. Excess nitrogen and phosphorus can also lead to the increased growth of algae that produce toxins that can be toxic to fish, invertebrates, and humans. Chemical characteristics of the water, such as pH and concentrations of dissolved oxygen (DO), can be affected by excess nitrogen and phosphorus, leading to low DO conditions and hypoxia that cannot support aquatic life. All of these adverse effects change the balance of the natural populations of aquatic flora and fauna expected to occur. In turn, each of these negative changes can lead to other negative changes in the stream community and ecology and, ultimately, to harmful, adverse effects to the overall function of the linked aquatic ecosystem and subsequent failure to support designated uses.

In light of this well-established paradigm, EPA reviewed the latest peer-reviewed scientific literature and found many nutrient thresholds where harmful, adverse effects in streams are coincident with or occur above EPA's proposed streams criteria. In these examples, there are regional and site-specific factors (e.g., precipitation, temperature, flow) that may account for the differences in the nutrient threshold concentrations, but, in general, EPA's proposed streams criteria are consistent with the range of thresholds of harmful, adverse effects documented in the peer-reviewed scientific literature. For example, TN and TP concentrations ranging between 0.659–0.714 mg/L and 0.048–0.071 mg/L, respectively, have been associated with moderate levels of productivity, or mesotrophy, in rivers and streams.[72] Higher concentrations of nutrients lead to eutrophy, which is what numeric nutrient criteria, in general, are intended to prevent. As another example, increases in suspended chlorophyll-*a,* decreases in water clarity, and decreases in macroinvertebrate and fish abundance in Wisconsin rivers and streams were observed over a TN and TP range of 0.5–2.0 mg/L and 0.035–0.150 mg/L, respectively.[73] Adverse increases in productivity (i.e., organic matter supply), also known as eutrophication, can negatively alter the metabolism of aquatic systems and lead to adverse environmental conditions such as depressed dissolved oxygen concentrations that cannot support aquatic life. These conditions, in turn, can harm macroinvertebrate and fish communities, creating changes to the balance of the natural populations of these aquatic fauna. The TN and TP concentrations above which these adverse effects are more likely to occur are coincident with EPA's proposed streams criteria TN and TP concentrations.

Many of the thresholds reported in the latest peer-reviewed scientific literature vary in comparison to the proposed criteria for Florida's streams due to site- and regional-specific factors such as climate and stream flow. However, the nutrient concentrations reported in the literature demonstrate and confirm that harmful, adverse effects occur as TN and TP concentrations increase in streams and are likely to occur as concentrations increase above the criteria concentrations that EPA has selected for Florida streams. EPA considers the

Inland Waters. U.S. EPA 2009; *Technical Support Document for U.S. EPA's Proposed Rule for Numeric Nutrient Criteria for Florida's Inland Surface Fresh Waters.* U.S. EPA 2010.

[57] Biggs, B.J.F. 2000. Eutrophication of streams and rivers: Dissolved nutrient-chlorophyll relationships for benthic algae. *Journal of the North American Benthological Society* 19:17–31.

[58] Bothwell, M.L. 1985. Phosphorus limitation of lotic periphyton growth rates: An intersite comparison using continuous-flow troughs (Thompson River system, British Columbia). *Limnology and Oceanography* 30:527–542.

[59] Bourassa, N., and A. Cattaneo. 1998. Control of periphyton biomass in Laurentian streams (Quebec). *Journal of the North American Benthological Society* 17:420–429.

[60] Bowling, L.C., and P.D. Baker. 1996. Major cyanobacterial bloom in the Barwon-Darling River, Australia, in 1991, and underlying limnological conditions. *Marine and Freshwater Research* 47:643–657.

[61] Cross, W.F., J.B. Wallace, A.D. Rosemond, and S.L. Eggert. 2006. Whole-system nutrient enrichment increases secondary production in a detritus-based ecosystem. *Ecology* 87:1556–1565.

[62] Dodds, W.K., and D.A. Gudder. 1992. The ecology of Cladophora. *Journal of Phycology* 28:415–427.

[63] Elwood, J.W., J.D. Newbold, A.F. Trimble, and R.W. Stark. 1981. The limiting role of phosphorus in a woodland stream ecosystem: Effects of P enrichment on leaf decomposition and primary producers. *Ecology* 62:146–158.

[64] Francoeur, S.N. 2001. Meta-analysis of lotic nutrient amendment experiments: Detecting and quantifying subtle responses. *Journal of the North American Benthological Society* 20:358–368.

[65] Moss, B., I. Hooker, H. Balls, and K. Manson. 1989. Phytoplankton distribution in a temperate floodplain lake and river system. I. Hydrology, nutrient sources and phytoplankton biomass. *Journal of Plankton Research* 11:813–835.

[66] Mulholland, P.J. and J.R. Webster. 2010. Nutrient dynamics in streams and the role of J–NABS. *Journal of the North American Benthological Society* 29: 100–117.

[67] Peterson, B.J., J.E. Hobbie, A.E. Hershey, M.A. Lock, T.E. Ford, J.R. Vestal, V.L. McKinley, M.A.J. Hullar, M.C. Miller, R.M. Ventullo, and G.S. Volk. 1985. Transformation of a tundra river from heterotrophy to autotrophy by addition of phosphorus. *Science* 229:1383–1386.

[68] Rosemond, A.D., P.J. Mulholland, and J.W. Elwood. 1993. Top-down and bottom-up control of stream periphyton: Effects of nutrients and herbivores. *Ecology* 74:1264–1280.

[69] Rosemond, A.D., C.M. Pringle, A. Ramirez, and M.J. Paul. 2001. A test of top-down and bottom-up control in a detritus-based food web. *Ecology* 82:2279–2293.

[70] Rosemond, A.D., C.M. Pringle, A. Ramirez, M.J. Paul, and J.L. Meyer. 2002. Landscape variation in phosphorus concentration and effects on detritus-based tropical streams. *Limnology and Oceanography* 47:278–289.

[71] Slavik, K., B.J. Peterson, L.A. Deegan, W.B. Bowden, A.E. Hershey, J.E. Hobbie. 2004. Long-term responses of the Kuparuk River ecosystem to phosphorus fertilization. *Ecology* 85:939–954.

[72] Dodds, W.K. 2006. Eutrophication and trophic state in rivers and streams. *Limnol. Oceanogr.* 51(1):671–680.

[73] Robertson, D.M., B.M. Weigel, and D.J. Graczyk. 2008. Nutrient concentrations and their relations to the biotic integrity of nonwadeable rivers in Wisconsin. U.S. Geological Survey and U.S. Department of the Interior professional paper 1754; Robertson, D.M., D.J. Graczyk, P.J. Garrison, L. Wang, G. LaLiberte, and R. Bannerman. 2006. Nutrient concentrations ant their relations to the biotic integrity of wadeable streams in Wisconsin. U.S. Geological Survey and U.S. Department of the Interior professional paper 1722.

association of the TN and TP concentrations with documented harmful, adverse effects to be compelling and supportive of this proposed rule. For a complete list of comparable nutrient thresholds reported in the scientific literature, see *''EPA Proposed Rule TSD for Florida's Streams and DPVs for Unimpaired Lakes''* (Chapter 1, Scientific Literature).

4. Additional Evidence of Harmful Effects in Florida Streams Above EPA's Proposed Criteria

In addition to reviewing the peer-reviewed scientific literature mentioned in the prior section, EPA reviewed analyses conducted by FDEP that demonstrated that excess nitrogen and phosphorus adversely affect streams. In its technical support document for deriving numeric nutrient criteria, FDEP stated: ''The results of the analyses generally indicate that many of the biological measures evaluated exhibit a statistically significant adverse response to nutrient pollution; however, the relationships between the biological response variables and nutrient levels were confounded by numerous other factors such as color, pH, conductivity, and canopy cover. While DEP believes the effect of nutrients on the biological communities is not clear enough to be used as the sole basis for establishing numeric nutrient criteria, the observed relationships between nutrients and the various biological measures demonstrate the need for nutrient criteria to prevent adverse biological effects in Florida streams. While the analysis in this chapter did not produce numeric thresholds that could be used as water quality criteria, the relationships that were determined, while relatively weak, do support the values derived using the Nutrient Benchmark Approach. Both the analysis of the Rapid Periphyton Survey (regarding probability of increased algal thickness) and the analysis of the second change point in the stream periphyton response to nutrients indicate that the biological response to nutrient enrichment will generally occur at levels higher than the values generated using the Benchmark Distribution Approach''.[74]

EPA has reviewed the available periphyton data in Florida streams and has verified that a harmful, adverse increase in the amount of algal coverage (> 6 mm thick over more than 25% of the stream bottom) will be substantially more likely as concentrations of TN and TP increase above EPA's proposed numeric streams criteria. This adverse biological response represents harmful, adverse changes to the natural populations of aquatic flora that occur as concentrations increase above the protective values in EPA's proposed numeric streams criteria. For more information on the likelihood of increases in the amount of algal coverage at varying concentrations of TN and TP, see ''*EPA Proposed Rule TSD for Florida's Streams and DPVs for Unimpaired Lakes''* (Chapter 1, Stressor-Response Relationships).

EPA also reviewed the available stream fauna data, specifically FDEP's multi-metric index of stream macroinvertebrates (e.g., insect larvae, worms), which FDEP developed as an indicator of stream health.[75] The index, called the stream condition index (SCI), is a generic index, indicating the aggregate impact of human disturbance on stream macroinvertebrates. It measures the number and diversity of various invertebrate taxa (i.e., individuals sharing the same general identity) and was not designed to be uniquely responsive to nutrients, but nutrients may contribute to adverse impacts. The SCI score for a given sample can range between 0 and 100, where 0 represents a highly degraded community and 100 represents the highest quality community. EPA re-analyzed Florida-specific stream data and found that stream macroinvertebrate community index scores predictably decrease below a level EPA and FDEP consider biologically healthy as a function of increasing TN and TP concentrations.

Furthermore, when ambient TN or TP concentrations were greater than EPA's proposed criteria, SCI scores indicated that, on average, faunal populations were imbalanced. For example, SCI scores ranged from 30 to 50 when ambient TP concentrations were equivalent to EPA's proposed TP criteria for each of the five stream NWRs. A SCI score of 50 has been identified by scientific experts to be associated with the loss of rare native taxa and with the replacement of some sensitive or ubiquitous taxa by more pollutant tolerant taxa—this is a level where there is some negative change in the natural populations of aquatic fauna, but is still considered a score that represents a biologically healthy condition; whereas a SCI score of 30 has been associated with unbalanced distribution of major groups from what is expected—this is a level where there is a profound harmful change in the natural populations of aquatic fauna.[76]

EPA applied the average SCI of 40 as one of many screening factors in selecting reference sites that were considered to be biologically healthy. EPA believes an average SCI of 40 is a level where there is some negative change in the natural populations of aquatic fauna, but before profound harmful change has occurred.[77] Following the court's remand of the streams criteria, EPA evaluated data in Florida streams and found that when the nutrient concentrations exceed EPA's proposed numeric streams criteria, the SCI score is 45–70% more likely to be less than 50, meaning that it is more likely that there will be some negative change as TN and TP concentrations increase above EPA's proposed streams criteria. In addition, when the nutrient concentrations exceed EPA's proposed numeric streams criteria, the SCI score is 17–34% more likely to be less than 30, meaning that it is more likely that there will be profound harmful change. Thus, the concentrations of EPA's proposed numeric streams criteria represent levels above which harmful change begins to be more likely. This adverse biological response represents harmful, adverse changes to the natural populations of aquatic fauna that occur at concentrations above the protective values in EPA's proposed numeric streams criteria. For more information on the likelihood of SCI scores at varying concentrations of TN and TP, see ''*EPA Proposed Rule TSD for Florida's Streams and DPVs for Unimpaired Lakes''* (Chapter 1, Stressor-Response Relationships).

When considered together and in light of the conclusions drawn by FDEP,[78] the previous and new analyses all indicate that a predictable harmful, adverse change (i.e., increase in TN and TP concentrations causing imbalance in natural populations of aquatic flora or fauna) would likely occur if levels of TN and TP exceed the proposed streams criteria.

[74] *Technical Support Document: Development of Numeric Nutrient Criteria for Florida Lakes, Spring Vents and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section, 2012, p. 110–111.

[75] *Technical Support Document for EPA's Proposed Rule for Numeric Nutrient Criteria to Protect Florida's Streams and Downstream Lakes.* USEPA, 2012.

[76] *Technical Support Document for U.S. EPA's Final Rule for Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Inland Surface Fresh Waters.* U.S. EPA 2010, pp. 49–51.

[77] *Technical Support Document for U.S. EPA's Final Rule for Numeric Criteria for Nitrogen/Phosphorus Pollution in Florida's Inland Surface Fresh Waters.* U.S. EPA 2010.

[78] *Technical Support Document: Development of Numeric Nutrient Criteria for Florida Lakes and Streams.* Florida Department of Environmental Protection, Standards and Assessment Section, June 2009, p. 96.

5. EPA's Rule Includes the SSAC Provision and Process To Address Any Uncertainties Associated With the Reference Condition Approach

EPA recognizes the uncertainties associated with setting numeric nutrient criteria based on the reference condition approach. The case law is clear, however, that in protecting human health and the environment, EPA can act in light of scientific uncertainty and choose to act proactively. *American Iron & Steel Institute,* 115 F.3d 979, (D.C. Cir. 1997) (''[I]t is within EPA's discretion to decide that in the wake of uncertainty, it would be better to give the values a conservative bent rather than err on the other side.''). While it was appropriate for EPA to act to adopt numeric nutrient criteria for streams based on the reference condition approach even in the face of some scientific uncertainty, EPA also recognized that site-specific water quality conditions may make it appropriate to adopt either more or less stringent numeric nutrient criteria for a specific water body or set of water bodies. To address those situations, and as discussed previously in this proposal, EPA's December 2010 final rule authorized and established a specific administrative process for adopting, site-specific alternative criteria (''SSAC'').

D. Proposed Numeric Criteria for the State of Florida's Streams

EPA is proposing numeric nutrient criteria for TN and TP in five geographically distinct watershed regions of Florida's streams not covered by the State of Florida's Rule classified as Class I or III waters under Florida law (Section 62–302.400, F.A.C.). The proposed TN and TP criteria are listed in Table B–1. The proposed criteria are the same criteria published in EPA's final rule signed on November 14, 2010 and published at 75 FR 75762 (December 6, 2010). For purposes of this proposed rule and in response to the Court's February 18, 2012 order, EPA is proposing these criteria values and explaining how the proposed criteria will ensure the protection of the Florida's Class I and III designated uses by avoiding harmful changes in TN and TP concentrations that would result in an imbalance of natural populations of aquatic flora or fauna. EPA requests comment on its proposed numeric nutrient criteria for Florida's streams and supporting rationale.

TABLE B–1—EPA'S PROPOSED NUMERIC CRITERIA FOR FLORIDA STREAMS NOT COVERED BY THE STATE OF FLORIDA'S RULE

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L) *	TP (mg/L) *
Panhandle West [a]	0.67	0.06
Panhandle East [b]	1.03	0.18
North Central [c]	1.87	0.30
West Central [d]	1.65	0.49
Peninsula [e]	1.54	0.12

Watersheds pertaining to each Nutrient Watershed Region (NWR) were based principally on the NOAA coastal, estuarine, and fluvial drainage areas with modifications to the NOAA drainage areas in the West Central and Peninsula Regions that account for unique watershed geologies. For more detailed information on regionalization and which WBIDs pertain to each NWR, see the Technical Support Document.

[a] Panhandle West region includes: Perdido Bay Watershed, Pensacola Bay Watershed, Choctawhatchee Bay Watershed, St. Andrew Bay Watershed, Apalachicola Bay Watershed.

[b] Panhandle East region includes: Apalachee Bay Watershed, and Econfina/Steinhatchee Coastal Drainage Area.

[c] North Central region includes the Suwannee River Watershed.

[d] West Central region includes: Peace, Myakka, Hillsborough, Alafia, Manatee, Little Manatee River Watersheds, and small, direct Tampa Bay tributary watersheds south of the Hillsborough River Watershed.

[e] Peninsula region includes: Waccasassa Coastal Drainage Area, Withlacoochee Coastal Drainage Area, Crystal/Pithlachascotee Coastal Drainage Area, small, direct Tampa Bay tributary watersheds west of the Hillsborough River Watershed, Sarasota Bay Watershed, small, direct Charlotte Harbor tributary watersheds south of the Peace River Watershed, Caloosahatchee River Watershed, Estero Bay Watershed, Kissimmee River/Lake Okeechobee Drainage Area, Loxahatchee/St. Lucie Watershed, Indian River Watershed, Daytona/St. Augustine Coastal Drainage Area, St. John's River Watershed, Nassau Coastal Drainage Area, and St. Mary's River Watershed.

* For a given waterbody, the annual geometric mean of TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

E. Proposed Numeric Criteria To Ensure the Downstream Protection of the State of Florida's Unimpaired Lakes

Similar to the Court's opinion regarding EPA's streams criteria, the Court found that EPA had not explained in sufficient detail how exceedances of the default DPV for unimpaired lakes would lead to ''harmful effects'' in the downstream lake. Order at 70. Thus, the Court invalidated the option for establishing default DPVs to protect unimpaired lakes in EPA's final rule and remanded it to the Agency for further action. Order at 85. This proposed rule provides three options for establishing a default DPV for unimpaired lakes and clarifies that the proposed options would ensure the attainment and maintenance of the numeric lake criteria so as to prevent harmful effects from occurring in a downstream lake.

EPA is proposing default DPV approaches for TN and TP that would provide for the attainment and maintenance of downstream water quality standards for Florida's unimpaired lakes pursuant to 40 CFR 131.10(b) when modeling approaches are unavailable. For this proposed rule, EPA is providing for public comment three default approaches available for use when modeling cannot be performed to derive DPVs that ensure the attainment and maintenance of the numeric lake criteria that, in turn, protect the designated uses in Florida's lakes. The default approaches would be applicable to streams that flow into unimpaired lakes, but could also be used for streams that flow into impaired lakes. The default approaches would supplement EPA's promulgated DPVs for the protection of downstream lakes, which are codified at 40 CFR 131.43(c)(2)(ii), consistent with the February 18, 2012 Court order. Order at 85.

Briefly, EPA's final rule provided that DPVs apply to tributary streams at the point of entry to the lake, also referred to as the pour point. The final rule specified that where sufficient data and information are available, DPVs may be established through application of the BATHTUB model. See 40 CFR 131.43(c)(2)(ii)(B). EPA's final rule also specifically authorizes FDEP or EPA to

use a model other than BATHTUB when either FDEP or EPA determines that it would be appropriate to use another scientifically defensible modeling approach that results in the protection of downstream lakes. 40 CFR 131.43(c)(2)(ii)(B). A lake-specific DPV derived through such modeling provides the most refined DPV for a stream at the pour point. Where sufficient information is not available to derive TN and/or TP DPVs using water quality modeling and the lake does not attain the applicable TN, TP, and/or chlorophyll-*a* criteria or is un-assessed, criteria values for TN and/or TP that apply to that lake are to be used as the default DPVs. 40 CFR 131.43(c)(2)(ii)(D). See id. EPA believes that this approach, which the Court upheld, is protective because the TN and TP concentrations entering the lake are unlikely to need to be lower than the criterion concentration necessary to be protective of the lake itself.

In the final rule, water quality modeling was EPA's preferred approach for the derivation of DPVs. Water quality modeling is the most rigorous and most data-demanding method and results in the most refined DPVs. The default methods were intended only for use where there is insufficient data to use a model. While using a default option to develop DPVs requires less data, it also generally leads to more stringent criteria to account for the uncertainties associated with these less refined approaches.

The rule proposed today provides three options for a default DPV that would apply in cases when there are insufficient data to use a water quality model for any unimpaired lake for which EPA has promulgated numeric nutrient criteria. The three default options EPA is proposing are not intended to supersede or limit the two approaches EPA provided in the final rule, codified at 40 CFR 131.43(c)(2)(ii), which were upheld by the Court. Order at pp. 69–70, 85. Rather, the default options are intended to provide flexibility in deriving a DPV in the situation where there is not sufficient information to develop a DPV using a water quality model. Thus, EPA views the proposed DPV options as supplemental to EPA's other established approaches for deriving DPVs. All three options for default DPVs are designed to ensure that the unimpaired lake criteria would be attained and maintained when the inflowing stream's TN and TP concentrations meet the DPV at the pour point.

The first proposed default option simply utilizes the downstream lake criteria as the DPV applicable at the pour point to the lake. EPA refers readers to 40 CFR § 131.43(c)(1) for the applicable TN and TP lake criteria, which would serve as the DPV. EPA believes that this proposed option is protective because it is unlikely that the TN and TP concentrations entering the lake need to be lower than the criterion concentration necessary to be protective of the lake itself.

The second proposed default option uses Florida-specific stream and lake data to empirically link the DPV to the attainment and maintenance of Florida's lake criteria in each of the three lake classes. This option utilizes Florida's extensive stream and lake data to compute a linear regression model, which relates the inflowing stream TN and TP concentrations to the TN and TP concentrations in the downstream lake. EPA developed a linear regression model for each of the three lake classes based on EPA's lake dataset provided in the final rule and Florida's stream data from its statewide water quality database.[79]

The linear regression equation is used to predict what the inflowing stream's TN and TP concentrations need to be in order for the lake concentrations to meet the lake criteria EPA established in the December 6, 2010 final rule. EPA's calculated TN and TP DPVs for each lake class using this approach are provided in Table C–1. The approach is described in further detail in the *EPA Proposed Rule TSD for Florida's Streams and DPVs for Unimpaired Lakes.*

For this proposed option, in circumstances where additional lake and stream data are available, the linear regression equation could be updated using this new data and used to calculate default DPVs that are reflective of newer, more site-specific information.

TABLE C–1—EPA'S PROPOSED DPVS FOR EACH LAKE CLASS USING THE SECOND DEFAULT APPROACH

Lake class	Default option 2	
	TN DPV (mg/L)	TP DPV (mg/L)
Colored Lakes	1.59	0.11
Clear, High Alkaline Lakes	1.40	0.09
Clear, Low Alkaline Lakes	0.87	0.06

The third proposed default option utilizes stream data that is spatially linked to and temporally coincident with the downstream lake when it is attaining the applicable lake criteria. This proposed option is a reference condition-based DPV approach that is conditioned upon the downstream lake attaining all applicable numeric nutrient criteria, TN, TP, and chlorophyll-*a,* including the duration and frequency components of the applicable lake criteria. To compute a reference condition-based DPV, the period of record during which the downstream lake was attaining all applicable criteria must be determined. At a minimum, and pursuant to 40 CFR 131.43(c)(1), the lake must not exceed any applicable numeric nutrient criteria, which are expressed as annual geometric means, more than once in a three-year period. If this condition is met, then a DPV for that lake can be computed using TN and TP data from the stream discharging into the lake coincident in time with the period of record when the lake was attaining all applicable numeric nutrient criteria. Because of the hydrologic link between streams and lakes, it follows that nitrogen and phosphorus concentrations in the stream would be sufficient to meet the lake criteria provided that the lake was meeting all applicable numeric nutrient criteria. In general, this approach is less refined compared to the modeling approach EPA promulgated at 40 CFR 131.43(c)(1)(ii)(B) because it does not incorporate the water quality parameters and data that would be necessary to derive a site-specific DPV, for either TN or TP, using a water quality model such as BATHTUB. Nonetheless, EPA believes that the data and information that would support this third approach, in the absence of additional data that would support modeling, is still sufficient to ensure the protection of the downstream lake because of the hydrologic linkage between the stream and downstream lake. A DPV calculated under this option may be more stringent than a DPV calculated using a water quality model. This default approach is intended to ensure that water quality standards are not only restored when found to be impaired, but are maintained when found to be attained, consistent with the Clean Water Act. Higher levels of TN and/or TP may be allowed in watersheds where it is demonstrated that such higher levels will fully protect the lake's water quality standard. To the extent that it is determined that the default DPV for a given lake tributary is over protective, applying a water quality model as set out in EPA's preferred approach will result in a more refined definition of the DPV for that tributary.

As discussed earlier, the calculation of the DPV using the three default

[79] IWR Run 40.

options requires that the lake criteria be explicitly considered. The applicable numeric lake criteria can be found at 40 CFR 131.43(c)(1). EPA recognizes that lake criteria may be modified pursuant to the modified lake criteria provision at 40 CFR 131.43(c)(1)(ii). Where lake criteria are modified in accordance with this provision, the modified criteria would be the applicable criteria in any of the three default DPV approaches. The duration and frequency components of DPV magnitudes computed using the proposed default approaches would be an annual geometric mean not to be exceeded more than once over a three-year period. These components of the proposed approaches align with the duration and frequency of both the numeric lake criteria, codified at 40 CFR 131.43(c)(1), and the streams criteria which are proposed to be codified at 40 CFR 131.43(c)(2).

As in the final rule, protection of downstream lakes using the options described in this proposed rule is accomplished through establishment of a DPV. The applicable criteria for streams that flow into downstream lakes include both the instream criteria for TN and TP and the DPV, which is a concentration or loading value at the point of entry of a stream into a downstream lake that ensures the attainment and maintenance of the numeric lake criteria. EPA selected the point of entry into the lake as the location to measure water quality because the lake responds to the input from the pour point, and all contributions from the stream network above this point in a watershed affect the water quality at the pour point. When a DPV is exceeded at the pour point, the waters that collectively comprise the network of streams in the watershed above that pour point are considered to not attain the DPV for purposes of CWA section 303(d). The State may identify these impaired waters as a group rather than individually.

Contributions of TN and/or TP from sources in stream tributaries upstream of the pour point are accountable to the DPV because the water quality in the stream tributaries must result in attainment of the DPV at the pour point into the lake. The spatial allocation of load within the watershed is an important accounting step to ensure that the DPV is achieved at the point of entry into the lake. How the watershed load is allocated may differ based on watershed characteristics and existing sources (e.g., areas that are more susceptible to physical loss of nitrogen; location of towns, farms, and dischargers), so long as the DPV is met at the point of entry into the downstream lake. Where additional information is available, watershed modeling could be used to develop allocations that reflect hydrologic variability and other water quality considerations. For protection of the downstream lake, what is important is an accounting for nutrient pollution loadings on a watershed scale that results in meeting the DPV at the point of entry into the downstream lake.

As in the December 6, 2010 final rule, this proposal provides that additional DPVs may be established in upstream locations to represent sub-allocations of the total allowable loading or concentration. Such sub-allocations may be useful where there are differences in hydrological conditions and/or sources of TN and/or TP in different parts of the watershed. In addition to the explanations provided earlier, EPA refers the reader to its technical support document associated with the December 6, 2010 final rule for specific information supporting how harmful, adverse effects are more likely to occur in lakes at TN and TP concentrations above the established numeric lake criteria (Chapter 2, Derivation of EPA's Numeric Nutrient Criteria for Lakes).

EPA requests comment on the three proposed default approaches, including whether implementation of DPVs calculated using the default approaches would ensure the attainment and maintenance of the downstream numeric lake criteria in Florida's unimpaired lakes. The proposed default DPV approaches and DPVs are aimed at the protection of unimpaired lakes. However, EPA recognizes that the second and third options may also be appropriate for the protection of impaired lakes and offer additional flexibility to the default DPV approach for impaired lakes, which is codified at 40 CFR 131.43(c)(2)(ii)(D). EPA requests comment on applying the second and third default DPV options to impaired lakes as well as unimpaired lakes. In addition, EPA requests comments on whether the Agency should promulgate default DPV values in addition to default DPV approaches to be used in situations when modeling is unavailable.

F. Applicability of Criteria When Final

EPA proposes that the numeric nutrient criteria for Florida's streams not covered by Florida's Rule and the DPVs for unimpaired lakes described in this rule be effective for CWA purposes 60 days after EPA publishes final criteria, and apply in addition to any other criteria for Class I or Class III waters already adopted by the State and submitted to EPA (and for those adopted after May 30, 2000, approved by EPA). EPA requests comment on this proposed effective date.

In addition to this proposal, EPA has proposed to stay the December 6, 2010 final rule [80] (75 FR 75762) to November 15, 2013 (See *http://water.epa.gov/lawsregs/rulesregs/florida_inland.cfm*). This date should closely coincide with the effective date of this proposed rule, which is approximately 60 days following the publication of the final rule (i.e., shortly after August 31, 2013).

For water bodies that Florida has designated as Class I and III, any final EPA numeric nutrient criteria will be applicable CWA water quality criteria for purposes of implementing CWA programs including permitting under the NPDES program, as well as monitoring and assessment, and establishment of TMDLs. The proposed criteria in this rule, when finalized, would be subject to Florida's general rules of applicability to the same extent as are other State-adopted and/or federally-promulgated criteria for Florida waters. Furthermore, states have discretion to adopt general policies that affect the application and implementation of WQS (40 CFR 131.13). There are many applications of criteria in Florida's water quality programs. Therefore, EPA believes that it is not necessary for purposes of this proposed rule to enumerate each of them, nor is it necessary to restate any otherwise generally applicable requirements.

It is important to note that no existing TMDL for waters in Florida will be rescinded or invalidated as a result of finalizing this proposed rule, nor will this proposed rule when finalized have the effect of withdrawing any prior EPA approval of a TMDL in Florida. Neither the CWA nor EPA regulations require TMDLs to be completed or revised within any specific time period after a change in water quality standards occurs. TMDLs are typically reviewed as part of states' ongoing water quality assessment programs. Florida may review TMDLs at its discretion based on the State's priorities, resources, and most recent assessments. NPDES permits are subject to five-year permit cycles, and in certain circumstances are administratively continued beyond five years. In practice, States often prioritize their administrative workload in permits. This prioritization could be coordinated with TMDL review.

[80] **Federal Register**, Vol. 75, No. 233, 75762, December 6, 2010. Water Quality Standards for the State of Florida's Lakes and Flowing Waters.

Because current nutrient TMDLs were established to protect Florida's waters from the effects of nitrogen and phosphorus pollution, the same goal as EPA's numeric nutrient criteria, the Agency believes that, absent specific new information to the contrary, it is reasonable to presume that basing NPDES permit limits on those TMDLs will result in effluent limitations as stringent as necessary to meet the federal numeric nutrient criteria.

IV. Under what conditions will Federal standards be either not finalized or withdrawn?

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their navigable waters. (*See* CWA section 303(a)–(c)). EPA is proposing numeric nutrient criteria for flowing waters outside the South Florida Region not covered by the State of Florida's Rule and DPVs for unimpaired lakes to meet the Agency's obligations under the Consent Decree. EPA notes if Florida's Rule will not take effect due to subsection 62–302.531(9), F.A.C., EPA would expect to finalize the criteria in this proposed rulemaking for all flowing waters (i.e., streams) located outside of the South Florida Region that are designated as either Class I or Class III. EPA solicits comment on this potential outcome. EPA recognizes that Florida has exercised the option to adopt and submit to EPA numeric nutrient criteria for some of the State's Class I and many of the State's Class III waters and EPA has approved those criteria as consistent with CWA section 303(c) and implementing regulations at 40 CFR part 131. Consistent with CWA section 303(c)(4), EPA does not intend to proceed with the final rulemaking for those waters for which EPA has approved Florida's criteria, provided that the newly approved State water quality standards will be allowed to go into effect, FDEP will be allowed to implement them consistent with their Implementation Document, and, with respect to numeric DPVs, that the district court modifies the Consent Decree consistent with EPA's amended Determination that numeric DPVs are not necessary to meet CWA requirements in Florida.

EPA is not obligated under the Consent Decree to promulgate regulations setting forth numeric nutrient criteria in all Class I and III lakes and flowing waters if the State of Florida submits and EPA approves new or revised WQS for these waterbodies. EPA approved revisions on November 30, 2012 and is in discussions with Florida regarding waters not covered by the State's numeric nutrient criteria.

Pursuant to 40 CFR 131.21(c), if EPA does finalize this proposed rule, the EPA-promulgated WQS would be applicable WQS for purposes of the CWA until EPA withdraws the federally-promulgated standard. Withdrawing the Federal standards for the State of Florida would require rulemaking by EPA pursuant to the requirements of the Administrative Procedure Act (5 U.S.C.551 *et seq.*). EPA would undertake such a rulemaking to withdraw the Federal criteria when EPA is assured that numeric nutrient criteria that fully meet the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131 are in effect.

Among the newly-approved state water quality standards are numeric criteria for nutrients that apply to a set of streams, as that term is specifically defined in the newly-approved state water quality standards. Under the Consent Decree, EPA is relieved of its obligation to propose numeric criteria for nutrients after FDEP submits and EPA approves new or revised water quality standards. Thus, under normal circumstances, EPA would be clearly relieved of its obligation to propose numeric criteria for nutrients Florida covered in its newly-approved state water quality standards. EPA notes that a provision included in Florida's Rule, specifically subsection 62–302.531(9), F.A.C., casts some doubt as to whether the newly approved state water quality standards will go into effect if EPA proposes and promulgates numeric nutrient criteria for streams not covered by the newly approved State water quality standards. Therefore, it is unclear whether an EPA's proposal to ''gap fill'', or establish numeric criteria for nutrients for Florida streams that FDEP does not cover in its Rule, would trigger 62–302.531(9), F.A.C. and result in Florida's streams criteria not taking effect.

In addition, due to a recent administrative challenge filed in the State of Florida Department of Administrative Hearings, there is uncertainty as to whether FDEP will be able to implement its newly approved state water quality standards consistent with FDEP's ''Implementation of Florida's Numeric Nutrient Standards'' (Implementation Document). Thus, EPA approved portions of Florida's new or revised water quality standards subject to the State being able to implement them as provided in its Implementation Document. If, as a result of legal challenge, FDEP is unable to implement its Rule as provided in its Implementation Document, EPA would intend to revisit its November 30, 2012 approval of Florida's new or revised water quality standards. EPA has therefore reserved its authority to withdraw or modify that approval.

In light of the above, EPA seeks comment on finalizing a rule that applies EPA's streams criteria to streams meeting EPA's definition of ''stream'' that are not covered under Florida's numeric interpretation of narrative nutrient criteria at 62–302.531(2)(c), F.A.C. This would serve to fill gaps in coverage if Florida's streams criteria are in effect, or apply to all streams if Florida's streams criteria are not in effect for any reason, including those mentioned above. EPA's understanding is that it is obligated to propose numeric criteria in streams not covered by 62–302.531(2)(c) F.A.C. under the consent decree. EPA acknowledges that it is possible that there may be approaches that are similarly protective of designated uses in a subset of the uncovered Class III waters and seeks comment on alternatives.

Finally, as described in EPA's November 30, 2012 approval of Florida's new or revised water quality standards, while EPA believes that the provisions addressing downstream protection will provide for quantitative approaches to ensure the attainment and maintenance of downstream waters consistent with 40 CFR 131.10(b), the provisions themselves, however, do not consist of numeric values. Because EPA is currently subject to a Consent Decree deadline to sign a rule proposing numeric downstream protection values (DPVs) for Florida by November 30, 2012, EPA is proposing numeric DPVs to comply with the Consent Decree. However, EPA has amended its January 2009 determination to specify that numeric criteria for downstream protection are not necessary and that quantitative approaches designed to ensure the attainment and maintenance of downstream water quality standards, such as those established by Florida, are sufficient to meet CWA requirements. As such, EPA will ask the court to modify the Consent Decree consistent with the Agency's amended determination, i.e., to not require EPA to promulgate numeric DPVs for Florida. Accordingly, EPA approved the State's downstream protection provisions subject to the district court modifying the Consent Decree to not require EPA to promulgate numeric DPVs for Florida. If the district court agrees to so modify the Consent Decree, EPA will not promulgate numeric DPVs for Florida. However, if the district court declines to so modify the Consent Decree, EPA would intend to promulgate numeric DPVs for Florida

and would also expect to revisit its November 30, 2012 approval of the State Rule's downstream protection provisions to modify or withdraw its approval. Therefore, EPA has also reserved its authority to do so in its approval document.

V. Statutory and Executive Order Reviews

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

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not include any information collection, reporting, or record-keeping requirements.

C. Regulatory Flexibility Act

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

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

Under the CWA WQS program, states must adopt WQS for their waters and must submit those WQS to EPA for approval; if the Agency disapproves a state standard and the state does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate WQS in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These state standards (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable WQS.

Thus, under the CWA, EPA's promulgation of WQS establishes standards that the State implements through the NPDES permit process. The State has discretion in developing discharge limits, as needed to meet the standards. This proposed rule does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Florida will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the proposed rule. In doing so, the State will have a number of choices associated with permit writing. While Florida's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, EPA's action, by itself, does not impose any of these requirements on small entities; that is, these requirements are not self-implementing. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act for state, local, or tribal governments or the private sector. The State may use these resulting water quality criteria in implementing its water quality control programs. This proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of UMRA.

EPA determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Moreover, WQS, including those promulgated here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA's authority and responsibility to promulgate Federal WQS when state standards do not meet the requirements of the CWA is well established and has been used on various occasions in the past. The proposed rule will not substantially affect the relationship between EPA and the states and territories, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule will not alter Florida's considerable discretion in implementing these WQS. Further, this proposed rule will not preclude Florida from adopting WQS that EPA concludes meet the requirements of the CWA, after promulgation of the final rule, which would eliminate the need for these Federal standards and lead EPA to withdraw them. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this action, EPA had extensive communication with the State of Florida to discuss EPA's concerns with the State's water quality criteria and the Federal rulemaking process. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

During its previous rulemaking and development of water quality standards for Florida's lakes and flowing waters,

EPA concluded that the rule [81] may have tribal implications. Ultimately, however, EPA felt that the rule would neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Therefore, EPA met with the Seminole Tribe on January 19, 2010 and requested an opportunity to meet with the Miccosukee Tribe to discuss EPA's rule, although a meeting was never requested by the Tribe.

Because this current proposal re-proposes the same numeric nutrient criteria with further explanation on how the criteria will ensure the protection of the Florida's designated uses by avoiding harmful changes in nutrient levels, and provides for the same approaches for determining DPVs as in the final rule with some additional flexibility, EPA determined that tribal consultation will not be needed. However, EPA will specifically solicit additional comment on this proposed rule from tribal officials during the public comment period.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency's promulgation of this rule will result in the reduction of environmental health and safety risks that could present a disproportionate risk to children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act of 1995

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

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

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

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

EPA has determined that this proposed rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will afford a greater level of protection to both human health and the environment if these numeric nutrient criteria are promulgated for Class I and Class III waters in the State of Florida.

List of Subjects in 40 CFR Part 131

Environmental protection, Florida, Nitrogen and phosphorus pollution, Nutrients, Water quality standards.

Dated: November 30, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.43 is amended by:
a. Revising (c)(2)(i).
b. Revising paragraph (c)(2)(ii)(C).
The revisions read as follows:

§ 131.43 Florida.

* * * * *

(c) * * *

(2) *Criteria for streams.*

(i) The applicable instream protection value (IPV) criteria for total nitrogen (TN) and total phosphorus (TP) for streams within each respective nutrient watershed region are shown on Table 2.

TABLE 2

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L) *	TP (mg/L) *
Panhandle West [a]	0.67	0.06
Panhandle East [b]	1.03	0.18
North Central [c]	1.87	0.30
West Central [d]	1.65	0.49
Peninsula [e]	1.54	0.12

Watersheds pertaining to each Nutrient Watershed Region (NWR) were based principally on the NOAA coastal, estuarine, and fluvial drainage areas with modifications to the NOAA drainage areas in the West Central and Peninsula Regions that account for unique watershed geologies. For more detailed information on regionalization and which WBIDs pertain to each NWR, see the Technical Support Document.

[a] Panhandle West region includes: Perdido Bay Watershed, Pensacola Bay Watershed, Choctawhatchee Bay Watershed, St. Andrew Bay Watershed, Apalachicola Bay Watershed.

[b] Panhandle East region includes: Apalachee Bay Watershed, and Econfina/Steinhatchee Coastal Drainage Area.

[c] North Central region includes the Suwannee River Watershed.

[81] 75 FR 75762, December 6, 2010. Water Quality Standards for the State of Florida's Lakes and Flowing Waters.

[d] West Central region includes: Peace, Myakka, Hillsborough, Alafia, Manatee, Little Manatee River Watersheds, and small, direct Tampa Bay tributary watersheds south of the Hillsborough River Watershed.

[e] Peninsula region includes: Waccasassa Coastal Drainage Area, Withlacoochee Coastal Drainage Area, Crystal/Pithlachascotee Coastal Drainage Area, small, direct Tampa Bay tributary watersheds west of the Hillsborough River Watershed, Sarasota Bay Watershed, small, direct Charlotte Harbor tributary watersheds south of the Peace River Watershed, Caloosahatchee River Watershed, Estero Bay Watershed, Kissimmee River/Lake Okeechobee Drainage Area, Loxahatchee/St. Lucie Watershed, Indian River Watershed, Daytona/St. Augustine Coastal Drainage Area, St. John's River Watershed, Nassau Coastal Drainage Area, and St. Mary's River Watershed.

* For a given water body, the annual geometric mean of TN or TP concentrations shall not exceed the applicable criterion concentration more than once in a three-year period.

(ii) *Criteria for protection of downstream lakes.*

(A) * * *

(B) * * *

(C) When the State or EPA has not derived a DPV for a stream pursuant to paragraph (c)(2)(ii)(B) of this section, and where the downstream lake attains the applicable chlorophyll-*a* criterion and the applicable TP and/or TN criteria, then the DPV for TN and/or TP will be determined using any of the following options: For the first option, the DPV for TN and/or TP applicable at the pour point to the lake is the applicable TN and/or TP criteria for the downstream lake codified in 40 CFR 131.43(c)(1), similar to paragraph (c)(2)(ii)(D) of this section. For the second option, the DPV for TN and/or TP applicable at the pour point of the receiving lake is found in Table 3.

TABLE 3

Lake class	Default option 2	
	TN DPV (mg/L)	TP DPV (mg/L)
Colored Lakes	1.59	0.11
Clear, High Alkaline Lakes	1.40	0.09
Clear, Low Alkaline Lakes	0.87	0.06

For the third option, the DPV for TN and/or TP applicable at the pour point to the lake is computed using TN and TP data from the stream discharging into the lake coincident in time with the period of record when the lake was attaining all applicable nutrient criteria pursuant to 40 CFR 131.43(c)(1). These default approaches supplement EPA's promulgated DPVs for the protection of downstream lakes in paragraphs (c)(2)(ii)(B) and (D) of this section.

[FR Doc. 2012–30114 Filed 12–17–12; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 77, No. 243

Tuesday, December 18, 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, DECEMBER

71483–71686 3
71687–72194 4
72195–72680 5
72681–72912 6
72913–73262 7
73263–73540 10
73541–73896 11
73897–74102 12
74103–74340 13
74341–74554 14
74555–74774 17
74775–75006 18

CFR PARTS AFFECTED DURING DECEMBER

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:
8909 72195
8910 72675
8911 72677
8912 72679
8913 72911
8914 73891
8915 74345

Executive Orders:
13630 73893
13631 (See EO 13544 of 6/10/2010; continued by EO 13591) 74101
13632 74341

Administrative Orders:
Presidential Determinations:
No. 2013-02 of December 4, 2012 74553

5 CFR

532 74347
870 71687
Ch. XCVIII 74347

7 CFR

915 71688
922 72681
923 72683
927 72197

Proposed Rules:
905 73961
927 72245
3201 72654

9 CFR

98 74555
417 72686

Proposed Rules:
94 74787

10 CFR

171 72199
430 74559
710 71689

Proposed Rules:
50 74788
61 72997
429 72763
430 74616
431 ..... 72763, 74616

11 CFR

Proposed Rules:
110 74121

12 CFR

308 74573
390 74573
703 74103
704 74103
709 74103
713 74112
741 74103
905 73263
1090 72913
1200 73263
1700 73263

Proposed Rules:
Ch. X 74625
1209 72247

13 CFR

121 ..... 72691, 72702

Proposed Rules:
121 72766

14 CFR

21 71691
39 ..... 71483, 71485, 71487, 71489, 71491, 72200, 72203, 72913, 73265, 73268, 73270, 73273, 73279, 73282, 73897, 73902, 73906, 73908, 74579
71 ..... 71492, 71493
91 ..... 72766, 72778
97 ..... 71494, 71495, 71497, 71499
117 73911
119 73911
121 73911

Proposed Rules:
39 ..... 71723, 71729, 71731, 72250, 72252, 72766, 72778, 73340, 73343, 73557, 74123, 74125, 74126, 74628
71 71734
91 72998
121 ..... 71735, 72998
125 ..... 71735, 72998
135 ..... 71735, 72998

15 CFR

6 72915
744 72917
774 72917
902 71501

Proposed Rules:
1400 72254

16 CFR

455 73912
681 72712
1107 72205
1500 ..... 73286, 73289
1700 73294

Proposed Rules:
240 71741
455 74746
1112 ..... 73345, 73354
1222 73345

1225 73354

17 CFR

1 74351
39 74284
50 74284
240 ....73302, 74775
249 73302
Proposed Rules:
Ch. II 71743
240 71568

19 CFR

4 73306
10 72715
24 ....72715, 73306
101 73306
102 ....72715, 73306
122 73310
123 72715
127 73306
128 72715
141 72715
143 72715
145 72715
148 72715
159 73306
161 73306
177 73306

21 CFR

1 74582
173 71695
Proposed Rules:
150 71746
500 72254
520 72254
522 72254
524 72254
529 72254
556 72254
558 72254
573 71750

24 CFR

203 72219
232 72920
1000 71513

25 CFR

162 72240

26 CFR

1 ....72923, 74583
40 72721
46 72721
48 72924
602 72721
Proposed Rules:
1 ....72268, 72612, 73965
31 72268
301 74798

27 CFR

25 72939
Proposed Rules:
25 72999

28 CFR

Proposed Rules:
811 73558

29 CFR

4022 74353
Proposed Rules:
18 72142
1910 72781
1926 72781
2520 74063
2550 74063
2578 74063

30 CFR

Proposed Rules:
926 73965
944 73966
1206 71751

31 CFR

515 71530
Proposed Rules:
356 72278
1010 72783

32 CFR

68 72941
706 ....72736, 74113
Proposed Rules:
157 72788

33 CFR

100 ....71531, 72956, 72957, 73311
117 ....72737, 74586, 74775
165 ....71697, 72957, 73541, 73916, 74587, 74777, 74781, 74784
Proposed Rules:
117 73967
165 74814

34 CFR

685 72960
Proposed Rules:
Subtitle A 74407
75 74392
77 74392

36 CFR

7 73919

37 CFR

Proposed Rules:
201 72788
203 72788

38 CFR

51 72738
53 73312
Proposed Rules:
3 73366

39 CFR

20 72960

40 CFR

52 ....71533, 71551, 71700, 72512, 72742, 72966, 72968, 73313, 73316, 73320, 73322, 73544, 73923, 73924, 73926, 74115, 74355, 74372, 74590
55 72744
80 ....72746, 74592
82 74381
122 72970
180 ....71555, 72223, 72232, 72747, 72975, 72984, 73934, 73937, 73940, 73945, 73951, 74116
716 71561
Proposed Rules:
52 ....71568, 71751, 72284, 72287, 72291, 73005, 73369, 73386, 73387, 73391, 73392, 73560, 73570, 73575, 74129, 74421, 74817, 74820
60 ....72294, 73968
63 ....72294, 73968
81 ....73560, 73575
82 74435
131 ....74449, 74924, 74985

42 CFR

8 72752
73 71702
438 74381
441 74381
447 74381
495 72985

44 CFR

64 74607
67 ....71702, 73324, 74610
Proposed Rules:
67 ....73393, 73394, 73396, 73398, 74142

45 CFR

170 72985
Proposed Rules:
153 73118
155 73118
156 73118
157 73118
158 73118
800 72582

46 CFR

8 73334
Proposed Rules:
10 74630

47 CFR

0 71711
54 ....71711, 71712
73 ....71713, 72237, 73545
101 73956
Proposed Rules:
1 ....73586, 73969
20 72294
27 73969
73 73969
76 72295
90 74822

48 CFR

Ch. 1 ....73516, 73520
4 73516
25 73516
52 73516
2401 73524
2402 73524
2403 73524
2404 73524
2406 73524
2407 73524
2409 73524
2415 73524
2416 73524
2417 73524
2419 73524
2426 73524
2427 73524
2428 73524
2432 73524
2437 73524
2439 73524
2442 73524
2452 73524
908 74382
945 74382
952 74382
970 74382
Proposed Rules:
538 74631
552 74631

49 CFR

567 71714
571 71717
Proposed Rules:
234 73589
235 73589
236 73589
571 ....71752, 72296, 74144
665 74452

50 CFR

17 ....71876, 72070, 73740, 73770
300 71501
622 ....72991, 73338, 73555, 74119, 74389
635 ....72993, 74612
648 ....71720, 72242, 72762, 72994, 73556, 73957, 74390
679 ....72243, 72995
Proposed Rules:
17 ....71757, 71759, 73828
223 73220
224 73220
300 73969
635 73608
648 ....72297, 74159
660 73005
679 ....72297, 72791
680 74161

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.

H.R. 915/P.L. 112–205

Jaime Zapata Border Enforcement Security Task Force Act (Dec. 7, 2012; 126 Stat. 1487)

H.R. 6063/P.L. 112–206
Child Protection Act of 2012 (Dec. 7, 2012; 126 Stat. 1490)

H.R. 6634/P.L. 112–207
To change the effective date for the Internet publication of certain financial disclosure forms. (Dec. 7, 2012; 126 Stat. 1495)

Last List December 7, 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.