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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2012–0485; Special Conditions No. 23–258A–SC]

Special Conditions: Tamarack Aerospace Group, Cirrus Model SR22; Active Technology Load Alleviation System (ATLAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions; request for comments.

SUMMARY: This action amends special conditions No. 23–258–SC, issued on July 13, 2012, for the Tamarack Aerospace Group's modification to the Cirrus Model SR22 airplane. This amendment clarifies the intent of two requirements: The requirement for reporting of load alleviation system failures (see paragraph (c) under Loads, Probability of Failure of Load Alleviation System) and the requirement for consideration of limit loads with an unannunciated load alleviation system failure (see paragraph (b) under Factor of Safety, Load Alleviation Systems). This airplane as modified by Tamarack will have a novel or unusual design feature(s) associated with Tamarack Aerospace Group's modification. The design change will install winglets and an Active Technology Load Alleviation System (ATLAS). The addition of the ATLAS mitigates the negative effects of the winglets by effectively aerodynamically turning off the winglet under limit gust and maneuver loads. This is accomplished by measuring the aircraft loading and moving a small aileron-like device called a Tamarack Active Control Surface (TACS). The TACS movement reduces lift at the tip of the wing, resulting in the wing center of pressure moving inboard, thus reducing bending stresses along the wing span. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These final special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additionally, this amendment corrects the issue date of special condition No. 23–258–SC to July 13, 2012.

DATES: This final rule is effective February 13, 2013, and is applicable beginning February 6, 2013. Comments must be received by March 15, 2013.

ADDRESSES: Send comments identified by docket number FAA–2012–0485 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
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Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: For sections 23.301 through 23.629 (structural requirements), contact Mr. Mike Reyer; telephone (816)–329–4131. For sections 23.672 through 23.701 (control system requirements), contact Mr. Ross Schaller; telephone (816)–329–4162. The address and facsimile for both Mr. Reyer and Mr. Schaller is: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, Missouri 64106; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On February 15, 2011, Tamarack Aerospace Group applied for a supplemental type certificate for installation of winglets and an Active Technology Load Alleviation System (ATLAS) on the Cirrus Model SR 22 (serial numbers 0002—2333, 2335—2419, and 2421—2437). The Cirrus model SR22 is a certified, single reciprocating engine, four-passenger, composite airplane.

The installation of winglets, as proposed by Tamarack, increases aerodynamic efficiency. However, the winglets by themselves also increase wing static loads and the wing fatigue stress ratio, which under limit gust and maneuver loads factors may exceed the certificated wing design limits. The addition of ATLAS mitigates the negative effects of the winglets by effectively aerodynamically turning off the winglet at elevated gust and maneuver loads factors.

The ATLAS functions as a load-relief system. This is accomplished by measuring aircraft loading via an accelerometer, and by moving a small aileron-like device called a Tamarack Active Control Surface (TACS) that reduces lift at the tip of the wing. Because the ATLAS compensates for the increased wing root bending at elevated load factors, the overall effect of this modification is that the winglet can be added to the Cirrus wing without the traditionally required reinforcement of the existing structure. This is the first application of an active loads alleviation system on a part 23 aircraft and the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Type Certification Basis

Under the provisions of § 21.101, Tamarack Aerospace Group must show that the Cirrus Model SR22, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet A00009CH or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Data Sheet A00009CH (Serial Numbers (S/Ns) 0002 through 2333, 2335 through 2419, and 2421 through 2437) are as follows:

14 CFR part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by 23–1 through 23–53, except as follows:

14 CFR 23.301 through Amendment 42

14 CFR 23.855, 23.1326, 23.1359 not applicable

14 CFR part 36, dated December 1, 1969, as amended by 36–1 through 36–22 Except for:

Increase in amendment level from the Cirrus Model SR22 certification basis for regulation 14 CFR 23.301 through Amendment 23–42 to: 14 CFR 23.301 through Amendment 23–48.

Addition of regulation 14 CFR 23.1306 through Amendment 23–61.

Addition of regulation 14 CFR 23.1308 through Amendment 23–57.

Change in Cirrus model SR22 certification basis for regulation 14 CFR 23.1359 through Amendment 23–49 from: Not Applicable to: Applicable

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ACE–96–5 for 14 CFR Section 23.221 (Spinning); Refer to FAA Memorandum, dated June 10, 1998, for models SR20, SR22.

ACE–00–09 for 14 CFR 23.1143(g) (Engine Controls) and 23.1147(b) (Mixture Controls); Refer to FAA Memorandum, dated September 11, 2000, for model SR22.

ACE–01–01 for 14 CFR 23.1143(g) (Engine Controls) and 23.1147(b) (Mixture Controls); Refer to FAA Memorandum, dated February 14, 2001, for model SR20.

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23–ACE–88 for ballistic parachute, for models SR20, SR22.

23–134–SC for protection of systems for High Intensity Radiated Fields continued: (HIRF), for models SR20, SR22.

23–163–SC for inflatable restraint system. Addition to the certification basis model SR20 effective S/N 1541 and subsequent; model SR22 S/N 1500, 1520 and subsequent.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the SR22 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the SR22 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The SR22 will incorporate the following novel or unusual design features:

Winglets with an Active Technology Load Alleviation System (ATLAS) that incorporates a small aileron-like device called a Tamarack Active Control Surface (TACS).

Discussion

Tamarack has applied for a Supplemental Type Certificate to install a winglet and ATLAS. The ATLAS is not a primary flight control system, a trim device, or a wing flap. However, there is definite applicability to ATLAS for several regulations under part 23, Subpart D—Control Systems, which might otherwise be considered ''Not Applicable'' under a strict interpretation of the regulations. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer.

Special conditions are also necessary for the effect of ATLAS on structural performance. These special conditions are intended to provide an equivalent level of safety for ATLAS as intended by part 23, Subpart C—Structure, and portions of part 23, Subpart D—Design and Construction.

Applicability

As discussed above, these special conditions are applicable to the SR22 (S/Ns 0002 thru 2333, 2335 thru 2419, and 2421 thru 2437). Should Tamarack Aerospace Group apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Data Sheet A00009CH to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

These Special Conditions

Accordingly, the Federal Aviation Administration (FAA) are issued the following special conditions as part of the type certification basis for Cirrus Model SR22 airplanes (S/Ns 0002 through 2333, 2335 through 2419, and 2421 through 2437) modified by Tamarack Aerospace Group.

1. Active Load Alleviation Systems—Structural Requirements

(A) The following special conditions apply to airplanes equipped with load alleviation systems that either directly, or as a result of failure or malfunction, affect structural performance. These

special conditions address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. Any statistical or probability terms used in the following special conditions apply to the structural requirements only and do not replace, remove, or supersede other requirements, including those in part 23, subpart E. These criteria are only applicable to structure whose failure could prevent continued safe flight and landing.

(B) In addition to the requirements in 14 CFR 23.301 Loads, comply with the following:

SC 23.301 Loads, Probability of Failure of Load Alleviation System

(a) Failures of the load alleviation system, including the annunciation system, must be immediately annunciated to the pilot or annunciated prior to the next flight. Failure of the load alleviation system, including the annunciation system, must be no greater than 1×10^{-5} per flight hour.

(b) If failure of the load alleviation system, including the annunciation system, is greater than 1×10^{-8} per flight hour, an independent system functional test must be accomplished at a periodic interval to limit time exposure to an undetected failed system. The time interval for the system functional test must be selected so that the product of the time interval in hours and the failure of the load alleviation system, including the annunciation system, is no greater than 1×10^{-5} per hour.

(c) Tamarack must report failed annunciation systems to the FAA in a manner acceptable to the Administrator.

(C) In place of the requirements in 14 CFR 23.303 Factor of Safety, comply with the following:

SC 23.303 Factor of Safety, Load Alleviation Systems

The airplane must be able to withstand the limit and ultimate loads resulting from the following scenarios:

(a) The loads resulting from 14 CFR 23.321 through 23.537, as applicable, corresponding to a fully operative load alleviation system. A factor of safety of 1.5 must be applied to determine ultimate loads.

(b) If an independent system functional test is required by SC 23.301(b), the loads resulting from 14 CFR 23.321 through 23.537, as applicable, corresponding to the system in the inoperative state without additional flight limitations or reconfiguration of the airplane. A factor of safety of 1.0 must be applied to determine ultimate loads.

(c) The loads corresponding to the time of occurrence of load alleviation system failure and immediately after the failure. These loads must be determined at any speed up to V_{NE}, starting from 1g level flight conditions, and considering realistic scenarios, including pilot corrective actions. A factor of safety of 1.5 must be applied to determine ultimate loads.

(d) For airplanes equipped with ''before the next flight'' failure annunciation systems, the loads resulting from 14 CFR 23.321 through 23.537, as applicable, corresponding to the system in the failed state without additional flight limitations or reconfiguration of the airplane. A factor of safety of 1.25 must be applied to determine ultimate loads.

(e) For airplanes equipped with ''immediate'' failure annunciation systems, the loads resulting from 14 CFR 23.321 through 23.537, as applicable, corresponding to the system in the failed state with additional flight limitations or reconfiguration of the airplane. A factor of safety of 1.0 must be applied to determine ultimate loads.

(D) In addition to the requirements in 14 CFR 23.571 through 23.574, comply with the following:

SC 23.571 Through SC 23.574 Fatigue and Damage Tolerance

If any system failure would have a significant effect on the fatigue or damage evaluations required in §§ 23.571 through 23.574, then these effects must be taken into account. If an independent system functional test is required by SC 23.301(b), the effect on fatigue and damage evaluations resulting from the selected inspection interval must be taken into account.

(E) In addition to the requirements in 14 CFR 23.629 Flutter, comply with the following:

SC 23.629 Flutter

(a) With the load alleviation system fully operative, compliance to 14 CFR 23.629 must be shown. Compliance with § 23.629(f) must include the ATLAS control system and control surface.

(b) At the time of occurrence of load alleviation system failure and immediately after the failure, compliance with 14 CFR 23.629(a) and (e) must be shown up to V_D/M_D without consideration of additional operating limitations or reconfiguration of the airplane.

(c) For airplanes equipped with ''before the next flight'' failure annunciation systems and the load alleviation system in the failed state, compliance to 14 CFR 23.629 Flutter, paragraphs (a) and (e), must be shown up to V_D/M_D without consideration of additional operating limitations or reconfiguration of the airplane.

(d) For airplanes equipped with ''immediate'' failure annunciation systems and the load alleviation system in the failed state, compliance to 14 CFR 23.629 Flutter, paragraphs (a) and (e), must be shown with consideration of additional operating limitations or reconfiguration of the airplane at speeds up to $V_D = 1.4 \times$ maximum speed limitation selected by the applicant.

2. Active Load Alleviation Systems—Control System Requirements

(A) In place of 14 CFR 23.672 Stability augmentation and automatic and power-operated systems requirement, comply with the following:

SC 23.672 Load Alleviation Systems

The load alleviation system must comply with the following:

(a) A warning, which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention, must be provided for any failure in the load alleviation system or in any other automatic system that could result in an unsafe condition if the pilot was not aware of the failure. Warning systems must not activate the control system.

(b) The design of the load alleviation system or of any other automatic system must permit initial counteraction of failures without requiring exceptional pilot skill or strength, by either the deactivation of the system or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that, while the system is active or after any single failure of the load alleviation system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configuration) that is described in the Airplane Flight Manual (AFM); and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

(B) In place of 14 CFR 23.677 Trim systems requirement, comply with the following:

SC 23.677 Load Alleviation Active Control Surface

(a) Proper precautions must be taken to prevent inadvertent, improper, or abrupt Tamarack Active Control Surface (TACS) operation.

(b) The load alleviation system must be designed so that, when any one connecting or transmitting element in the primary flight control system fails, adequate longitudinal control for safe flight and landing is available.

(c) The load alleviation system must be irreversible unless the TACS is properly balanced and has no unsafe flutter characteristics. The system must have adequate rigidity and reliability in the portion of the system from the tab to the attachment of the irreversible unit to the airplane structure.

(d) It must be demonstrated that the airplane is safely controllable and that the pilot can perform all maneuvers and operations necessary to effect a safe landing following any probable powered system runaway that reasonably might be expected in service, allowing for appropriate time delay after pilot recognition of the system runaway. The demonstration must be conducted at critical airplane weights and center of gravity positions.

(C) In place of 14 CFR 23.683 Operation tests requirement, comply with the following:

SC 23.683 Operation Tests

(a) It must be shown by operation tests that, when the load alleviation system is active and operational and loaded as prescribed in paragraph (b) of this section, the system is free from—

(1) Jamming;

(2) Excessive friction; and

(3) Excessive deflection.

(b) The prescribed test loads are, for the entire system, loads corresponding to the limit airloads on the appropriate surface.

(D) In place of 14 CFR 23.685 Control system details requirement, comply with the following:

SC 23.685 Control system details

(a) Each detail of the Tamarack Active Control Surface (TACS) must be designed and installed to prevent jamming, chafing, and interference from cargo, passengers, loose objects, or the freezing of moisture.

(b) There must be means in the cockpit to prevent the entry of foreign objects into places where they would jam any one connecting or transmitting element of the system.

(c) Each element of the load alleviation system must have design features, or must be distinctively and permanently marked, to minimize the possibility of incorrect assembly that could result in malfunctioning of the control system.

(E) In place of 14 CFR 23.697 Wing flap controls requirement, comply with the following:

SC 23.697 Load Alleviation System Controls

(a) The Tamarack Active Control Surface (TACS) must be designed so that, when the surface has been placed in any position, it will not move from that position unless the control is adjusted or is moved by the automatic operation of a load alleviation system.

(b) The rate of movement of the TACS in response to the automatic device must give satisfactory flight and performance characteristics under steady or changing conditions of airspeed, engine power, and attitude.

(F) In place of 14 CFR 23.701 Flap interconnection requirement, comply with the following:

SC 23.701 Load Alleviation System Interconnection

(a) The load alleviation system and related movable surfaces as a system must—

(1) Be synchronized by a mechanical interconnection between the movable surfaces; or by an approved equivalent means; or

(2) Be designed so that the occurrence of any failure of the system that would result in an unsafe flight characteristic of the airplane is extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual movable surfaces.

Issued in Kansas City, Missouri, on February 6, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–03296 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30884; Amdt. No. 3519]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 13, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 2013.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available

online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 1, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 7 MARCH 2013

Tatitlek, AK, Tatitlek, RNAV (GPS) RWY 31, Orig–A
Jonesboro, AR, Jonesboro Muni, RNAV (GPS) RWY 5, Amdt 1
Jonesboro, AR, Jonesboro Muni, RNAV (GPS) RWY 23, Amdt 1
Jonesboro, AR, Jonesboro Muni, RNAV (GPS) RWY 31, Amdt 1
Jonesboro, AR, Jonesboro Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Washington, DC, Manassas Rgnl/Harry P. Davis Field, ILS OR LOC RWY 16L, Amdt 5
Washington, DC, Ronald Reagan Washington National, RNAV (RNP) RWY 19, Amdt 1
Jacksonville, FL, Jacksonville Executive at Craig Airport, ILS OR LOC RWY 32, Amdt 5
Jacksonville, FL, Jacksonville Executive at Craig Airport, RNAV (GPS) RWY 14, Amdt 1
Jacksonville, FL, Jacksonville Executive at Craig Airport, RNAV (GPS) RWY 32, Amdt 1
Jacksonville, FL, Jacksonville Executive at Craig Airport, Takeoff Minimums and Obstacle DP, Amdt 4
Jacksonville, FL, Jacksonville Executive at Craig Airport, VOR RWY 14, Amdt 5
Jacksonville, FL, Jacksonville Executive at Craig Airport, VOR/DME RWY 32, Amdt 3
Tallahassee, FL, Tallahassee Rgnl, ILS OR LOC/DME RWY 36, Amdt 25
Tallahassee, FL, Tallahassee Rgnl, NDB RWY 36, Amdt 20B, CANCELED
Tallahassee, FL, Tallahassee Rgnl, VOR RWY 18, Amdt 12
Tallahassee, FL, Tallahassee Rgnl, VOR/DME OR TACAN RWY 36, Amdt 1
Atlanta, GA, Fulton County Airport-Brown Field, RNAV (GPS) RWY 26, Amdt 1A
Lawrenceville, GA, Gwinnett County—Briscoe Field, ILS OR LOC RWY 25, Amdt 2A
Lawrenceville, GA, Gwinnett County—Briscoe Field, NDB RWY 25, Amdt 1A
Lawrenceville, GA, Gwinnett County—Briscoe Field, RNAV (GPS) RWY 7, Orig–A
Lawrenceville, GA, Gwinnett County—Briscoe Field, RNAV (GPS) RWY 25, Orig–A
Lawrenceville, GA, Gwinnett County—Briscoe Field, RNAV (GPS)-A, Orig–A

Lawrenceville, GA, Gwinnett County—Briscoe Field, VOR/DME RWY 7, Amdt 2A
Iowa Falls, IA, Iowa Falls Muni, NDB RWY 31, Amdt 5, CANCELED
Iowa Falls, IA, Iowa Falls Muni, RNAV (GPS) RWY 13, Orig
Iowa Falls, IA, Iowa Falls Muni, RNAV (GPS) RWY 31, Amdt 1
Pinckneyville, IL, Pinckneyville-Du Quoin, RNAV (GPS) RWY 18, Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 33L, ILS RWY 33L (SA CAT I), ILS RWY 33L (CAT II), ILS RWY 33L (CAT III), Amdt 5
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 33L, Amdt 2
Montague, MA, Turners Falls, RNAV (GPS)–B, Orig
Montague, MA, Turners Falls, VOR–A, Amdt 4
Marquette, MI, Sawyer Intl, RNAV (GPS) RWY 1, Orig
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 1L, Amdt 15
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 1R, ILS RWY 1R (SA CAT I), ILS RWY 1R (CAT II), ILS RWY 1R (CAT III), Amdt 4
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 9, Amdt 14
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 19L, Amdt 2
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 19R, ILS RWY 19R (SA CAT I), ILS RWY 19R (CAT II), ILS RWY 19R (CAT III), Amdt 11
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 27, Amdt 3
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 1L, Amdt 2
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 1R, Amdt 2
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 9, Amdt 2
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 19L, Amdt 2
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 19R, Amdt 2
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 27, Amdt 2
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 1L, Amdt 1
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 1R, Amdt 1
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 9, Amdt 1
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 19L, Amdt 1
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 19R, Amdt 1
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 27, Amdt 1
Raymond, MS, John Bell Williams, ILS OR LOC RWY 12, Orig–A
Gallipolis, OH, Gallia-Meigs Rgnl, GPS RWY 23, Orig, CANCELED
Gallipolis, OH, Gallia-Meigs Rgnl, RNAV (GPS) RWY 23, Orig
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 6, Amdt 2
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 24, Amdt 19
Erie, PA, Erie Intl/Tom Ridge Field, VOR RWY 6, Amdt 16, CANCELED
Erie, PA, Erie Intl/Tom Ridge Field, VOR/DME RWY 24, Amdt 12, CANCELED
Washington, PA, Washington County, RNAV (GPS) RWY 9, Amdt 1A
Ponce, PR, Mercedita, Takeoff Minimums and Obstacle DP, Amdt 3
San Juan, PR, Luis Munoz Marin Intl, ILS OR LOC RWY 10, Amdt 6
San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 10, Amdt 2
San Juan, PR, Luis Munoz Marin Intl, VOR OR TACAN RWY 10, Amdt 2
Union City, TN, Everett-Stewart Rgnl, ILS OR LOC RWY 1, Amdt 2
Union City, TN, Everett-Stewart Rgnl, RNAV (GPS) RWY 1, Amdt 3
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16C, ILS RWY 16C (SA CAT I), ILS RWY 16C (CAT II), ILS RWY 16C (CAT III), Amdt 14
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16L, ILS RWY 16L (SA CAT I), ILS RWY 16L (CAT II), ILS RWY 16L (CAT III), Amdt 5
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16R, ILS RWY 16R (SA CAT I), ILS RWY 16R (CAT II), ILS RWY 16R (CAT III), Amdt 2
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 34C, ILS RWY 34C (SA CAT I), ILS RWY 34C (SA CAT II), Amdt 3
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 34L, ILS RWY 34L (SA CAT I), ILS RWY 34L (SA CAT II), Amdt 1
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 34R, ILS RWY 34R (SA CAT I), ILS RWY 34R (SA CAT II), Amdt 2
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 16C, Amdt 2
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 16L, Amdt 3
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 16R, Amdt 1
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 34C, Amdt 2
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 34L, Amdt 1
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 34R, Amdt 2
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 16C, Orig
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 16L, Orig
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 16R, Orig
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 34C, Orig
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 34L, Orig
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 34R, Orig

Effective 4 APRIL 2013

Connersville, IN, Mettel Field, RNAV (GPS) RWY 18, Amdt 1A
Georgetown, TX, Georgetown Muni, NDB RWY 18, Amdt 5, CANCELED

Rescinded: On January 25, 2013 (78 FR 5256), the FAA published an Amendment in Docket No. 30880, Amdt No. 3515 to Part 97 of the Federal Aviation Regulations under section 97.33. The following 4 entries for Lakeview, CA, effective 7 March, 2013, are hereby rescinded in their entirety:

Lakeview, OR, Lake County, GPS RWY 34, Orig–A, CANCELED
Lakeview, OR, Lake County, RNAV (GPS) RWY 17, Orig
Lakeview, OR, Lake County, RNAV (GPS) RWY 35, Orig
Lakeview, OR, Lake County, Takeoff Minimums and Obstacle DP, Amdt 3

[FR Doc. 2013–03147 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30885; Amdt. No. 3520]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 13, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 2013.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 1, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
7-Mar-13	TX	Palacios	Palacios Muni	3/1794	01/11/13	This NOTAM, published in TL 13–05, is hereby rescinded in its entirety.
7-Mar-13	ID	Pocatello	Pocatello Rgnl	2/2570	01/16/13	VOR Rwy 3, Amdt 17
7-Mar-13	ID	Pocatello	Pocatello Rgnl	2/2572	01/16/13	RNAV (GPS) Rwy 3, Amdt 1A
7-Mar-13	CA	Apple Valley	Apple Valley	2/4862	01/23/13	RNAV (GPS) Z Rwy 18, Orig
7-Mar-13	CA	Apple Valley	Apple Valley	2/4868	01/23/13	RNAV (GPS) Y Rwy 18, Amdt 1
7-Mar-13	CA	Mountain View	Moffett Federal Afld	2/6390	01/16/13	TACAN Rwy 32L, Orig
7-Mar-13	CA	Mountain View	Moffett Federal Afld	2/6396	01/16/13	ILS or LOC/DME Rwy 32R, Orig
7-Mar-13	CA	Mountain View	Moffett Federal Afld	2/6397	01/16/13	LOC/DME Rwy 14L, Orig
7-Mar-13	CA	Mountain View	Moffett Federal Afld	2/6398	01/16/13	TACAN Rwy 32R, Orig
7-Mar-13	CA	Willits	Ells Field-Willits Muni	3/1482	01/18/13	RNAV (GPS) Rwy 34, Amdt 1

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
7-Mar-13	CA	Willits	Ells Field-Willits Muni	3/1491	01/18/13	RNAV (GPS) Rwy 16, Amdt 1
7-Mar-13	CA	Van Nuys	Van Nuys	3/1631	01/18/13	VOR A, Amdt 4
7-Mar-13	CA	Van Nuys	Van Nuys	3/1632	01/18/13	VOR/DME or GPS B, Amdt 2A
7-Mar-13	CA	Van Nuys	Van Nuys	3/1633	01/18/13	LDA C, Amdt 2B
7-Mar-13	CA	Van Nuys	Van Nuys	3/1634	01/18/13	ILS Rwy 16R, Amdt 5F
7-Mar-13	PA	Chambersburg	Franklin County Rgnl	3/2081	01/24/13	RNAV (GPS) Rwy 6, Orig
7-Mar-13	PA	Chambersburg	Franklin County Rgnl	3/2082	01/24/13	RNAV (GPS) Rwy 24, Orig
7-Mar-13	PA	Chambersburg	Franklin County Rgnl	3/2083	01/24/13	VOR/DME B, Amdt 2
7-Mar-13	LA	Jonesboro	Jonesboro	3/2484	01/18/13	RNAV (GPS) Rwy 18, Orig
7-Mar-13	LA	Jonesboro	Jonesboro	3/2485	01/18/13	RNAV (GPS) Rwy 36, Orig
7-Mar-13	ME	Bar Harbor	Hancock County-Bar Harbor	3/2504	01/16/13	Takeoff Minimums and (Obstacle) DP, Amdt 4
7-Mar-13	NM	Zuni Pueblo	Black Rock	3/2558	01/16/13	VOR/DME Rwy 6, Amdt 2A
7-Mar-13	MN	Long Prairie	Todd Field	3/2560	01/16/13	RNAV (GPS) Rwy 34, Amdt 1
7-Mar-13	ID	Lewiston	Lewiston-Nez Perce County	3/2608	01/18/13	ILS Rwy 26, Amdt 13
7-Mar-13	PA	Bedford	Bedford County	3/2756	01/16/13	VOR A, Amdt 1
7-Mar-13	PA	Bedford	Bedford County	3/2757	01/16/13	RNAV (GPS) Rwy 14, Amdt 1

[FR Doc. 2013–03146 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0022]

RIN 1625–AA00

Safety Zone; Sea World San Diego Fireworks, Mission Bay; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Mission Bay in support of the Sea World San Diego Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:50 p.m. to 10 p.m. on February 16, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0022]. 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 Petty Officer Deborah Metzger, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11-pf-marineeventssandiego@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 delay would be impracticable. Immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

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**. Delaying the effective date would be impracticable, since immediate action is needed to ensure the public's safety.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 et seq.).

Sea World is sponsoring the Sea World Fireworks, which will include a fireworks presentation from a barge in Mission Bay. The fireworks display is scheduled to occur between 8:50 p.m. and 10 p.m. on February 16, 2013. This fireworks display could cause a hazard for crew, spectators, participants, and other vessels and users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:50 p.m. to 10 p.m. on February 16, 2013. The safety zone will cover a 600 foot radius surrounding the fireworks barge in approximate position 32°46′03″ N, 117°13′11″ W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. When this safety zone is being enforced, persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

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.

(1) This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Mission Bay from 8:50 p.m. to 10 p.m. on February 16, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for one hour and 10 minutes late in the evening when vessel traffic is low.

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 establishment of a temporary 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 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, 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. 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.T11–545 to read as follows:

§ 165.T11–545 Safety Zone; Sea World San Diego Fireworks, Mission Bay; San Diego, CA.

(a) *Location.* The safety zone will include the area within 600 feet of the fireworks barge in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This safety zone will be enforced from 8:50 p.m. to 10 p.m. on February 16, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) In accordance with general regulations in 33 CFR Part 165, Subpart C, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: January 29, 2013.

J.A. Janszen,

Commander, United States Coast Guard, Acting, Captain of the Port San Diego.

[FR Doc. 2013–03261 Filed 2–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0039]

RIN 1625–AA00

Safety Zone; Vigor Industrial Roll-Out, West Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the West Duwamish Waterway in Seattle, Washington for a vessel roll-out at Vigor Industrial. The safety zone is necessary to ensure the safety of the maritime public and workers involved in the roll-out. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or a Designated Representative.

DATES: This rule is effective on February 28, 2013 from 2:00 a.m. until 10:00 a.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0039]. 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 Nathaniel P. Clinger, Waterways Management Division, Coast Guard Sector Puget Sound, Coast Guard; telephone 206–217–6045, email *Sector PugetSoundWWM@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 temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable to do so. Delaying promulgation may result in injury or damage to persons and vessels since the roll-out event is scheduled to occur before a comment period would end and a Final Rule could be published.

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**. Delaying the effective date until 30 days after publication would be impracticable, as this delay would eliminate the safety zones' effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the 30-day period.

B. Basis and Purpose

Vigor Industrial is conducting a vessel roll-out in the West Duwamish Waterway in Seattle, Washington on February 28, 2013. Due to the dangers involved with a large slow moving dry dock that will be maneuvering close to the shore, the Coast Guard is establishing a temporary safety zone to ensure the safety of the workers involved as well as the maritime public.

C. Discussion of the Final Rule

The safety zone helps ensure the public's safety during a vessel roll-out that will take place on February 28, 2013 in the waters of the West Duwamish Waterway. The safety zone created by this rule encompasses all waters of the West Duwamish Waterway in Seattle, Washington within the area created by connecting the following points: 47°35′04″ N, 122°21′30″ W thence westerly to 47°35′04″ N, 122°21′50″ W thence northerly to 47°35′19″ N, 122°21′50″ W thence easterly to 47°35′19″ N, 122°21′30″ W

thence southerly to 47°35′04″ N, 122°21′30″ W. Geographically, the safety zone is adjacent to the northern tip of Harbor Island in Seattle, WA.

All persons and vessels will be prohibited from entering or remaining in the safety zone. The safety zone will be effective on February 28, 2013 from 2:00 a.m. to 10:00 a.m. unless cancelled sooner by the Captain of the Port or a Designated Representative. The safety zone will be enforced by the U.S. Coast Guard. The Captain of the Port may also be assisted in the enforcement of this safety zone by other federal, state, or local agencies.

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. The Coast Guard has made this finding based on the fact that the safety zone is limited in duration, and maritime traffic may be able to transit through the safety zone with permission of the Captain of the Port or a Designated Representative.

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 affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the safety zone created by this rule. This rule will not have a significant economic impact on a substantial number of small entities, although the safety zone will apply to the entire width of the waterway, the zone will be enforced for a limited period of time, and vessel traffic will be allowed to pass through the safety zone with the permission of the Captain of the Port or a Designated Representative.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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 temporary 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 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, 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 § 165.T13–241 to read as follows:

§ 165.T13–241 Safety Zone; Vigor Industrial Vessel Roll-Out, West Duwamish Waterway, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of the West Duwamish Waterway in Seattle, WA encompassed within the area created by connecting the following points: 47°35′04″ N, 122°21′30″ W thence westerly to 47°35′04″ N, 122°21′50″ W thence northerly to 47°35′19″ N, 122°21′50″ W thence easterly to 47°35′19″ N, 122°21′30″ W thence southerly to 47°35′04″ N, 122°21′30″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the Captain of the Port or a Designated Representative. See 33 CFR Part 165, Subpart C, for additional information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting Vessel Traffic Service Puget Sound on VHF channel 14, or the Sector Puget Sound Joint Harbor Operations Center at (206) 217–6001.

(c) *Enforcement Period.* The safety zone created in this rule is enforced from 2:00 a.m. to 10:00 a.m. on February 28, 2013 unless cancelled sooner by the Captain of the Port.

Dated: February 1, 2013.

S. J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2013–03264 Filed 2–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified
Unincorporated Areas of Halifax County, North Carolina Docket No.: FEMA–B–1198				
North Carolina	Unincorporated Areas of Halifax County.	Fishing Creek	At the upstream side of the railroad	+97
			Approximately 50 feet downstream of White Oak Road.	+132

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Halifax County

Maps are available for inspection at the Halifax County Planning Department, 15 West Pittsylvania Street, Halifax, NC 27839.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Osceola County, Florida, and Incorporated Areas Docket No.: FEMA–B–1198			
Bass Slough (Lower Reach)	Approximately 1,211 feet downstream of County Route 525.	+57	City of Kissimmee, Unincorporated Areas of Osceola County.
	Approximately 0.6 mile upstream of State Route 530	+76	
Bass Slough (Upper Reach)	Approximately 1,863 feet downstream of the Bass Slough Tributary confluence.	+79	City of Kissimmee, Unincorporated Areas of Osceola County.
	Approximately 337 feet upstream of Florida Parkway	+80	
Bass Slough Tributary	At the Bass Slough (Upper Reach) confluence	+79	Unincorporated Areas of Osceola County.
	Approximately 0.4 mile upstream of the Bass Slough (Upper Reach) confluence.	+79	
Clay Hole Pond	Entire shoreline	+66	Unincorporated Areas of Osceola County.
Courthouse Pond	Entire shoreline	+68	Unincorporated Areas of Osceola County.
Eagle Pond	Entire shoreline	+65	Unincorporated Areas of Osceola County.
East City Canal Tributary 1	At the upstream side of Vine Street	+66	City of Kissimmee.
	Approximately 637 feet upstream of Vine Street	+66	
Lake Marian	Entire shoreline	+59	Unincorporated Areas of Osceola County.
Multiple Ponding Areas	Area bound by San Remo Road to the north and east, Cypress Parkway to the south, and Marigold Avenue to the west.	+69	Unincorporated Areas of Osceola County.
Multiple Ponding Areas	Area bound by Florida's Turnpike to the north and east and State Route 523 to the south and west.	+65	City of Kissimmee.
Multiple Ponding Areas	Area approximately 0.8 mile northwest of the intersection of Brandon Lane and County Route 523, bound by Williams Road to the north, U.S. Route 441 to the east, and Florida's Turnpike to the south and west.	+69	Unincorporated Areas of Osceola County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Multiple Ponding Areas	Area bound by County Route 523 to the north, U.S. Route 441 to the east, Hayman Ranch Road to the south, and Florida's Turnpike to the west.	+69	Unincorporated Areas of Osceola County.
Multiple Ponding Areas	Area approximately 2.4 miles north of the intersection of 3rd Street and 4th Avenue, bound by Williams Road to the north, U.S. Route 441 to the east, and Florida's Turnpike to the south and west.	+67	Unincorporated Areas of Osceola County.
Otter Pond	Entire shoreline	+69	Unincorporated Areas of Osceola County.
Ponding Area	Area bound by West Orange Street to the north, North Main Street to the east, Sumner Street to the south, and U.S. Routes 17/92 to the west.	+66	Unincorporated Areas of Osceola County.
Ponding Area	Area bound by Pleasant Hill Road to the north, Florida's Turnpike to the east, and Scrub Jay Trail to the south and west.	+64	Unincorporated Areas of Osceola County.
Ponding Area	Area approximately 0.9 mile east of the intersection of Martigues Drive and Amiens Road, bound by West Southport Road to the north, Florida's Turnpike to the east, and Scrub Jay Trail to the south and west.	+63	Unincorporated Areas of Osceola County.
Ponding Area	Area bound by Amiens Road to the north and east, Chestnut Street to the south, and Bordeaux Road to the west.	+62	Unincorporated Areas of Osceola County.
Ponding Area	Area approximately 0.6 mile east of the intersection of Saint Michel Way and Amiens Road, bound by West Southport Road to the north, Florida's Turnpike to the east, and Scrub Jay Trail to the south and west.	+62	Unincorporated Areas of Osceola County.
Ponding Area	Area bound by Old Pleasant Hill Road to the north, Scrub Jay Trail to the east, and the Polk County boundary to the south and west.	+60	Unincorporated Areas of Osceola County.
Ponding Area	Area bound by Chestnut Street to the north, Scrub Jay Trail to the east, and the Polk County boundary to the south and west.	+63	Unincorporated Areas of Osceola County.
Ponding Area	Area approximately 2.2 miles north of the intersection of Coulter Drive and County Route 523, bound by Williams Road to the north, U.S. Route 441 to the east, and Florida's Turnpike to the south and west.	+66	Unincorporated Areas of Osceola County.
Unnamed Connecting Channel downstream of Clay Hole Pond.	Just upstream of Eagle Pond	+65	Unincorporated Areas of Osceola County.
	Just downstream of Clay Hole Pond	+66	
Unnamed Connecting Channel downstream of Eagle Pond.	Approximately 0.6 mile downstream of Eagle Pond	+65	Unincorporated Areas of Osceola County.
	Just downstream of Eagle Pond	+65	
Unnamed Connecting Channel upstream of Lake Marian.	Just upstream of Lake Marian	+59	Unincorporated Areas of Osceola County.
	Approximately 0.4 mile upstream of Lake Marian	+65	
Unnamed Connecting Channel upstream of Lake Marian.	Just upstream of Lake Marian	+59	Unincorporated Areas of Osceola County.
	Approximately 1.0 mile upstream of Lake Marian	+69	
Unnamed Flooding Area upstream of Lake Marian.	Just upstream of Lake Marian	+59	Unincorporated Areas of Osceola County.
	Approximately 0.5 mile upstream of Lake Marian	+65	
WPA Canal Tributary 1	Approximately 1,612 feet upstream of the WPA Canal confluence.	+71	City of St. Cloud, Unincorporated Areas of Osceola County.
	Approximately 1.6 miles upstream of Snail Kite Avenue	+75	
WPA Canal Tributary 1–1	At the WPA Canal Tributary 1 confluence	+75	City of St. Cloud, Unincorporated Areas of Osceola County.
	Approximately 0.7 mile upstream of the WPA Canal Tributary 1 confluence.	+75	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

ADDRESSES

City of Kissimmee
Maps are available for inspection at City Hall, Engineering Department, Suite 301, 101 North Church Street, Kissimmee, FL 34741.

City of St. Cloud
Maps are available for inspection at City Hall, Public Works Department, Building A, 2nd Floor, 1300 9th Street, St. Cloud, FL 34769.

Unincorporated Areas of Osceola County
Maps are available for inspection at the Osceola County Stormwater Section, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.

Oswego County, New York (All Jurisdictions)
Docket Nos.: FEMA–B–1210 and 1232

Bell Creek (backwater area)	From the Town of Schroeppel corporate limits to approximately 1,380 feet upstream of the Town of Schroeppel corporate limits.	+379	Town of Volney.
Black Creek (backwater area)	From the Town of Mexico corporate limits to approximately 200 feet upstream of the Town of Mexico corporate limits.	+442	Town of Palermo.
Lake Ontario	Entire shoreline within Selkirk Shores State Park boundary.	+249	Town of Richland.
Lycoming Creek (backwater area).	From the Town of Scriba corporate limits to approximately 0.5 mile upstream of the Town of Scriba corporate limits.	+277	Town of New Haven.
Panther Lake	Entire shoreline within community	+600	Town of Amboy.
Salmon River	Approximately 0.63 mile upstream of County Route 2A (Lehigh Road).	+436	Town of Albion.
	Approximately 0.96 mile upstream of County Route 2A (Lehigh Road).	+440	
Scriba Creek	Approximately 0.90 mile upstream of County Route 23 (Potter Road).	+546	Town of Amboy.
	Approximately 1.30 miles upstream of County Route 23 (Potter Road).	+547	
South Branch Grindstone Creek (backwater effects from Lake Ontario).	Areas within Selkirk Shores State Park boundary	+249	Town of Richland.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Albion
Maps are available for inspection at the Albion Town Municipal Building, 15 Bridge Street, Altmar, NY 13302.

Town of Amboy
Maps are available for inspection at the Amboy Town Hall, 822 State Route 69, Williamstown, NY 13493.

Town of New Haven
Maps are available for inspection at the Town Hall, 4279 State Route 104, New Haven, NY 13121.

Town of Palermo
Maps are available for inspection at the Palermo Town Municipal Offices, 53 County Route 35, Fulton, NY 13069.

Town of Richland
Maps are available for inspection at the Town of Richland Courthouse Building, 1 Bridge Street, Pulaski, NY 13142.

Town of Volney
Maps are available for inspection at the Volney Town Offices, 1445 County Road 6, Fulton, NY 13069.

Washoe County, Nevada, and Incorporated Areas
Docket No.: FEMA–B–1227

211 Creek	Approximately 400 feet downstream of U.S. Route 395	+5039	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 0.42 mile upstream of Union Pacific Railroad.	+5513	
6015 Creek	At the upstream side of the West Copperfield Creek confluence.	+5166	City of Reno.
	Approximately 1,500 feet upstream of the West Copperfield Creek confluence.	+5252	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
6634 Creek	Approximately 1.11 miles downstream of Union Pacific Railroad.	+5068	City of Reno.
	Approximately 0.47 mile upstream of Union Pacific Railroad.	+5473	
Copperfield Creek	Approximately 1,600 feet downstream of the West Copperfield Creek confluence.	+5040	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 0.92 mile upstream of U.S. Route 395 (southbound on-ramp).	+5295	
Evans Creek	Approximately 1,700 feet upstream of Lakeside Drive	+4682	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 0.52 mile upstream of Evans Creek Drive	+5070	
Fat Creek	Approximately 460 feet downstream of U.S. Route 395	+5040	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 0.62 mile upstream of Frontage Road	+5086	
Flat Creek	Approximately 975 feet downstream of the Flat Creek Split confluence.	+5043	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 0.58 mile upstream of the Flat Creek Split confluence.	+5177	
Flat Creek Split	Approximately 50 feet upstream of Frontage Road	+5043	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 130 feet downstream of the Flat Creek confluence.	+5052	
North Evans Creek	Approximately 160 feet downstream of the Evans Creek confluence.	+4900	Unincorporated Areas of Washoe County.
	Approximately 0.74 mile upstream of the Evans Creek confluence.	+5094	
Short Creek	Approximately 1,500 feet downstream of U.S. Route 395	+5039	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 0.61 mile upstream of Frontage Road	+5153	
West Copperfield Creek	Approximately 1,000 feet downstream of Frontage Road	+5060	City of Reno, Unincorporated Areas of Washoe County.
	Approximately 1.01 miles upstream of Frontage Road	+5259	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Reno

Maps are available for inspection at the City Hall Annex, 450 Sinclair Street, Reno, NV 89501.

Unincorporated Areas of Washoe County

Maps are available for inspection at the Washoe County Administration Building, 1001 East 9th Street, Reno, NV 89512.

Edgecombe County, North Carolina, and Incorporated Areas
Docket No.: FEMA–B–1202 and B–1213

Cokey Swamp	Approximately 0.9 mile downstream of North Carolina Highway 43.	+77	Town of Sharpsburg, Unincorporated Areas of Edgecombe County.
	Approximately 70 feet downstream of the railroad	+118	
Cokey Swamp Tributary	At the Cokey Swamp confluence	+88	Unincorporated Areas of Edgecombe County.
	Approximately 450 feet upstream of Floods Store Road (State Route 1146).	+106	
Cowlick Creek	At the Tar River confluence	+78	City of Rocky Mount.
	At the Parkers Canal confluence	+79	
Fishing Creek	Approximately 0.3 mile downstream of U.S. Highway 301	+94	Unincorporated Areas of Edgecombe County.
	Approximately 1,000 feet downstream of the railroad	+95	
Indian Branch	Approximately 175 feet downstream of Gay Road (State Route 1268).	+70	Unincorporated Areas of Edgecombe County.
Little Cokey Swamp	At the Cokey Swamp confluence	+80	Unincorporated Areas of Edgecombe County.
	Approximately 250 feet downstream of Greenpasture Road (State Route 1141).	+93	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Swift Creek	Approximately 0.6 mile downstream of Seven Bridges Road (State Route 1404).	+78	Unincorporated Areas of Edgecombe County.
	Approximately 400 feet downstream of the railroad	+90	
Tar River	Approximately 0.5 mile downstream of the Cowlick Creek confluence.	+78	City of Rocky Mount, Unincorporated Areas of Edgecombe County.
	Approximately 1,100 feet downstream of Atlantic Avenue	+81	
White Oak Swamp	Approximately 0.6 mile upstream of Speight's Chapel Road.	+103	Town of Whitakers, Unincorporated Areas of Edgecombe County.
	Approximately 630 feet upstream of South Cutchin Street (State Route 1410).	+124	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Rocky Mount
Maps are available for inspection at the Planning Department, 331 South Franklin Street, Rocky Mount, NC 27802.

Town of Sharpsburg
Maps are available for inspection at the Town Hall, 110 Railroad Street, Sharpsburg, NC 27878.

Town of Whitakers
Maps are available for inspection at the Town Hall, 302 Northwest Railroad Street, Whitakers, NC 27891.

Unincorporated Areas of Edgecombe County
Maps are available for inspection at the Edgecombe County Planning Department, 201 Saint Andrews Street, Tarboro, NC 27886.

Nash County, North Carolina, and Incorporated Areas
Docket No.: FEMA–B–1153

Cokey Swamp	Approximately 90 feet downstream of Old Wilson Road (Secondary Road 1002).	+107	City of Rocky Mount.
	Approximately 1.1 mile upstream of Old Wilson Road (Secondary Road 1002).	+118	
Cowlick Creek	Just upstream of U.S. Highway 64	+79	City of Rocky Mount.
	Just downstream of Cortland Avenue	+92	
Fishing Creek	Just upstream of the railroad	+97	Unincorporated Areas of Nash County.
	Approximately 50 feet downstream of Ward Road (Secondary Road 1502).	+132	
Grape Branch	Approximately 200 feet upstream of Beechwood Drive	+107	City of Rocky Mount, Unincorporated Areas of Nash County.
	Approximately 1,100 feet upstream of Beechwood Drive	+107	
Indian Branch	Approximately 175 feet downstream of Gay Road (Secondary Road 1268).	+70	City of Rocky Mount.
	Approximately 190 feet upstream of Hunting Lodge Drive	+91	
Little Cokey Swamp	Approximately 250 feet downstream of Greenpasture Road (Secondary Road 1141).	+93	City of Rocky Mount.
	Approximately 50 feet downstream of Kingston Avenue	+130	
Little Cokey Swamp Tributary	At the confluence with Little Cokey Swamp	+105	City of Rocky Mount.
	Approximately 200 feet upstream of South Church Street	+126	
Maple Creek	Approximately 0.3 mile upstream of Bethlehem Road (Secondary Road 1142).	+111	City of Rocky Mount, Unincorporated Areas of Nash County.
	Approximately 280 feet upstream of South Old Carriage Road.	+166	
Parkers Canal	At the confluence with Cowlick Creek	+79	City of Rocky Mount.
	Approximately 60 feet downstream of Atlantic Avenue	+98	
Pig Basket Creek	Approximately 900 feet upstream of Red Oak Road (Secondary Road 1003).	+127	Town of Red Oak, Unincorporated Areas of Nash County.
	Approximately 0.4 mile upstream of Taylors Store Road (Secondary Road 1004).	+155	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Polecat Branch	At the confluence with Maple Creek	+112	Unincorporated Areas of Nash County.
	Approximately 0.8 mile upstream of the confluence with Polecat Branch Tributary.	+120	
Sapony Creek	Approximately 200 feet upstream of Sandy Cross Road (Secondary Road 1717).	+132	Unincorporated Areas of Nash County.
	Approximately 1,550 feet upstream of NC Highway 58	+145	
Stony Creek	Approximately 0.5 mile downstream of Red Oak Road (Secondary Road 1003).	+130	City of Rocky Mount, Town of Nashville.
	Just upstream of U.S. Route 64	+152	
Swift Creek	Approximately 1.8 miles downstream of the Edgecombe County boundary.	+88	City of Rocky Mount, Unincorporated Areas of Nash County.
	At Red Oak Road (Secondary Road 1003)	+131	
Tar River	Approximately 150 feet downstream of South Old Carriage Road.	+133	City of Rocky Mount, Unincorporated Areas of Nash County.
	Approximately 0.64 mile downstream of U.S. Highway 64	+162	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Rocky Mount
Maps are available for inspection at the Planning Department, 331 South Franklin Street, Rocky Mount, NC 27802.

Town of Nashville
Maps are available for inspection at the Town Hall, 499 South Barnes Street, Nashville, NC 27856.

Town of Red Oak
Maps are available for inspection at the Town Hall, 8406 Main Street, Red Oak, NC 27868.

Unincorporated Areas of Nash County
Maps are available for inspection at the Nash County Planning Department, 120 West Washington Street, Suite 2110, Nashville, NC 27856.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,
Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–03259 Filed 2–12–13; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *luis.rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the

proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
Duval County, Florida, and Incorporated Areas Docket No.: FEMA–B–1126			
Big Davis Creek	Just upstream of I–95	+6	City of Jacksonville.
	Approximately 1.25 mile upstream of Philips Highway.	+17	
Big Fishweir Creek	Just upstream of Roosevelt Boulevard	+6	City of Jacksonville.
	Just downstream of Lakeshore Boulevard	+21	
Big Fishweir Creek Tributary 1	Just upstream of the railroad	+10	City of Jacksonville.
	Just downstream of Cassat Avenue	+19	
Bigelow Branch	Just upstream of Talleyrand Avenue	+5	City of Jacksonville.
	Approximately 1,500 feet upstream of Buckman Street.	+15	
Blockhouse Creek	Approximately 6,700 feet upstream of the confluence with the Trout River.	+5	City of Jacksonville.
	Just downstream of Armsdale Road	+17	
Bonett Branch	At the confluence with Pottsburg Creek	+10	City of Jacksonville.
	Just downstream of I–95	+19	
Box Branch	At the confluence with Pablo Creek	+7	City of Jacksonville.
	At the confluence with Box Branch Tributary 1	+14	
Box Branch Tributary 1	At the confluence with Box Branch	+14	City of Jacksonville.
	Approximately 3,350 feet upstream of the confluence with Box Branch.	+17	
Butcher Pen Creek	Just upstream of Wesconnet Road	+5	City of Jacksonville.
	Approximately 600 feet upstream of Randia Road	+17	
Caldwell Branch	Approximately 1,300 feet upstream of the confluence with Yellow Water Creek.	+68	City of Jacksonville.
	Approximately 4,100 feet upstream of the confluence with Caldwell Branch Tributary 2.	+79	
Caldwell Branch Tributary 1	At the confluence with Caldwell Branch	+74	City of Jacksonville.
	Approximately 6,700 feet upstream of the confluence with Caldwell Branch.	+81	
Caldwell Branch Tributary 2	At the confluence with Caldwell Branch	+77	City of Jacksonville.
	Approximately 4,000 feet upstream of the confluence with Caldwell Branch.	+81	
Caney Branch	Approximately 4,000 feet upstream of the confluence with Rushing Branch.	+7	City of Jacksonville.
	Approximately 2.5 miles upstream of the confluence with Rushing Branch.	+22	
Cedar Creek	Just upstream of I–95	+6	City of Jacksonville.
	Just upstream of Lem Turner Road	+23	
Cedar Creek Tributary 2	At the confluence with Cedar Creek	+13	City of Jacksonville.
	Just upstream of Terrell Road	+16	
Cedar Creek Tributary 6	At the confluence with Cedar Creek	+8	City of Jacksonville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
	Just downstream of Biscayne Boulevard	+15	
Cedar Creek Tributary 7	At the confluence with Cedar Creek	+18	City of Jacksonville.
	Just downstream of Lem Turner Road	+19	
Cedar Creek Tributary 8	At the confluence with Cedar Creek	+18	City of Jacksonville.
	Just downstream of Lem Turner Road	+18	
Cedar River	Approximately 1,500 feet upstream of the confluence with Cedar River Tributary 1.	+6	City of Jacksonville.
	Approximately 3,000 feet upstream of the confluence with Cedar River Tributary 16.	+42	
Cedar River Tributary 1	At the confluence with the Cedar River	+5	City of Jacksonville.
	Approximately 50 feet upstream of Lakeshore Boulevard.	+6	
Cedar River Tributary 12	At the confluence with the Cedar River	+8	City of Jacksonville.
	Approximately 150 feet upstream of Lane Avenue	+11	
Cedar River Tributary 13	At the confluence with the Cedar River	+8	City of Jacksonville.
	Approximately 100 feet upstream of Normandy Boulevard.	+29	
Cedar River Tributary 14	At the confluence with the Cedar River	+14	City of Jacksonville.
	Approximately 900 feet upstream of the confluence with Cedar River Tributary 18.	+17	
Cedar River Tributary 15	At the confluence with Cedar River Tributary 14	+17	City of Jacksonville.
	Approximately 1,300 feet upstream of the confluence with Cedar River Tributary 14.	+18	
Cedar River Tributary 16	At the confluence with the Cedar River	+21	City of Jacksonville.
	Approximately 2,200 feet upstream of the confluence with the Cedar River.	+22	
Cedar River Tributary 17	At the confluence with the Cedar River	+20	City of Jacksonville.
	Approximately 350 feet upstream of Beaver Street.	+25	
Cedar River Tributary 19	Approximately 700 feet upstream of the confluence with the Cedar River.	+12	City of Jacksonville.
	Approximately 250 feet upstream of Grace Terrace.	+12	
Cedar Swamp Creek	At the confluence with Pablo Creek	+9	City of Jacksonville.
	Approximately 3,400 feet upstream of Huffman Boulevard.	+37	
Cedar Swamp Creek Tributary 1	At the confluence with Cedar Swamp Creek	+29	City of Jacksonville.
	Just downstream of Beach Boulevard	+33	
Cedar Swamp Creek Tributary 2	At the confluence with Cedar Swamp Creek	+28	City of Jacksonville.
	At the confluence with Pablo Creek Tributary 3	+34	
Christopher Creek	At the confluence with Christopher Creek Tributary 1.	+5	City of Jacksonville.
	Approximately 50 feet upstream of Old Saint Augustine Road.	+20	
Christopher Creek Tributary 1	At the confluence with Christopher Creek	+5	City of Jacksonville.
	Approximately 50 feet upstream of Dupont Avenue.	+11	
Cormorant Branch	Approximately 1,800 feet upstream of Julington Creek Road.	+4	City of Jacksonville.
	Just upstream of Ricky Drive	+17	
Craig Creek	Just upstream of Hendricks Avenue	+5	City of Jacksonville.
	Just downstream of I–95	+21	
Deep Bottom Creek	Just upstream of Scott Mill Road	+5	City of Jacksonville.
	Just downstream of Hampton Road	+19	
Deep Bottom Creek Tributary 1	At the confluence with Deep Bottom Creek	+18	City of Jacksonville.
	Just downstream of Hartley Road	+19	
Deer Creek	Approximately 900 feet upstream of the Saint Johns River.	+4	City of Jacksonville.
	Approximately 4,400 feet upstream of the Saint Johns River.	+9	
Dunn Creek	Approximately 3,600 feet upstream of the confluence with Rushing Branch.	+6	City of Jacksonville.
	Just upstream of Bernard Road	+22	
Dunn Creek Tributary 1	At the confluence with Dunn Creek	+8	City of Jacksonville.
	Just downstream of Shamrock Avenue	+19	
Dunn Creek Tributary 2	At the confluence with Dunn Creek	+14	City of Jacksonville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
	Approximately 3,500 feet upstream of Webb Road.	+22	
Durbin Creek	At the confluence with Julington Creek	+4	City of Jacksonville.
	At the St. Johns County boundary	+9	
Durbin Creek Tributary 1	At the confluence with Durbin Creek	+7	City of Jacksonville.
	Just downstream of Philips Highway	+19	
East Branch	Just upstream of Bessent Road	+5	City of Jacksonville.
	Approximately 100 feet upstream of the confluence with East Branch Tributary 1.	+14	
East Branch Tributary 1	At the confluence with East Branch	+14	City of Jacksonville.
	Approximately 60 feet upstream of Lem Turner Road.	+14	
Fishing Creek	Just upstream of Timiquana Road	+7	City of Jacksonville.
	Approximately 1,500 feet upstream of Jammes Road.	+21	
Fishing Creek Tributary 1	At the confluence with Fishing Creek	+8	City of Jacksonville.
	Approximately 300 feet upstream of 103rd Street	+30	
Ginhouse Creek	Just upstream of Fort Caroline Road	+6	City of Jacksonville.
	Approximately 50 feet downstream of Bradley Road.	+38	
Goodbys Creek	Approximately 2,400 feet upstream of Sanchez Road.	+5	City of Jacksonville.
	Approximately 800 feet downstream of Praver Drive.	+16	
Goodbys Creek Tributary 1	Approximately 1,000 feet downstream of Sunbeam Road.	+9	City of Jacksonville.
	Approximately 9,300 feet upstream of the confluence with Goodbys Creek.	+23	
Goodbys Creek Tributary 2	Just downstream of the end of San Rae Road	+4	City of Jacksonville.
	Approximately 1,750 feet upstream of Runnymeade Road.	+20	
Goodbys Creek Tributary 3	At the confluence with Goodbys Creek	+9	City of Jacksonville.
	Approximately 100 feet upstream of Philips Highway.	+22	
Goodbys Creek Tributary 4	At the confluence with Goodbys Creek Tributary 2.	+17	City of Jacksonville.
	Approximately 3,200 feet upstream of the confluence with Goodbys Creek Tributary 2.	+21	
Goodbys Creek Tributary 5	At the confluence with Goodbys Creek	+5	City of Jacksonville.
	Approximately 2,000 feet upstream of the confluence with Goodbys Creek.	+5	
Greenfield Creek	Approximately 350 feet downstream of Atlantic Boulevard.	+8	City of Jacksonville.
	Approximately 1,500 feet upstream of Hodges Boulevard.	+17	
Gulley Branch	At the confluence with the Trout River	+5	City of Jacksonville.
	Approximately 1,650 feet upstream of Dunn Avenue.	+18	
Half Creek	At the confluence with the Trout River	+5	City of Jacksonville.
	Approximately 400 feet upstream of V.C. Johnson Road.	+17	
Half Creek Tributary 1	At the confluence with Half Creek	+13	City of Jacksonville.
	Approximately 1,000 feet upstream of V.C. Johnson Road.	+21	
Half Creek Tributary 2	At the confluence with Half Creek	+17	City of Jacksonville.
	Approximately 580 feet upstream of the confluence with Half Creek.	+18	
Hogan Creek	Just upstream of Bay Street	+6	City of Jacksonville.
	Approximately 1,050 feet upstream of 11th Street	+21	
Hogpen Creek	Just upstream of San Pablo Road	+6	City of Jacksonville.
	Approximately 1,050 feet upstream of San Pablo Road.	+6	
Hogpen Creek Tributary 1	At the confluence with Hogpen Creek	+6	City of Jacksonville.
	Approximately 1,350 feet upstream of Canyon Falls Drive.	+13	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
Hopkins Creek	At the confluence with Pablo Creek	+5	City of Atlantic Beach, City of Neptune Beach.
	Approximately 1,100 feet upstream of Cutlass Drive.	+7	
Hopkins Creek Tributary 1	At the confluence with Hopkins Creek Tributary 2	+4	City of Jacksonville Beach, City of Neptune Beach.
	Approximately 1,700 feet upstream of the confluence with Hopkins Creek.	+4	
Hopkins Creek Tributary 2	At the confluence with Hopkins Creek	+4	City of Neptune Beach.
	Just downstream of Bay Street	+8	
Hopkins Creek Tributary 3	At the confluence with Hopkins Creek Tributary 2	+6	City of Jacksonville Beach, City of Neptune Beach.
	Just upstream of 15th Avenue	+9	
Jones Creek	Approximately 800 feet upstream of Monument Road.	+10	City of Jacksonville.
	At the upstream confluence with Jones Creek Tributary 1.	+39	
Jones Creek Tributary 1	At the downstream confluence with Jones Creek	+23	City of Jacksonville.
	At the upstream confluence with Jones Creek	+39	
Jones Creek Tributary 2	At the confluence with Jones Creek	+4	City of Jacksonville.
	Approximately 150 feet upstream of State Route 9A.	+44	
Julington Creek	Approximately 2,800 feet upstream of Julington Tributary 8.	+4	City of Jacksonville.
	Just upstream of Hood Road	+23	
Julington Creek Tributary 1	At the confluence with Julington Creek	+17	City of Jacksonville.
	Just downstream of Deer Creek Club Road	+28	
Julington Creek Tributary 4	At the confluence with Julington Creek	+9	City of Jacksonville.
	Approximately 50 feet downstream of I–295	+22	
Julington Creek Tributary 5	At the confluence with Julington Creek	+7	City of Jacksonville.
	Approximately 500 feet upstream of Greenland Oaks Drive.	+16	
Julington Creek Tributary 8	At the confluence with Julington Creek	+2	City of Jacksonville.
	Approximately 850 feet upstream of Julington Creek Road.	+18	
Little Cedar Creek	Approximately 2,800 feet upstream of I–95	+6	City of Jacksonville.
	Just upstream of Owens Road	+25	
Little Cedar Creek Tributary 1	At the confluence with Little Cedar Creek	+9	City of Jacksonville.
	Approximately 6,650 feet upstream of I–95	+24	
Little Cedar Creek Tributary 2	At the confluence with Little Cedar Creek	+5	City of Jacksonville.
	Approximately 150 feet upstream of I-95	+6	
Little Fishweir Creek	Just upstream of St. Johns Avenue	+5	City of Jacksonville.
	Just downstream of Roosevelt Boulevard	+17	
Little Pottsburg Creek	Just upstream of the Hart Expressway	+5	City of Jacksonville.
	Approximately 600 feet upstream of I-95	+19	
Little Pottsburg Creek Tributary 1	At the confluence with Little Pottsburg Creek	+10	City of Jacksonville.
	Approximately 600 feet upstream of Hickman Road.	+21	
Little Pottsburg Creek Tributary 2	At the confluence with Little Pottsburg Creek	+12	City of Jacksonville.
	Approximately 50 feet downstream of Spring Glen Road.	+20	
Little Pottsburg Creek Tributary 3	At the confluence with Little Pottsburg Creek	+12	City of Jacksonville.
	Approximately 1,250 feet upstream of the confluence with Little Pottsburg Creek.	+14	
Little Sixmile Creek	At the confluence with the Ribault River	+12	City of Jacksonville.
	Approximately 2,700 feet upstream of 5th Street	+17	
Little Sixmile Creek Tributary 1	At the confluence with Little Sixmile Creek	+13	City of Jacksonville.
	Just upstream of Shawland Road	+15	
Little Sixmile Creek Tributary 2	At the confluence with Little Sixmile Creek Tributary 1.	+15	City of Jacksonville.
	Approximately 750 feet upstream of Dahlia Road	+18	
Little Sixmile Creek Tributary 3	At the confluence with Sixmile Creek	+13	City of Jacksonville.
	Just downstream of Lucoma Drive	+13	
Little Trout River	At the confluence with the Trout River	+4	City of Jacksonville.
	Approximately 1,000 feet upstream of the confluence with Little Trout River Tributary 4.	+15	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
Little Trout River Tributary 4	At the confluence with the Little Trout River	+15	City of Jacksonville.
	Approximately 1,200 feet upstream of the confluence with the Little Trout River.	+15	
Little Trout River Tributary 6	At the confluence with the Little Trout River	+9	City of Jacksonville.
	Approximately 600 feet downstream of Plummer Road.	+13	
Little Trout River Tributary 10	At the confluence with the Little Trout River	+4	City of Jacksonville.
	Approximately 2,600 feet upstream of the confluence with the Little Trout River.	+9	
Long Branch	Just upstream of Buffalo Avenue	+5	City of Jacksonville.
	Approximately 400 feet upstream of Liberty Street	+12	
Long Branch Tributary 1	Approximately 400 feet upstream of Liberty Street	+12	City of Jacksonville.
	Approximately 1,100 feet upstream of Liberty Street.	+14	
Magnolia Gardens Creek	At the confluence with the Ribault River	+2	City of Jacksonville.
	Approximately 300 feet upstream of Cleveland Road.	+19	
McCoy Creek	At the end of Oak Street	+7	City of Jacksonville.
	Just upstream of Commonwealth Avenue	+20	
McCoy Creek North Branch	At the confluence with McCoy Creek	+17	City of Jacksonville.
	Just upstream of 3rd Street	+20	
McCoy Creek Southwest Branch	At the confluence with McCoy Creek	+12	City of Jacksonville.
	Just upstream of College Street	+17	
McCoy Creek Tributary 5	Just upstream of Roselle Road at the confluence with McCoy Creek Southwest Branch.	+14	City of Jacksonville.
	Approximately 50 feet upstream of Gilmore Street	+15	
McGirts Creek	At the confluence with the Ortega River	+58	City of Jacksonville.
	Approximately 1,000 feet upstream of Halsems Road.	+75	
McGirts Creek Tributary 11	At the confluence with McGirts Creek	+60	City of Jacksonville.
	Approximately 1.3 mile upstream of the confluence with McGirts Creek.	+74	
McGirts Creek Tributary 12	At the confluence with McGirts Creek	+63	City of Jacksonville.
	Approximately 1,200 feet upstream of William Avenue.	+80	
McGirts Creek Tributary 14	At the confluence with McGirts Creek	+59	City of Jacksonville.
	Approximately 1,750 feet upstream of Joes Road	+79	
Mill Dam Branch	At the confluence with Pablo Creek	+21	City of Jacksonville.
	Approximately 3,750 feet upstream of Leaby Road.	+43	
Mill Dam Branch Canal	At the confluence with Mill Dam Branch	+27	City of Jacksonville.
	Approximately 100 feet upstream of Gate Parkway.	+34	
Mill Dam Branch Tributary 3	At the confluence with Mill Dam Branch	+38	City of Jacksonville.
	Approximately 100 feet upstream of Beach Boulevard.	+38	
Mill Dam Branch Tributary 4	At the confluence with Mill Dam Branch	+38	City of Jacksonville.
	Approximately 50 feet upstream of Anniston Road.	+41	
Mill Dam Branch Tributary 5	At the confluence with Mill Dam Branch at Lantana Lakes Drive.	+41	City of Jacksonville.
	Just upstream of Forest Boulevard	+45	
Miller Creek	At the confluence with the Saint Johns River	+6	City of Jacksonville.
	Approximately 400 feet upstream of Camden Avenue.	+18	
Miller Creek Tributary 1	At the confluence with Miller Creek	+16	City of Jacksonville.
	Just downstream of Stillman Street	+16	
Miramar Tributary	At the confluence with the Saint Johns River	+5	City of Jacksonville.
	Approximately 1,200 feet upstream of Orlando Circle West.	+13	
Moncrief Creek	At the confluence with the Trout River	+2	City of Jacksonville.
	Approximately 250 feet upstream of 9th Street	+21	
Moncrief Creek Tributary 4	At the confluence with Moncrief Creek	+17	City of Jacksonville.
	Approximately 250 feet upstream of Spring Grove Avenue.	+19	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
Mount Pleasant Creek	Approximately 3,400 feet upstream of Ashley Melisse Boulevard.	+7	City of Jacksonville.
	Just downstream of General Doolittle Drive	+36	
Mount Pleasant Creek Tributary 3	At the confluence with Tiger Pond Creek	+6	City of Jacksonville.
	Approximately 2,050 feet upstream of Ashley Melisse Boulevard.	+26	
Mount Pleasant Creek Tributary 4	Approximately 1,150 feet upstream of Blue Eagle Way.	+23	City of Jacksonville.
	At the confluence with Mount Pleasant Creek	+26	
Mount Pleasant Creek Tributary 6	At the confluence with Mount Pleasant Creek	+27	City of Jacksonville.
	Just downstream of Running River Road	+35	
New Rose Creek	At the confluence with the Saint Johns River	+7	City of Jacksonville.
	Just upstream of Saint Augustine Road	+21	
New Rose Creek Tributary 1	At the confluence with New Rose Creek	+6	City of Jacksonville.
	Approximately 100 feet upstream of Grant Road	+22	
Newcastle Creek	At the confluence with the Saint Johns River	+7	City of Jacksonville.
	Approximately 200 feet downstream of Greenfern Lane.	+27	
Newcastle Creek Tributary 1	At the confluence with Newcastle Creek	+14	City of Jacksonville.
	Approximately 700 feet upstream of the confluence with Newcastle Creek.	+18	
Ninemile Creek	At the confluence with the Trout River	+5	City of Jacksonville.
	Approximately 1,250 feet upstream of Smalley Road.	+22	
Ninemile Creek Tributary 1	At the confluence with Ninemile Creek	+10	City of Jacksonville.
	Approximately 1,600 feet upstream of Old Kings Road.	+14	
Ninemile Creek Tributary 2	At the confluence with Ninemile Creek	+20	City of Jacksonville.
	Approximately 1,500 feet upstream of the railroad	+21	
Ninemile Creek Tributary 6	At the confluence with Ninemile Creek	+9	City of Jacksonville.
	Approximately 2,100 feet upstream of Old Kings Road.	+22	
North Fork Sixmile Creek	At the confluence with Sixmile Creek	+20	City of Jacksonville.
	Approximately 3,300 feet upstream of Fish Road west.	+75	
North Fork Sixmile Creek Tributary 1.	At the confluence with North Fork Sixmile Creek	+21	City of Jacksonville.
	Approximately 3,600 feet upstream of Bulls Bay Highway.	+23	
Oldfield Creek	Approximately 400 feet upstream of the confluence with Oldfield Tributary 4.	+5	City of Jacksonville.
	At the confluence with Oldfield Creek Tributary 7	+26	
Oldfield Creek Tributary 1	Approximately 1,000 feet downstream of Old Saint Augustine Road.	+11	City of Jacksonville.
	Approximately 100 feet downstream of I–295	+22	
Oldfield Creek Tributary 2	At the confluence with Oldfield Creek	+16	City of Jacksonville.
	Approximately 50 feet upstream of Old Saint Augustine Road.	+19	
Oldfield Creek Tributary 3	At the confluence with Oldfield Creek	+23	City of Jacksonville.
	Approximately 2,250 feet upstream of the confluence with Oldfield Creek.	+25	
Oldfield Creek Tributary 4	At the confluence with Oldfield Creek	+5	City of Jacksonville.
	Approximately 25 feet upstream of Hood Landing Road.	+25	
Oldfield Creek Tributary 7	Approximately 450 feet upstream of Knottingby Drive.	+26	City of Jacksonville.
	At the confluence with Oldfield Creek	+26	
Open Creek	Approximately 2,000 feet upstream of the confluence with Open Creek Tributary 1.	+8	City of Jacksonville.
	Approximately 1,900 feet upstream of Open Creek Tributary 4.	+23	
Open Creek Tributary 1	Approximately 2,200 feet upstream of Crosswater Boulevard.	+10	City of Jacksonville.
	Approximately 4,700 feet upstream of Crosswater Boulevard.	+19	
Open Creek Tributary 2	At the confluence with Open Creek	+13	City of Jacksonville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	Communities affected
	Approximately 200 feet upstream of Wm. Davis Parkway.	+22	
Open Creek Tributary 3	At the confluence with Open Creek	+4	City of Jacksonville.
	Approximately 1,450 feet upstream of San Pablo Parkway.	+14	
Open Creek Tributary 4	At the confluence with Open Creek	+23	City of Jacksonville.
	Approximately 1,300 feet upstream of Highland Glen Way.	+30	
Ortega River	Approximately 2,000 feet downstream of Collins Road.	+4	City of Jacksonville.
	Approximately 5,400 feet upstream of Normandy Boulevard at the confluence with McGirts Creek.	+58	
Ortega River Tributary 1	At the confluence with the Ortega River	+4	City of Jacksonville.
	Just downstream of Jubal Lane	+20	
Ortega River Tributary 2	At the confluence with the Ortega River	+39	City of Jacksonville.
	Approximately 900 feet upstream of Old Middleburg Road.	+68	
Ortega River Tributary 3	At the confluence with the Ortega River	+34	City of Jacksonville.
	Approximately 250 feet upstream of Steamboat Springs Drive.	+85	
Ortega River Tributary 4	At the confluence with the Ortega River	+28	City of Jacksonville.
	Just downstream of Connie Jean Road	+71	
Ortega River Tributary 5	At the confluence with the Ortega River	+20	City of Jacksonville.
	Just downstream of I–295	+25	
Ortega River Tributary 6	Approximately 1,600 feet upstream of Argyle Forest Boulevard.	+8	City of Jacksonville.
	Just downstream of I–295	+21	
Ortega River Tributary 7	Approximately 600 feet upstream of Argyle Forest Boulevard.	+8	City of Jacksonville.
	Just upstream of I–295	+18	
Ortega River Tributary 10	At the confluence with the Ortega River	+22	City of Jacksonville.
	Approximately 1,000 feet upstream of Brett Forest Drive.	+67	
Ortega River Tributary 11	At the confluence with the Ortega River	+20	City of Jacksonville.
	Approximately 20 feet downstream of Collins Road.	+40	
Pablo Creek	Approximately 2,500 feet upstream of the Duval County line.	+5	City of Jacksonville.
	At the confluence with Sawmill Slough/Buckhead Branch.	+22	
Pablo Creek Tributary 1	At the confluence with Pablo Creek	+11	City of Jacksonville.
	Approximately 50 feet downstream of J. Turner Butler Boulevard.	+35	
Pablo Creek Tributary 2	At the confluence with Pablo Creek	+12	City of Jacksonville.
	Approximately 6,300 feet upstream of Kernan Boulevard.	+36	
Pablo Creek Tributary 3	At the confluence with Pablo Creek Tributary 2	+22	City of Jacksonville.
	Approximately 6,000 feet upstream of the confluence with Cedar Swamp Creek Tributary 2.	+34	
Pickett Branch	At the confluence with Cedar Creek	+9	City of Jacksonville.
	Just downstream of Yankee Clipper Drive	+21	
Pickett Branch Tributary 3	At the confluence with Pickett Branch	+19	City of Jacksonville.
	Just upstream of Pecan Park Road	+21	
Pickett Branch Tributary 4	At the confluence with Pickett Branch	+20	City of Jacksonville.
	Just downstream of Pecan Park Road	+20	
Pickett Branch Tributary 5	At the confluence with Pickett Branch	+21	City of Jacksonville.
	Just upstream of Pecan Park Road	+21	
Pottsburg Creek	Approximately 1 mile downstream of Beach Boulevard.	+5	City of Jacksonville.
	Just upstream of Baymeadows Road	+17	
Pottsburg Creek Tributary 5	At the confluence with Pottsburg Creek	+9	City of Jacksonville.
	Approximately 300 feet upstream of Spring Park Road.	+20	
Puckett Creek	Approximately 100 feet upstream of State Route A1A.	+6	City of Atlantic Beach, City of Jacksonville.

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	Approximately 1,050 feet upstream of Fairway Villas Drive.	+7	
Red Bay Branch	Approximately 700 feet downstream of Arlington Expressway.	+8	City of Jacksonville.
	Approximately 4,100 feet upstream of Lone Star Road.	+22	
Red Bay Branch Tributary 1	At the confluence with Red Bay Branch	+9	City of Jacksonville.
	Just downstream of Lone Star Road	+13	
Ribault River	Approximately 3,000 feet downstream of Howell Drive.	+5	City of Jacksonville.
	At the confluence with Sixmile Creek	+12	
Ribault River Tributary 2	At the confluence with Ribault Creek	+11	City of Jacksonville.
	Approximately 70 feet downstream of Edgewood Drive.	+11	
Ribault River Tributary 5	At the confluence with Ribault Creek	+11	City of Jacksonville.
	Approximately 2,200 feet upstream of the confluence with Ribault Creek.	+11	
Ribault River Tributary 8	At the confluence with Ribault Creek	+9	City of Jacksonville.
	Approximately 1,600 feet upstream of Clyde Drive.	+11	
Ribault River Tributary 9	At the confluence with Ribault Creek	+11	City of Jacksonville.
	Approximately 300 feet upstream of West Virginia Avenue.	+11	
Rowell Creek	At the confluence with Sal Taylor Creek	+52	City of Jacksonville.
	Approximately 0.51 mile upstream of the intersection of Inspiration Avenue and D Avenue.	+80	
Rowell Creek Tributary 2	At the confluence with Rowell Creek	+78	City of Jacksonville.
	Approximately 3,700 feet upstream of New World Avenue.	+82	
Rushing Branch	Approximately 1,800 feet upstream of Yellow Bluff Road.	+6	City of Jacksonville.
	Just upstream of Cedar Point Road	+19	
Rushing Branch Tributary 1	At the confluence with Rushing Branch	+9	City of Jacksonville.
	Just upstream of New Berlin Road	+13	
Sal Taylor Creek	Approximately 3,700 feet upstream of the confluence with Yellow Water Creek.	+50	City of Jacksonville.
	At the confluence with Rowell Creek Tributary 1 approximately 2,800 feet east of Aviation Avenue.	+76	
Sal Taylor Creek Tributary 2	At the confluence with Sal Taylor Creek	+62	City of Jacksonville.
	Approximately 1,500 feet upstream of the confluence with Sal Taylor Creek Tributary 3.	+68	
Sal Taylor Creek Tributary 3	At the confluence with Sal Taylor Creek Tributary 2.	+66	City of Jacksonville.
	Approximately 3,400 feet upstream of the confluence with Sal Taylor Creek Tributary 2.	+70	
Sal Taylor Creek Tributary 4	At the confluence with Sal Taylor Creek	+69	City of Jacksonville.
	Approximately 800 feet upstream of 103rd Street	+80	
Sandalwood Canal	Approximately 1,100 feet upstream of San Pablo Road.	+6	City of Jacksonville.
	Approximately 2 miles upstream of Kernan Boulevard.	+35	
Sawmill Slough/Buckhead Branch	At the confluence with Pablo Creek	+23	City of Jacksonville.
	Approximately 2,300 feet upstream of J. Turner Butler Boulevard.	+29	
Sawmill Slough/Buckhead Branch Tributary 1.	At the confluence with Sawmill Slough/Buckhead Branch.	+25	City of Jacksonville.
	Approximately 1,200 feet upstream of J. Turner Butler Boulevard.	+27	
Sawmill Slough/Buckhead Branch Tributary 2.	At the confluence with Sawmill Slough/Buckhead Branch.	+34	City of Jacksonville.
	Approximately 550 feet upstream of the confluence with Sawmill Slough/Buckhead Branch.	+34	
Seaton Creek	At the confluence with Thomas Creek	+9	City of Jacksonville.
	At the confluence with Seaton Creek Tributary 2	+13	
Seaton Creek Tributary 1	At the confluence with Seaton Creek	+9	City of Jacksonville.

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	Approximately 2 miles upstream of Arnold Road	+17	
Seaton Creek Tributary 2	At the confluence with Seaton Creek	+13	City of Jacksonville.
	Just upstream of Arnold Road	+18	
Second Puncheon Branch	At the confluence with Pablo Creek	+21	City of Jacksonville.
	Just downstream of Beach Boulevard	+44	
Second Puncheon Branch Tributary 1.	At the confluence with Second Puncheon Branch	+27	City of Jacksonville.
	Approximately 100 feet downstream of Point Meadows Drive.	+34	
Second Puncheon Branch Tributary 3.	At the confluence with Second Puncheon Branch	+31	City of Jacksonville.
	Just downstream of Courtyards Lane	+40	
Second Puncheon Branch Tributary 4.	At the confluence with Second Puncheon Branch	+32	City of Jacksonville.
	Approximately 2,000 feet upstream of the confluence with Second Puncheon Branch.	+39	
Second Puncheon Branch Tributary 5.	At the confluence with Second Puncheon Branch	+42	City of Jacksonville.
	Just upstream of Gate Parkway	+45	
Second Puncheon Branch Tributary 6.	At the confluence with Second Puncheon Branch	+43	City of Jacksonville.
	Approximately 1,400 feet upstream of the confluence with Second Puncheon Branch.	+50	
Sherman Creek	Just downstream of Pioneer Drive	+6	City of Atlantic Beach, City of Jacksonville.
	Approximately 100 feet upstream of Seminole Road.	+7	
Sherman Creek Canal	At the confluence with Sherman Creek	+6	City of Atlantic Beach, City of Jacksonville.
	Just downstream of Fleet Landing Boulevard	+7	
Silversmith Creek	At the confluence with Pottsburg Creek	+4	City of Jacksonville.
	Approximately 2,250 feet upstream of Silversmith Tributary 1.	+20	
Silversmith Creek Tributary 1	At the confluence with Silversmith Creek	+13	City of Jacksonville.
	Approximately 50 feet upstream of Century 21 Drive.	+24	
Sixmile Creek	At the confluence with the Ribault River	+12	City of Jacksonville.
	Approximately 3,100 feet upstream of Commonwealth Avenue.	+68	
Sixmile Creek Tributary 6	At the confluence with Sixmile Creek	+34	City of Jacksonville.
	Approximately 3,000 feet upstream of railroad	+56	
Sixmile Creek Tributary 9	At the confluence with Sixmile Creek	+17	City of Jacksonville.
	Just downstream of Pritchard Road	+17	
St. Mary's River Tributary	Just upstream of Beaver Street	+81	City of Jacksonville.
	Approximately 3,700 feet upstream of I–10	+82	
Strawberry Creek	Approximately 2,400 feet upstream of the confluence with Pottsburg Creek.	+5	City of Jacksonville.
	Approximately 50 feet downstream of Merril Road	+35	
Sweetwater Creek	At the confluence with Julington Creek	+9	City of Jacksonville.
	Approximately 2,300 feet upstream of Vineyard Lake Road North.	+29	
Tacito Creek	Approximately 2,000 feet upstream of Scott Mill Road.	+5	City of Jacksonville.
	Approximately 3,300 feet upstream of Scott Mill Road.	+8	
Tiger Hole Swamp	At the confluence with Pottsburg Creek	+14	City of Jacksonville.
	Approximately 1,650 feet upstream of J. Turner Butler Boulevard.	+23	
Tiger Pond Creek	At the confluence with Mt. Pleasant Creek	+3	City of Jacksonville.
	Approximately 1,600 feet upstream of McCormick Road.	+28	
Tiger Pond Creek Tributary 1	At the confluence with Tiger Pond Creek	+14	City of Jacksonville.
	Approximately 300 feet upstream of Kernan Forest Boulevard.	+20	
Tributary 1 to Miramar Tributary	At the confluence with Miramar Tributary	+8	City of Jacksonville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	Communities affected
	Approximately 1,000 feet upstream of Greenridge Road.	+11	
Tributary to Little Sixmile Creek Tributary 1.	At the confluence with Little Sixmile Creek Tributary 1.	+15	City of Jacksonville.
	Just downstream of Edgewood Avenue	+19	
Tributary to Ortega River Tributary 1.	At the confluence with Ortega River Tributary 1	+4	City of Jacksonville.
	Just downstream of Ovella Road	+10	
Trout River	Approximately 2,000 feet upstream of New Kings Road.	+6	City of Jacksonville.
	Just downstream of Cisco Gardens Road	+61	
Trout River Tributary 2	At the confluence with the Trout River	+21	City of Jacksonville.
	Approximately 1,200 feet upstream of Jones Road.	+52	
Trout River Tributary 3	At the confluence with the Trout River	+13	City of Jacksonville.
	Approximately 100 feet upstream of the Norfolk Southern Railway.	+19	
Trout River Tributary 7	At the confluence with Trout River Tributary 2	+32	City of Jacksonville.
	Just downstream of Jones Road	+49	
Trout River Tributary 8	At the confluence with the Trout River and Trout River Tributary 9.	+39	City of Jacksonville.
	Approximately 1,600 feet upstream of Pines Plantation Road.	+55	
West Branch	Just downstream of Bessent Road	+5	City of Jacksonville.
	Approximately 1,200 feet upstream of Dunn Avenue.	+12	
West Branch Tributary 1	At the confluence with West Branch	+9	City of Jacksonville.
	Approximately 500 feet upstream of North Campus Boulevard.	+18	
West Branch Tributary 2	At the confluence with West Branch	+11	City of Jacksonville.
	Approximately 50 feet upstream of Dunn Avenue	+11	
Williamson Creek	At the confluence with the Cedar River	+5	City of Jacksonville.
	Just downstream of Wilson Boulevard	+25	
Williamson Creek Tributary 3	At the confluence with Williamson Creek	+9	City of Jacksonville.
	Just downstream of Wilson Boulevard	+25	
Williamson Creek Tributary 4	At the confluence with Williamson Creek	+9	City of Jacksonville.
	Approximately 50 feet downstream of Lucente Road.	+23	
Wills Branch	At the confluence with the Cedar River	+7	City of Jacksonville.
	Approximately 400 feet upstream of Ramona Boulevard.	+62	
Wills Branch Tributary 1	At the confluence with Wills Branch	+9	City of Jacksonville.
	Just downstream of Frank H. Peterson Academy Road.	+64	
Wills Branch Tributary 2	At the confluence with Wills Branch Tributary 1	+34	City of Jacksonville.
	Approximately 1,400 feet upstream of Fouraker Road.	+47	
Wills Branch Tributary 3	At the confluence with Wills Branch	+23	City of Jacksonville.
	Just downstream of I–10	+82	
Wills Branch Tributary 4	At the confluence with Wills Branch Tributary 3	+50	City of Jacksonville.
	Approximately 1,600 feet upstream of Herlong Road.	+77	
Wills Branch Tributary 5	At the confluence with Wills Branch Tributary 1	+10	City of Jacksonville.
	Approximately 50 feet downstream of Dayton Road.	+25	
Wills Branch Tributary 6	At the confluence with Wills Branch Tributary 1	+17	City of Jacksonville.
	Approximately 50 feet upstream of Spring Branch Drive.	+50	
Yellow Water Creek Tributary 1	Just upstream of Bicentennial Drive	+62	City of Jacksonville.
	Approximately 5,200 feet upstream of Bicentennial Drive.	+78	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	Communities affected

ADDRESSES

City of Atlantic Beach
Maps are available for inspection at the City Building, 800 Seminole Road, Atlantic Beach, FL 32233.

City of Jacksonville
Maps are available for inspection at City Hall, 117 West Duval Street, Jacksonville, FL 32202.

City of Jacksonville Beach
Maps are available for inspection at City Hall, 11 North 3rd Street, Jacksonville Beach, FL 32250.

City of Neptune Beach
Maps are available for inspection at City Hall, 116 1st Street, Neptune Beach, FL 32266.

Pennington County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–1197

Arrowhead Creek	At the Rapid Creek confluence	+3318	City of Rapid City.
	Approximately 408 feet upstream of Summerset Drive.	+3490	
Box Elder Creek through Box Elder.	Approximately 0.8 mile downstream of 151st Avenue.	+2994	City of Box Elder, Unincorporated Areas of Pennington County.
	At the downstream side of 146th Avenue (Bennett Road).	+3085	
Box Elder Creek through Box Elder Overflow.	At the Box Elder Creek confluence	+3039	City of Box Elder, Unincorporated Areas of Pennington County.
	At the Box Elder Creek divergence	+3082	
East Tributary to Box Elder Creek	At the North Tributary to Box Elder Creek confluence.	+2998	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 515 feet upstream of G Avenue	+3168	
Ellsworth AFB Alert Apron Drainage.	At the Box Elder Creek through Box Elder Overflow confluence.	+3056	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 1.0 mile upstream of Kenney Road	+3186	
Ellsworth AFB West Drainage Basin.	At the Box Elder Creek through Box Elder Overflow confluence.	+3071	City of Box Elder, Unincorporated Areas of Pennington County.
	At the downstream side of 225th Street	+3156	
Haines Avenue Drainage Basin	At the Rapid Creek confluence	+3213	City of Rapid City.
	Approximately 340 feet upstream of Curtis Street	+3285	
Meade-Hawthorne Drainage Basin.	At the Rapid Creek confluence	+3141	City of Rapid City.
	At the downstream side of Saint Anne Street	+3236	
North Tributary to Box Elder Creek.	At the Box Elder Creek confluence	+2994	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 540 feet upstream of 225th Street	+3117	
Northwest Tributary to Box Elder Creek.	At the North Tributary to Box Elder Creek confluence.	+3045	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 280 feet upstream of 225th Street	+3255	
Rapid Creek through Silver City	At the Pactola Reservoir confluence	+4593	Unincorporated Areas of Pennington County.
	Approximately 2.7 miles upstream of the Pactola Reservoir confluence.	+4667	
Red Rock Canyon	At the Rapid Creek confluence	+3375	City of Rapid City, Unincorporated Areas of Pennington County.
	Approximately 1.0 mile upstream of Red Rock Canyon Road.	+3545	
Robinsdale Drain	At the Southeast Drainage Basin confluence	+3172	City of Rapid City.
	Approximately 220 feet upstream of 5th Street	+3340	
South Canyon Creek	At the Lime Creek confluence	+3334	City of Rapid City, Unincorporated Areas of Pennington County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	Communities affected
	Approximately 1,030 feet upstream of Nemo Road.	+3571	
Southeast Drainage Basin	At the Rapid Creek confluence	+3133	City of Rapid City, Unincorporated Areas of Pennington County.
	Approximately 1,180 feet upstream of Old Folsom Road.	+3223	
Tributary 1 to East Tributary to Box Elder Creek.	At the East Tributary to Box Elder Creek confluence.	+3077	City of Box Elder.
	Approximately 0.5 mile upstream of the East Tributary to Box Elder Creek confluence.	+3153	
Truck Bypass	At the Southeast Drainage Basin confluence	+3213	City of Rapid City, Unincorporated Areas of Pennington County.
	Approximately 1,870 feet upstream of State Highway 16.	+3310	
West Tributary to Box Elder Creek.	At the East Tributary to Box Elder Creek confluence.	+3025	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 700 feet upstream of Kenney Road.	+3130	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Box Elder
Maps are available for inspection at 520 North Ellsworth Road, Suite 9C, Box Elder, SD 57719.

City of Rapid City
Maps are available for inspection at 300 6th Street, Rapid City, SD 57701.

Unincorporated Areas of Pennington County
Maps are available for inspection at 832 Saint Joseph Street, Rapid City, SD 57701.

Ellis County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1140

Armstrong Creek	Approximately 100 feet downstream of Waterworks Road.	+740	Unincorporated Areas of Ellis County.
	Approximately 1,040 feet upstream of Waterworks Road.	+746	
Bedford Branch	Approximately 0.5 mile downstream of Southern Pacific Railroad.	+538	City of Grand Prairie, Unincorporated Areas of Ellis County.
	Approximately 275 feet upstream of Southern Pacific Railroad.	+567	
Cottonwood Creek	Approximately 0.74 mile upstream of Old Fort Worth Road.	+574	City of Grand Prairie, Unincorporated Areas of Ellis County.
	At the confluence with Newton Branch	+584	
East Fork to Soap Creek	At the confluence with Soap Creek	+594	City of Midlothian, Unincorporated Areas of Ellis County.
	Just upstream of Weatherford Road	+616	
Hollings Branch	Approximately 0.66 mile downstream of Magic Valley Lane.	+641	City of Cedar Hill.
	Approximately 725 feet downstream of Magic Valley Lane.	+659	
Joe Pool Lake	Approximately 0.48 mile downstream of Southern Pacific Railroad.	+538	City of Grand Prairie, Unincorporated Areas of Ellis County.
	Approximately 0.37 mile upstream of FM 661	+540	
Newton Branch	At the confluence with Soap Creek	+550	City of Grand Prairie, City of Midlothian, Unincorporated Areas of Ellis County.
	Approximately 1,360 feet upstream of Kimble Road.	+564	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	Communities affected
Soap Creek	At the confluence with Joe Pool Lake	+540	City of Grand Prairie, City of Midlothian, Unincorporated Areas of Ellis County.
	Approximately 0.26 mile downstream of U.S. Route 67.	+598	
West Soap Creek	At the confluence with Soap Creek	+581	Unincorporated Areas of Ellis County.
	Approximately 0.5 mile upstream of Ray White Road.	+601	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Cedar Hill
Maps are available for inspection at City Hall, 502 Cedar Street, Cedar Hill, TX 75104.

City of Grand Prairie
Maps are available for inspection at City Hall, 317 College Street, Grand Prairie, TX 75053.

City of Midlothian
Maps are available for inspection at City Hall, 104 West Avenue East, Midlothian, TX 76065.

Unincorporated Areas of Ellis County
Maps are available for inspection at the Ellis County Courthouse, 101 West Main Street, Waxahachie, TX 75165.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–03258 Filed 2–12–13; 8:45 am]

BILLING CODE 9110–12–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606, 1614, 1618, and 1623

Limited Reductions of Funding, Termination, and Debarment Procedures; Recompetition; Enforcement; Suspension Procedures; Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Legal Services Corporation's regulations on enforcement procedures through the addition of options for limited reductions of funding, expansion of non-audit based suspensions for up to ninety days, and immediate special grant conditions for compliance issues. The final rule provides updates and enhancements to the rules regarding enforcement generally, terminations, debarments, and suspensions. It also provides a technical conforming update to a cross-reference in the private attorney involvement regulation.

DATES: *Effective Date:* This rule is effective as of March 15, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Procedural Background

On January 31, 2012, the Legal Services Corporation (LSC) published in the **Federal Register** at 77 FR 4749 a Notice of Proposed Rulemaking (NPRM) proposing changes to LSC's enforcement mechanisms. On August 7, 2012, LSC published in the **Federal Register** at 77 FR 46995 a Further Notice of Proposed Rulemaking (FNPRM) expanding on the NPRM. LSC is now publishing final rules to conclude this rulemaking.

LSC undertook this rulemaking to add three new enforcement options to the LSC regulations regarding grants for the provision of legal assistance:

(1) A new ''limited reduction of funding'' that enables LSC to respond quickly to instances of substantial violation of LSC requirements through funding reductions of less than five percent using more simple procedures than for terminations of five percent or greater;

(2) suspensions for non-audit based compliance issues that could last for up to ninety days, an increase from thirty days in the previous rule; and

(3) special grant conditions regarding compliance issues that LSC could add immediately to a current grant.

In the course of the rulemaking, LSC developed new administrative procedures to enhance the opportunities for informal resolution when LSC proposes to undertake a limited reduction of funding, a termination in whole or in part, or a debarment. The rule already provided for informal resolution through an informal conference with opportunities for settlement or compromise. The rule has enhanced the informal conference and added procedures to provide for resolution of the matter through prompt corrective action agreements, when appropriate.

This rulemaking also clarifies existing regulations and makes conforming changes to the rules in order to accommodate the new process and procedures indicated. All of the comments and related memos submitted to the LSC Board regarding this

rulemaking are available in the open rulemaking section of LSC's Web site at *www.lsc.gov.*

http://www.lsc.gov/about/regulations-rules/open-rulemaking

After the effective date of the rule, those materials will appear in the closed rulemaking section.

http://www.lsc.gov/about/regulations-rules/closed-rulemaking

II. General Authorities, Impetus for Rulemaking, and Existing Regulatory Compliance Mechanisms

The LSC Act provides general authority to the Corporation ''to insure the compliance of recipients and their employees with the provisions of [the Act] and the rules, regulations, and guidelines promulgated pursuant to [the Act].'' 42 U.S.C. 2996e(b)(1)(A). LSC's principal regulation discussing general enforcement authority and procedures is the Enforcement Procedures regulation at 45 CFR part 1618. LSC uses a variety of enforcement tools, formal and informal, to ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning of a grant award period or at grant renewal. Several enforcement tools involving suspending or reducing funding to a recipient to address significant non-compliance are provided in LSC-adopted regulations. LSC has adopted grant termination procedures (45 CFR part 1606) that provide for the termination of funding in whole or part in cases of a recipient's substantial noncompliance with LSC statutory or regulatory requirements and other policies, instructions, or grant terms and conditions. LSC has also adopted suspension procedures (45 CFR part 1623) and disallowed-cost procedures (45 CFR part 1630). Lastly, part 1606 provides authority for LSC to debar recipients from eligibility to receive future grants.

LSC amended the part 1606 termination procedures in 1998 and created a separate provision for reductions of funding of less than five percent, which are not considered terminations and not subject to the full set of procedures that apply to terminations. The 1998 amendments to the rule required, however, that to reduce funding to a recipient by less than five percent, LSC would have to establish additional procedures by rulemaking. 45 CFR 1606.2(d)(2)(v). LSC commenced this rulemaking to establish those procedures.

The majority of LSC recipients are in substantial compliance with LSC requirements most of the time. When non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance, but there have been exceptions and situations in which LSC has felt the need for the kind of enforcement tools covered by this rulemaking.

This rulemaking also addresses a problem in the previous rules regarding LSC's ability to take timely actions. LSC can impose suspensions after as little as eleven days of process, but the previous rule limited suspensions to thirty days (other than audit-based suspensions). The next enforcement option available to LSC was terminations, which require five months or more of procedures if the recipient uses all available levels of review. Similarly, disallowed costs may be available to recover improperly spent funds, although that process is designed for recovery rather than enforcement and sanction. Also, disallowed costs can take over five months to complete (except for disallowed costs of less than $2,500). This rulemaking provides for suspensions of funding for up to ninety days, for limited reductions of funding that can be implemented in approximately eighty days, and for special grant conditions that can be added immediately to an existing grant.

This rulemaking also addresses concerns expressed by the Government Accountability Office (GAO) in its report, Legal Services Corporation: Improved internal controls needed in grants management and oversight, GAO–08–37 (December 2007). In that report, the GAO opined that LSC has ''limited options for sanctioning or replacing poor-performing recipients.'' GAO–08–37 at 17. The existing enforcement mechanisms available to LSC are best suited to situations involving numerous and/or very significant violations that merit severe actions such as terminations, or to situations in which compliance issues are technical or minor and can be resolved through corrective actions, grant conditions, and similar actions. LSC has not had enforcement mechanisms well suited to violations or compliance issues in an intermediate range (*e.g.,* material but not extreme, or multiple but not profuse) in situations where a recipient does not voluntarily take corrective action in a timely manner. Furthermore, disallowed costs are not a good substitute for an intermediate range enforcement mechanism. The amount of funds in question is not necessarily proportional to the severity of the violation. Minor violations could have large associated costs while major violations could have relatively small associated costs.

LSC significantly revised LSC's enforcement rules in 1998 in response to Congressional changes to the governing law. Prior to 1996, section 1011 of the LSC Act provided minimum process requirements for suspensions over thirty days, terminations, and denials of refunding that included hearing rights and review by independent hearing examiners. 42 U.S.C. 2996j. LSC implemented these statutory requirements in 1976 and 1978 through the original enforcement regulations: part 1618 (General enforcement thresholds), part 1606 (Terminations and denials of refunding), and part 1623 (Suspensions). In 1996, Congress suspended section 1011 via riders to the annual LSC appropriation, which have been reincorporated every year thereafter, including some modifications in 1998.

For the purposes of the funding provided in this [FY 1996 Appropriations] Act, rights under sections 1007(a)(9) [interim funding for refunding applicants] and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 42 U.S.C. 2996j) shall not apply.

Pub. L. 104–134, section 503(f), 110 Stat. 1321 (1996) (FY 1996); Pub. L. 104–208, section 501(b), 110 Stat. 3009 (1996) (FY 1997) (reiterating the FY 1996 language). For FY 1998, Congress reiterated the FY 1996 language and further elaborated that LSC ''may terminate'' a grant or contract if LSC finds ''that the recipient has failed to comply with any requirement of the Legal Services Corporation Act (42 U.S.C. 2996 *et seq.*), this [appropriations] Act, or any other applicable law relating to funding for the Corporation * * *.'' Pub. L. 105–119, sections 501(b) and (c), 111 Stat. 2440 (1997) (FY 1998). Congress has incorporated that language by reference in every annual LSC appropriation since 1998. Congress also mandated in 1996 and thereafter that LSC have the option to suspend funding to a recipient, in full or in part, if the recipient fails to have an acceptable audit. Audit-based suspensions last until completion of an acceptable audit. Pub. L. 104–134, section 509(c), 110 Stat. 1321 (1996) (FY 1996) (incorporated by reference thereafter).

LSC implemented these statutory changes by revising 45 CFR parts 1606 and 1623. 63 FR 64636 (1998) (parts

1606 and 1625), 63 FR 64646 (1998) (part 1623). LSC explained that:

> the new law in the appropriations act emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations and other applicable law. *See* H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this rule, the hearing procedures in part 1606 have been streamlined. The changes are intended to emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance. At the same time, the Corporation intends that recipients be provided notice and a fair opportunity to be heard before any termination or debarment action is taken.

63 FR at 64637 (preamble to revised parts 1606 and 1625). LSC further elaborated in the preamble to the rulemaking that:

> [t]he legislative intent underlying Sections 501(b) and (c) of the Corporation's FY 1998 appropriations act was to enable the Corporation to streamline its due process procedures in order to ensure that recipients are in full compliance with LSC grant requirements and restrictions.

Id. at 64640. LSC carefully balanced the concerns for ongoing client services and recipient rights with the clear direction from Congress to enhance accountability and oversight of recipients' use of LSC funds. The current rulemaking is designed to build upon, but not fundamentally alter, the rationale for the 1998 rulemaking.

The changes in this final rule reflect LSC's obligation to safeguard public funds appropriated by Congress for civil legal aid by ensuring compliance with LSC rules, restrictions, and requirements. These additions to the enforcement mechanisms are consistent with LSC's understanding of Congress's intent to strengthen LSC's enforcement mechanisms, while carefully accounting for the importance of continued delivery of legal services and the rights of LSC recipients.

III. Summary of Existing Compliance Tools Not Covered by the Regulations

LSC uses a variety of non-regulation based tools to track and ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning of a grant year.

LSC relies primarily on RCAs to remedy compliance problems. The LSC Office of Compliance and Enforcement (OCE) estimates that in approximately 90 percent of cases in which RCAs are imposed, recipients implement the RCAs on a timely and satisfactory basis. In approximately ten percent of the cases, however, a recipient fails to implement the required corrective actions in a timely or satisfactory manner. In some instances in which recipients have failed to implement RCAs in a timely or satisfactory manner, LSC has imposed SGCs. Although SGCs may be substantively identical to the measures contained in RCAs, SGCs elevate the matter by formally incorporating the conditions into the recipient's grant documents and ensuring that the recipient's Board Chair, who has to sign the SGCs, is aware of an ongoing problem. In recent years, LSC has also used short-term funding to encourage compliance by providing a grant or successive grants for less than a year (*e.g.,* month-to-month).

IV. Summary of Procedures for Compliance Tools

Members of the LSC Board raised concerns that the parallel and interrelated procedures for different enforcement mechanisms could be confusing. For clarification, the table below summarizes the enforcement actions provided for in the rules and the respective procedures for each. This table uses the revised nomenclature provided in the final rule. The prior suspension and termination rules contained inconsistencies in the terms used for each stage of the process; those terms have been standardized in the final rule.

Limited reductions	Termination	Debarment	Suspension
§ 1606.2, Less than 5 Percent	§ 1606.2, 5 percent or more	§ 1606.2	§ 1623.2
Type of Violation			
Substantial violation, § 1606.2	Substantial violation, § 1606.2		Substantial violation, § 1623.3(a), § 1606.2.
	Substantial failure, § 1606.3(a)(2)		
		Good cause, § 1606.4(b)	
			Prompt action is necessary, § 1623.3(a).
			Failure of an audit, § 1623.3(b).
Procedure			
Preliminary Determination, § 1606.6(a).	Preliminary Determination, § 1606.6(a).	Preliminary Determination, § 1606.6(a).	Proposed Determination, § 1623.4(b).
Compliance Agreement (if available and agreed to), § 1606.7(a).	Compliance Agreement (if available and agreed to), § 1606.7(a).	Compliance Agreement (if available and agreed to), § 1606.7(a).	Prompt Corrective Action, § 1623.2.
Submission of Written Materials in Opposition to the Preliminary Determination (if no compliance agreement), § 1606.7(b).	Submission of Written Materials in Opposition to the Preliminary Determination (if no compliance agreement), § 1606.7(b).	Submission of Written Materials in Opposition to the Preliminary Determination (if no compliance agreement), § 1606.7(b).	Submission of Written Materials in Opposition to the Proposed Determination, § 1623.4(f).
Informal Conference, § 1606.7(b)–(e).	Informal Conference, § 1606.7(b)–(e).	Informal Conference, § 1606.7(b)–(e).	Informal Meeting, § 1623.4(b)–(f).
Draft Final Decision, § 1606.7(f)	Draft Final Decision, § 1606.7(f)	Draft Final Decision, § 1606.7(f)	Final determination, § 1623.4(f).
	Hearing, § 1606.8	Hearing, § 1606.8.	
	Recommended Decision, § 1606.9	Recommended Decision, § 1606.9.	

Limited reductions	Termination	Debarment	Suspension
Review by the LSC President, § 1606.10.	Review by the LSC President, § 1606.10.	Review by the LSC President, § 1606.10.	Review by the LSC President (for a suspension lasting more than 30 days not based on an audit failure), § 1623.4(h).
Final Decision, § 1606.10(e)	Final Decision, § 1606.10(e)	Final Decision, § 1606.10(e)	Suspension Appeal Decision, § 1623.4(h)(3).

V. Commentary on Rulemaking Process and Comments Received

LSC received nineteen comments on the NPRM and eight comments on the FNPRM. All of the comments and LSC's analysis of them are posted on the rulemaking page of *www.lsc.gov.http://www.lsc.gov/about/regulations-rules*

The most extensive comments on both proposals were submitted by the LSC Office of Inspector General (OIG), the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID), and the National Legal Aid and Defender Association (NLADA). Colorado Legal Services and the Northwest Justice Project (NJP) also submitted detailed comments. The other comments generally endorsed the NLADA comments. Only the OIG fully supported the rulemaking, although the OIG recommended removing any time limit on suspensions and expressed concerns that the requirements for the new special grant conditions were too restrictive. SCLAID did not oppose the rulemaking, but it strongly recommended significant enhancements to standards and procedures similar to those recommended by NLADA. NLADA, and most of the other comments, opposed the rulemaking and recommended significant enhancements to standards and procedures if it proceeded.

a. New Compliance Tools

The NPRM proposed a new set of procedures for limited reductions of funding based on the existing procedures for suspensions, which provide for one level of review through an informal meeting. In response to comments that this did not provide sufficient process, LSC revised the proposal in the FNPRM in two ways. First, the same process is used at the initial stage for terminations and for limited reductions. Thereafter, limited reductions may be appealed to the LSC President using procedures based on the disallowed cost appeal procedures in 45 CFR part 1630. Some comments also raised similar concerns for suspensions, especially if they could last for up to ninety days. In response, the final rule also adds the same appeal process for suspensions once they extend beyond thirty days (thirty-day suspensions have always been permitted without further appeal). The NPRM proposed allowing LSC to impose SGCs immediately during a grant term rather than waiting for a new grant award or renewal. The OIG's comment expressed concern that the SGC language might appear to constrain some of LSC's authority, and other comments indicated concerns that the SGC language was too vague. In the FNPRM, LSC revised the language to clarify that it applies to the kinds of situations in which LSC has investigated a matter and developed RCAs. LSC may immediately impose SGCs that incorporate those RCAs into the grant documents.

b. Standards and Procedures

The comments that recommended enhancements in the standards and procedures were not limited to the enforcement actions in the proposed rulemaking. Rather, they recommended revisions that would significantly change the rules as they have existed since 1998. In many cases, they would return to the pre-1998 standards, such as requiring non-LSC, independent hearing examiners, or exceed those standards, such as an increased intent requirement and a safe harbor for reliance on reasonable alternate interpretations of the LSC rules. LSC commenced this rulemaking to enhance enforcement options within the standards and procedures adopted in the 1998 rulemaking to respond to Congress's changes in the enforcement requirements of the LSC Act. The final rule does not adopt the many suggestions in the comments to change that carefully constructed enforcement framework. The OIG also suggested adding a requirement for publication of all final decisions to address due process concerns in the comments through transparency for those final actions. Rather than incorporating that suggestion as a regulatory requirement, LSC will address it in the policies and procedures for enforcement actions.

c. Informal Conference and Prompt Corrective Actions

The final rule makes a number of revisions to increase the focus on attempts to resolve the violation at or before the informal conference. The final rule adds to the notice of the preliminary determination a requirement for summarizing prior attempts at resolution. The previous rule required that the same LSC employee who issued the notice would hold the informal conference. The final rule permits LSC to designate any senior employee to hold the informal conference, which provides LSC with more flexibility to set a dispute resolution tone. The final rule also adds ''implementation of corrective actions'' as an example of the types of settlement or compromise envisioned for the informal conference.

The final rule includes a new alternative strategy for informal resolution prior to the implementation of an enforcement action. LSC has the option of notifying the recipient that it can avoid the enforcement action through corrective action, if appropriate. The recipient may elect to accept that corrective action through timelines and implementation plans acceptable to LSC and documented in a compliance agreement; LSC could hold the enforcement action in abeyance so long as the recipient honors the agreement. If the recipient completes the corrective actions to LSC's satisfaction (in both substance and timeliness), then LSC would withdraw the preliminary determination without implementing the enforcement action. If LSC at any time decides that the recipient has failed to adhere to the agreed-upon corrective action plan, including failing to act in accordance with the established timeline, then LSC could continue with the enforcement process.

d. Suspension Appeals

In response to the comments received, LSC has included in the final rule an appeals process for suspensions that last over thirty days. The appeals process is based on the appeals process for limited reductions of funding. As with suspension decisions, the timeframe is short to enable LSC to resolve the appeal quickly. Unlike other enforcement actions, suspensions are enforced during the appeal period.

e. Scope of Enforcement Action

The final rule discusses the scope of partial terminations and limited reductions of funding by using the language of the previous rule regarding the level of financial assistance provided by the Corporation to a recipient pursuant to a grant or contract. 45 CFR 1600.1 defines ''financial assistance'' as the ''annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.'' These grants are for the provision of general-purpose legal assistance in a geographic area or to a specific population. Currently, LSC provides these grants for three types of service areas: basic field, Native American, and migrant. When LSC awards multiple service areas to a recipient (*e.g.,* both a basic field service area and migrant service area), it typically does so through a single grant or contract. Part 1606 enforcement actions affect the level of financial assistance, which will include all of the 1006(a)(1)(A) service areas.

Other LSC grants, under sections 1006(a)(1)(B) or (a)(3) of the LSC Act, are not subject to these procedures. Rather, LSC may provide for terminations or other enforcement actions for those grants pursuant to policies and procedures specific to those grant programs. For example, funding for Technology Initiative Grants is project-based and specifically tied to acquisitions, tasks, and timelines.

The final rule implements the NPRM provision that limited reductions apply only to one grant year. The final rule continues the provisions of the previous rule that a partial termination presumptively applies to only one grant year, but that LSC can specify a longer period up to the entire funding term.

VI. Section-by-Section Analysis

Part 1606—Termination, Limited Reduction of Funding, and Debarment Procedures; Recompetition

1606.1 Purpose

Section 1601.1(b) contains two additions. First, the phrase ''proportional to the proposed action'' is added to modify ''timely and fair due process procedures.'' This addition corresponds to the addition of procedures for limited reductions of funding of less than five percent, which do not include a hearing before a hearing officer. The rule provides two sets of overlapping procedures, one for debarments and terminations of funding (five percent and greater) and the other for limited reductions of funding (less than five percent). Second, the phrase ''or to impose a limited reduction of funding'' is added to the list of remedies available under the rule.

A new § 1601.1(d) reflects a reorganization of the rule in the interest of clarity. It relocates the previous § 1606.2(c), without change, which described provisions of other LSC regulations that involve funding changes but are not subject to the termination procedures. This relocation emphasizes and clarifies that the indicated situations are not subject to the actions under part 1606. A corresponding change to matching language in 45 CFR part 1614 is included in this final rule.

1606.2 Definitions

This section has substantive and structural changes. All of the definitions now appear alphabetically.

The term ''Corporation'' is defined in 45 CFR 1600.1 to mean the Legal Services Corporation. The definition has been expanded here to provide that decisions of the Corporation, such as initiating a part 1606 proceeding, must be made by an individual acting at the level of, or senior to, an LSC office director. A deputy director could make these decisions if he or she is acting with the authority of the director, such as when the director's position is vacant, or the director is unavailable due to an illness and the deputy director has taken over the relevant responsibilities. The FNPRM had proposed that decisions could be made by deputy directors. The final rule narrows the circumstances in which deputy directors can act, in part responding to concerns raised by a commenter.

''Days'' is added as a defined term to mean calendar days as computed under the Federal Rules of Civil Procedure, unless business days are specified, in which case Saturdays, Sundays, and legal holidays recognized under those rules are excluded. The rule had not previously defined days, which could have caused confusion regarding deadlines. In particular, some deadlines were five days, which in some cases could be as little as two business days. All time periods below fifteen days are changed in the rule to business days.

''Funding term'' is added as a defined term to mean the time period for an award of financial assistance for a service area as that term is used in grant-making. The funding term is the longest period between competitions for a service area. Under 45 CFR part 1634, LSC can award a section 1006(a)(1)(A) grant or contract for up to five years, which is the funding term. LSC provides section 1006(a)(1)(A) awards for a maximum funding term, which is normally no greater than three years. Within the funding term, LSC provides funding for grant award periods of no more than one year, which can be renewed for additional grant award periods.

''Limited reduction of funding'' is added as a defined term for reductions of funding of less than five percent, which the previous rule excluded from the definition of terminations. Unlike partial terminations, limited reductions apply only to the current grant year.

''LSC requirements'' is added as a defined term in 45 CFR part 1618 to capture the full list of statutory, regulatory, and other requirements that apply to LSC grants or contracts for financial assistance under the LSC Act. Parts 1606 and 1623 of the previous rules repeatedly referenced the list of sources specified in this definition. For both clarity and consistency, the term is now defined using the language appearing in the previous rules and is cross-referenced in both parts 1606 and 1623.

''Receipt'' of materials is added as a defined term to provide clarity in calculating deadlines under the rule. Formal service of process is not required. Service must be sufficient to ensure that both LSC and the recipient are fully aware of the proceedings and the actions taken by both entities at each stage.

The definition of ''recipient'' is functionally unchanged from the previously published version of this rule, which reiterated the definition at 45 CFR 1600.1. The final rule replaces that reiteration with a simple cross-reference.

The term ''substantial noncompliance'' is clarified in this rule. The term is defined to mean either a substantial violation of the LSC requirements or a substantial failure to provide high quality, economical, and effective legal assistance.

A definition of ''substantial violation'' has been added using the functional definition from § 1606.3(a) without any material modifications that would change its meaning or application from the previous rule.

The definition of ''termination'' has been updated to reflect new definitions in the rule and relocation of the cross-references to other regulations; no material modifications that would change its meaning or application from the previous rule have been made.

A definition of ''violation'' has been added to make clear that the scope of violations at issue under this rule is limited to the LSC requirements.

1606.3 Grounds for a Termination or a Limited Reduction of Funding

The title of this section is updated to add limited reductions of funding.

Section 1606.3(a) has minor nomenclature changes to conform to the new definitions and terms, including the new definition of ''substantial violation,'' but without any material modifications that would change its meaning or application from the previous rule. The definition of a ''substantial failure'' remains in § 1606.3(a)(2) with two adjustments: 1) the LSC appropriations have been added as a measure of performance, and 2) the term ''guidance'' is changed to ''guidelines or instructions'' consistent with the use of those terms in lieu of ''guidance'' throughout the previous and revised rules.

Section 1606.3(b) is added to specify that LSC may impose a limited reduction of funding for substantial violations, but not substantial failures, when LSC determines that a termination, in whole or in part, is not warranted. As with terminations, LSC can base a limited reduction of funding only on substantial violations occurring within the past five years.

Section 1606.3(c), the former paragraph (b), is changed to add limited reductions of funding. The requirements for a ''substantial violation'' are moved, without material modifications that would change their meaning or application from the previous rule, to the new definition of ''substantial violation.'' As proposed in the NPRM those same criteria apply to the determination of the magnitude of a proposed termination or limited reduction of funding. LSC stated in the NPRM that consideration of these factors was already implicit in considerations of how much funding should be affected by a proposed enforcement mechanism. SCLAID's comments recommended that LSC add an entire new section and criteria for determinations of magnitude, including the impact on client services and other funding for the recipient. The final rule does not do so because the magnitude of an enforcement action should relate directly to the magnitude of the violation and deterrence of future violations. LSC has general discretion to consider the totality of the situation when deciding how to proceed with an enforcement action to foster ongoing compliance while minimizing disruption of client services.

1606.4 Grounds for Debarment

This section does not include any material modifications that would change its meaning or application from the previous rule. All changes are technical adjustments.

The language of section 1606.4(b)(4) is modified to clarify that it applies to any arrangements that are covered by debarments, not only subgrants or subcontracts, and that reference to a debarred ''IPA,'' which is undefined in the previous rule, means any debarred independent public accountant or other auditor.

Last, the reference to the ''effective date of this rule'' in § 1606.4(b)(5) is changed to December 23, 1998, the effective date of the previous rule.

1606.5 Procedures

The heading and § 1606.5(a) are updated to remove the limited reference to terminations and debarments in order to include limited reductions of funding. These procedures are available for, and apply to, all part 1606 enforcement mechanisms.

A new § 1606.5(b) is added to correspond to the new level of review in § 1606.10 for limited reductions of funding. The LSC President, or another senior LSC employee, will hear any final appeal of a limited reduction draft final decision. Those procedures are modeled on the 45 CFR part 1630 final appeal procedures for disallowed costs. The person hearing the appeal must have not been involved in the prior proceedings. The final rule requires that LSC designate the person to hear the final appeal before LSC considers whether or not to proceed with a preliminary determination for a limited reduction of funding.

1606.6 Preliminary Determination and Final Decision

The title of this section is updated to include reference to a final decision, which may be issued under this section if the recipient does not request any review of the preliminary determination. The language of this section is updated for clarity and to include limited reductions of funding, without material modifications that would change its meaning or application from the previous rule.

Section 1606.6(a)(6) is added to explicitly provide an option for LSC to specify corrective action that could resolve the situation without a termination or limited reduction of funding. This language is based on the previous suspension rule at 45 CFR part 1623; it does not appear in the previous part 1606 rule. LSC is not required to provide the recipient with a corrective action option, and the recipient does not have a right to avoid a termination or limited reduction of funding through corrective actions unless explicitly authorized by LSC. This language provides a clear option for resolving these situations through corrective action if LSC determines that doing so would be sufficient pursuant to the new § 1606.7(a).

Section 1606.6(a)(7) is added to require that the preliminary determination summarize any prior attempts at resolution of the situation. The addition of this paragraph does not require LSC to seek resolution prior to initiating a part 1606 action. Rather, when LSC and the recipient have attempted to resolve the situation, the rule will now require that LSC summarize those attempts and make them part of the administrative record.

References to a ''designated employee'' in this section are replaced with references to the Corporation as the actor, consistent with the definition of Corporation.

1606.7 Corrective Action, Informal Conference, Review of Written Materials in Opposition to the Preliminary Determination, and Final Decision

The title and content of this section have been updated to expand and clarify the options available after a recipient receives a preliminary determination. As stated in the previous rule, the informal conference is designed to create the opportunity for narrowing the issues and exploring the possibility of settlement or compromise. The informal conference is retained without material modifications that would change its meaning or application from the previous rule. The rule is changed to permit any senior LSC employee to hold the informal conference rather than the previous requirement that it be held by the same employee who issued the preliminary determination. In some cases, the same employee should handle both matters to bring consistent perspective and experience to the matter. In other situations, it may foster an atmosphere of settlement or compromise to have different LSC employees handle each stage of the process.

This section now explicitly provides an option for the recipient to submit written materials in opposition to the preliminary determination without a request for an informal conference. This option to present arguments in writing only is based on the similar option in the suspension rule at 45 CFR part 1623; a conference is not required if the recipient requests only a paper review.

1606.7(a) Corrective Action

Paragraph (a) provides a new option for resolving a preliminary

determination through adoption of any corrective action proposed by LSC, in its sole discretion, as a clear path to settlement of the issues. A corrective action proposed by the recipient that significantly differs from the LSC proposal may be considered at an informal conference but not as part of the § 1606.7(a) procedures. The recipient must agree to the terms and timing of implementation of the corrective actions to the satisfaction of LSC, as memorialized in a written compliance agreement. If, at any time, LSC determines that the recipient is not sufficiently implementing the corrective action, LSC can proceed to issue a draft final decision, subject to the further rights of review under later sections of this part. If a recipient chooses this new process, then the recipient cannot later request an informal conference under this section. This option responds to a comment that the proposed rule did not clearly address what would happen if the recipient adopted the suggested corrective action. It also implements suggestions from the LSC Board that the rule should provide better means of alternative resolution when appropriate.

1606.7(b)–(g)

The provisions regarding the informal conference have been revised to clarify the procedures, permit any senior LSC employee to hold the conference, and to require that a draft decision to proceed with the enforcement option contain a summary of the issues raised in the conference or in submitted written materials.

1606.8 Hearing for a Termination or Debarment

The title of this section is updated to specify that hearings are available only for terminations and debarments, but not for limited reductions of funding. There are no material modifications that would change the meaning or application of this section from the previous rule. The deadlines have been designated as business or calendar days consistent with the new definition of days.

1606.9 Recommended Decision for Termination or Debarment

The title and language of this section are updated to specify that the recommended decision is applicable only to hearings for terminations or debarments. The only substantive change is a new § 1606.9(a)(2) that permits the hearing officer to recommend reducing a termination to below five percent, and thus convert a termination into a limited reduction of funding. The previous rule permitted the hearing officer to recommend terminations only, which would exclude the option of funding reductions of below five percent. Reference to limited reductions of funding is added to § 1606.9(a)(3) for consistency without any material modifications that would change its meaning or application from the previous rule referencing terminations or debarments.

1606.10 Final Decision for a Termination, Debarment, or Limited Reduction of Funding

This section is updated to add direct appeals to the LSC President, or designee, of draft final decisions for limited reductions of funding. This type of appeal is similar to the final appeal of a disallowed cost decision in 45 CFR part 1630. The final review is identical as that provided for in other part 1606 actions, with one exception. For limited reduction of funding appeals to the President, in which there in no right to review by a hearing officer, new paragraph (d) provides that the President must not have had prior involvement with the limited reduction of funding proceedings under this part. That provision is also based on the part 1630 process, which requires that the President not review actions in which he or she had prior involvement. As discussed in the FNPRM, the President is not disqualified merely because he or she is briefed about the situation, contacted by the recipient or other parties, or otherwise is aware but not actively involved in the part 1606 proceedings.

A number of comments recommended that the hearing officers or the final decision maker for appeals be non-LSC employees. As discussed earlier, in 1996 Congress lifted the LSC Act requirement for enforcement actions to be reviewed by an independent hearing examiner. The final rule does not change the impartiality requirement for hearing officers for terminations and debarment that they have not had prior involvement in the part 1606 enforcement action being reviewed. It also does not change the ability of LSC to suspend funding for up to thirty days without impartial review. For the new limited reductions of funding and suspensions of over thirty days, the final rule provides the same requirement of impartiality for the LSC President or other senior LSC employee providing final review of the matter. These impartiality requirements are sufficient for the process rights of recipients within the statutory framework and LSC's understanding of Congress's expectations for LSC's enforcement procedures. Other changes to this section clarify the process and deadlines without substantive changes. The FNPRM suggested adding the § 1606.6(a) preliminary determination requirements to any final decision modifying or extending the draft final decision. That suggestion is not retained in this final rule because it became apparent during the comment period that those requirements are tailored to the preliminary determination, *e.g.,* including the notice of rights to appeal and continued funding, and are not appropriate for final decisions.

1606.11 Qualifications on Hearing Procedures

This section is updated for clarity without material modifications that would change its meaning or application from the previous rule. Section 1606.11(c)(3) is updated to require that LSC provide the final decision to the recipient within five days of the expiration of the appeal period. The previous rule stated that the recommended decision would become final if not appealed, but did not state when it must be provided as a final decision.

1606.12 Time and Waiver

This section is updated for clarity without material modifications that would change its meaning or application from the previous rule.

1606.13 Interim and Other Funding, Reprogramming, Implementation

This section is updated to include reference to limited reductions of funding. A new § 1606.13(d) is added to state explicitly that the manner of implementation is at the sole discretion of LSC. For example, depending on the situation, including the timing of the action in the grant year and funding term, LSC may choose to pro-rate a partial termination or limited reduction through the remaining grant payments or to withhold the reduced funds in one lump sum. The previous rule did not address that issue and this new section is consistent with the options available to LSC within its discretion under that rule.

Section 1606.13(e), the former paragraph (d), is modified to remove the reference to using the terminated or reduced funds for the same service area, as proposed in the NPRM. The previous rule provided that LSC may keep the funds in the same service area or otherwise reallocate them for any basic field purposes. Some of the comments recommended keeping the existing rule. As discussed in the NPRM, this language is eliminated because it could

lead to an erroneous expectation that LSC would give preference to keeping the funds from a termination in part or from a limited reduction of funding in the same service area in which the same recipient continued to provide services through the end of the funding term. LSC had the authority under the previous rule and has the authority under this final rule to exercise its discretion to determine the best use of these funds in light of considerations such as the needs of the service area, the behavior of the recipient, and other uses of recovered funds for emergencies or special grants in other service areas. The change in language does not change the substance of the rule.

Part 1614—Private Attorney Involvement

1614.7(b) Failure To Comply

One technical update to 45 CFR part 1614 relates to this rulemaking. Although not included in the NPRM or FNPRM, this update includes no material modifications that would change the meaning or application of this section from the previous rule and is necessary to harmonize that rule with this rulemaking and other prior changes to the LSC regulations. Part 1614 requires that an LSC recipient expend an amount equivalent to at least 12.5 percent of a basic field award on private attorney involvement (PAI) activities. The failure to do so may result in LSC withholding or recovering some funds from the recipient, depending on the circumstances. Section 1614.7 of the previous rule provided the requirements for those situations and stated that the withholding or recovery of funds for a failure to meet the part 1614 requirements does not constitute either a termination or a denial of refunding. The reference to terminations is changed to a reference to any action under 45 CFR part 1606. The reference to denials of refunding is eliminated, as LSC withdrew the denial of refunding regulation in 1998.

Part 1618—Enforcement Procedures

This final rule incorporates some substantive changes and some extensive structural, but non-substantive, changes to 45 CFR part 1618 as proposed in the FNPRM. The significant substantive change to the rule involves adding the imposition of special grant conditions during a grant year to § 1618.5(c). The final rule also changes references to violations of the LSC Act throughout the rule to violations of the LSC requirements as the term ''LSC requirements'' is defined for use in parts 1606 and 1623. The previous rule defined the ''Act'' as the LSC Act or the LSC rules and regulations, but did not include other applicable laws, such as the LSC appropriations riders, or LSC guidelines and instructions, which have been included in both parts 1606 and 1623 as they have been updated over the past thirty years. Part 1618 is both outdated and confusing in this regard. The new definition of LSC requirements is based on the language used in parts 1606 and 1623, and this definition applies in all three sections for consistency and clarity.

Some of the comments suggested changing the threshold standard under § 1618.5(b) for proceeding to enforcement actions under parts 1606 and 1623. The rule provides that LSC can proceed to consider enforcement actions:

> [w]henever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful. * * *

45 CFR 1618.5(b). Those comments suggested adding a ''knowing and willful'' standard to this section. The OIG's comment notes that the 1998 rulemaking considered using ''intent'' as a factor in the standard for terminations and choose instead to use the defined term ''knowing and willful.'' The final rule does not change this language and retains the longstanding ''intent'' prong of the part 1618 analysis consistent with original structure of the rule under the LSC Act and the 1998 changes to parts 1606 and 1623. ''Knowing and willful'' was adopted in 1998 as a defined term in those regulations as one of many factors for consideration, while ''intentionally violated'' was retained in part 1618.

1618.1 Purpose

The purpose section is updated to incorporate the broader scope of the LSC requirements.

1618.2 Definitions

The definitions section is updated to incorporate the broader scope of the LSC requirements. A definition of ''violation'' has been added to make clear that the scope of violations at issue under this rule is limited to the LSC requirements.

1618.3 Complaints

The language of this section is updated for clarity and to reference the new definitions.

1618.4 Duties of Recipients

The language of this section is updated for clarity and to reference the new definitions. A new § 1618.4(c) is added to emphasize that this section does not create rights for recipient employees. Rather, this section is designed to ensure that recipients adopt and follow procedures designed to ensure that employees implement and follow the LSC requirements, and that the recipient applies those requirements consistent with LSC's interpretation of them.

1618.5 Duties of the Corporation

The language of this section is updated for clarity and to reference the new definitions and include reference to limited reductions of funding. Section 1618.5(a) has a new final sentence clarifying that LSC's investigation of a possible violation may be limited to determining if the recipient is taking sufficient actions.

The existing language in § 1618.5(b) requires ''attempts at informal resolution'' prior to proceeding to consider enforcement actions under some circumstances. There are no changes to this language, but LSC notes that the informal resolution referenced here includes consideration of remedial actions, preventative actions, and sanctions, as discussed in the FNPRM.

A new § 1618.5(c) is added regarding immediate special grant conditions. Under previous LSC practice, special grant conditions were imposed only when a new grant was awarded or an existing grant was renewed. Under that practice, a recipient had an opportunity to consider the special grant conditions prior to agreeing to them. The NPRM proposed language to permit LSC to impose immediate grant conditions any time that the § 1618.5(b) thresholds are met. The FNPRM revised that language to permit immediate special grant conditions only after LSC determines that three factors are met: (1) A violation has occurred, (2) corrective actions are required, and (3) special grant conditions are needed prior to the next renewal or competition. The immediate special grant conditions enable LSC to convert required corrective actions contained in reports, such as OCE reports, into specific grant requirements.

Part 1623—Suspension Procedures

The NPRM proposed to change only the language regarding the thirty-day limit on non-audit based suspensions to increase it to a ninety-day limit. The FNPRM, and this final rule, make a number of non-substantive, technical changes to harmonize the suspension

rule with 45 CFR part 1606. In the previous rule, some, but not all, of the relevant definitions are repeated in both rules. The final rule provides a cross reference to the definitions in 45 CFR part 1606 for consistency. An additional change is made in the final rule to permit commencement of other enforcement actions during a suspension. This change is consistent with the overall rulemaking and the revised enforcement mechanisms structure.

Comments on the NPRM and the FNPRM recommended an appeal process for suspensions, especially those that go beyond certain dollar thresholds. The OIG agreed that some appeal might be appropriate, but expressed concern about adopting appeal procedures that are too cumbersome and emphasized that appeals should occur during the pendency of the suspension, which is meant to protect funds from future misuse. The final rule includes an appeal procedure that mirrors the procedure for limited reductions of funding, which is based on the 45 CFR part 1630 disallowed cost appeal procedure.

The OIG also recommended eliminating any time limit for suspensions, and permitting suspensions to continue until compliance, as is the case for audit-based suspensions. In the 1998 rulemaking, LSC decided to retain a thirty-day limit on suspensions because LSC determined that a termination process was more appropriate than a prolonged suspension. 63 FR 64636 at 64638 (1998). In this rulemaking LSC has expanded suspensions to ninety days to make them more effective in short timeframes, but LSC continues to believe that terminations or reductions of funding with their corresponding procedures are more appropriate for intractable concerns that cannot be resolved within a limited suspension period.

1623.2 Definitions

The definitions of ''knowing and willful'' and ''recipient'' are deleted and replaced with a cross-reference to the definitions in 45 CFR part 1606, which include both of those terms. The definitions are identical in the previous rules and this change makes no substantive change to either. The use of the same definitions for other terms in both rules provides consistency throughout the regulations, *e.g.,* ''LSC requirements'' and ''substantial violation.''

1623.3 Grounds for Suspension

The previous rule provided a definition of ''substantial violation'' identical to the use of that term in 45 CFR part 1606. The term is deleted in favor of the new cross-reference to definitions in part 1606. There are no substantive changes to the definition.

Similarly the term ''LSC requirements'' replaces the list of LSC requirements that appeared in this rule and in other places in the regulations. It is defined in 45 CFR part 1618 and cross-referenced in 45 CFR part 1606.

1623.4 Suspension Procedures

In response to comments regarding the need for appeals of suspensions, LSC is adding an appeals process for suspensions that last longer than thirty days. The process is specified in § 1623.4(a) and (h). This addition preserves the previous rule's requirements for commencing suspensions based on notice and an informal meeting and continuing those suspensions for up to thirty days without further appeal. If the suspension lasts longer than thirty days, then the recipient may appeal to the LSC President. The appeal procedures are based on the new part 1606 limited reduction of funding appeal procedures, which are in turn based on the part 1630 disallowed cost appeal procedures. The discussion of those procedures in part 1606 applies equally to this section. Unlike part 1606 actions, the suspension will continue pending the appeal. The final rule requires that LSC issue a suspension decision within fifteen calendar days of receipt of the appeal in order to resolve the appeal promptly.

New § 1623.4(d) and (e) are copied from the revised informal conference procedures in 45 CFR part 1606. That language emphasizes seeking settlement or compromise and provides that the informal meeting can be conducted by the same employee who issued the proposed determination, or another senior LSC employee.

Section 1623.4(k), regarding audit-based suspensions, is updated to state that the new appeal process does not apply to audit-based suspensions, preserving the previous rule's requirements.

1623.6 Interim Funding

A technical change is made to § 1623.6(b) to state that suspended funds will be ''released'' at the end of the suspension period rather than ''returned.''

Promulgation of Regulations

List of Subjects

45 CFR Part 1606

Administrative practice and procedure, Grant programs-law, Legal services.

45 CFR Part 1614

Grant programs-law, Legal services, Reporting and recordkeeping requirements.

45 CFR Part 1618

Grant programs-law, Legal services.

45 CFR Part 1623

Administrative practice and procedure, Grant programs-law, Legal services.

For the reasons set forth above, and under the authority of 42 U.S.C. 2996g(3), LSC proposes to amend 45 CFR chapter XVI as follows:

■ 1. 1. Revise part 1606 to read as follows:

PART 1606—TERMINATION, LIMITED REDUCTION OF FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.
1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for a termination or a limited reduction of funding.
1606.4 Grounds for debarment.
1606.5 Procedures.
1606.6 Preliminary determination and final decision.
1606.7 Corrective action, informal conference, review of written materials, and final decision.
1606.8 Hearing for a termination or debarment.
1606.9 Recommended decision for a termination or debarment.
1606.10 Final decision for a termination, debarment, or limited reduction of funding.
1606.11 Qualifications on hearing procedures.
1606.12 Time and waiver.
1606.13 Interim and termination funding; reprogramming, implementation.
1606.14 Recompetition.

Authority: 42 U.S.C. 2996e(b)(1), 2996f(a)(3), and 2996f(d); Pub. L. 105–119, Title V, Secs. 501(b) and (c), 502, 503, and 504, 111 Stat. 2440, 2510–12; Pub. L. 104–134, Title V, Sec. 503(f), 110 Stat. 1321, 1321–53.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law

applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, to debar a recipient from receiving future LSC awards of financial assistance, or to impose a limited reduction in funding; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

(d) None of the following actions are subject to the procedures or requirements of this part:

(1) A reduction of funding required by law, including but not limited to a reduction in, or rescission of, the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(2) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(3) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(4) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614.

§ 1606.2 Definitions.

For the purposes of this part:

Corporation, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual acting with a seniority level at, or equivalent to, the level of an office director or higher.

Days shall mean the number of calendar days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of *business days* shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

Debarment means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to any other means, including a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

Funding term means the maximum time period for an award or awards of financial assistance under section 1006(a)(1)(A) of the LSC Act provided by the Corporation to a recipient selected pursuant the competition requirements at 45 CFR part 1634. LSC may award grants or contracts for a period of the entire funding term or for shorter periods that may be renewed or extended up to the funding term.

Knowing and willful means that the recipient had actual knowledge that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action, as the case may be.

Limited reduction of funding means a reduction of funding of less than five percent of a recipient's current level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction of funding will affect only the recipient's current year's funding.

LSC requirements means the same as that term is defined in 45 CFR Part 1618.

Receipt of materials shall mean that the materials were sent to the normal address for physical mail, email, or fax transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation email or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient or the Corporation is sufficient for the running of applicable time periods. Proof of receipt by the Chair of the governing body is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

Recipient means the same as the term is defined in 45 CFR Part 1600.

Substantial noncompliance means either a substantial violation, as defined in this part, or a substantial failure, as indicated at § 1606.3(a) of this part.

Substantial violation means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

Termination means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part in the amount of five percent or greater prior to the expiration of the funding term of a recipient's current grant or contract. A partial termination will affect only the level of funding for the current grant year, unless the Corporation provides otherwise in the final decision.

Violation means a violation by the recipient of the LSC requirements.

§ 1606.3 Grounds for a termination or a limited reduction of funding.

(a) A grant or contract may be terminated in whole or in part when:

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a) of this part; or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act or LSC appropriations, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidelines or instructions issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a) of this part.

(c) A determination of whether there has been a substantial violation for the purposes of this part, and the magnitude of any termination, in whole or in part, or any limited reduction in funding, shall be based on consideration of the criteria set forth in the definition of ''substantial violation'' in § 1606.2 of this part.

§ 1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, ''good cause'' means:

(1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;

(2) A termination of financial assistance in whole of the most recent grant or contract of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in § 1610.2(a) and (b) of this chapter, provided that the violation occurred within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into:

(i) Any agreement or arrangement, including, but not limited to, a subgrant, subcontract, or other similar agreement, with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(ii) An agreement for professional services with an independent public accountant or other auditor debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(5) The filing of a lawsuit by a recipient, provided that the lawsuit:

(i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;

(ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;

(iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and

(iv) Was initiated after December 23, 1998.

§ 1606.5 Procedures.

(a) Before any final action is taken under this part, the recipient will be provided notice and an opportunity to be heard as set out in this part.

(b) Prior to a preliminary determination involving a limited reduction of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to § 1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion set out in § 1606.10(d) of this part.

§ 1606.6 Preliminary determination and final decision.

(a) When the Corporation has made a preliminary determination of one or more of the following, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body: that a recipient's grant or contract should be terminated, that a limited reduction of funding shall be imposed, or that a recipient should be debarred. The notice shall:

(1) State the substantial noncompliance that constitutes the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed amount and proposed effective date for the proposed action;

(4) Advise the recipient of its procedural rights for review of the proposed action under this part;

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13 of this part;

(6) Specify what, if any, corrective action the recipient can take to avoid the proposed action; and

(7) Summarize prior attempts, if any, for resolution of the substantial noncompliance.

(b) If the recipient does not request review, as provided for in this part, before the relevant time limits have expired, then the Corporation may issue a final decision to the recipient. No further appeal or review will be available under this part.

§ 1606.7 Corrective action, informal conference, review of written materials, and final decision.

(a) If the Corporation proposes a corrective action in the preliminary determination pursuant to § 1606.6(a)(6) of this part, then the recipient may accept and implement the corrective action, in lieu of an informal conference or submission of written materials under this section, subject to the following requirements:

(1) Within 10 business days of receipt of the preliminary determination, the recipient may submit a draft compliance agreement to accept the terms of the proposed corrective action, which must include an implementation plan and timeline;

(2) If the Corporation approves the draft compliance agreement, including any modifications suggested by the recipient or the Corporation, then it shall be memorialized in a final compliance agreement signed by the Corporation and the recipient, which shall stay these proceedings;

(3) If the recipient completes the terms of the written compliance agreement in a time and manner that is satisfactory to the Corporation, then the Corporation shall withdraw the preliminary determination; and

(4) If the Corporation determines at any time that the recipient has not presented an acceptable draft compliance agreement, or has not fulfilled any terms of the final compliance agreement, then the Corporation shall notify the recipient in writing. Within 15 calendar days of that notice, the Corporation shall modify or affirm the preliminary determination as a draft final decision. The draft final decision shall summarize these attempts at resolution. The draft final decision need not engage in a detailed analysis of the failure to resolve the substantial noncompliance.

(b) A recipient may submit written materials in opposition to the preliminary determination, request an informal conference, or both, as follows:

(1) For terminations or debarments, within 30 calendar days of receipt of the preliminary determination; or

(2) For limited reductions in funding, within 10 business days of receipt of the preliminary determination.

(c) Within 5 business days of receipt of a request for a conference, the Corporation shall notify the recipient of the time and place the conference will be held. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of the Corporation.

(d) The informal conference shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level equivalent to the level of an office director or higher.

(e) At the informal conference, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) If an informal conference is conducted or written materials are submitted in opposition to the proposed determination by the recipient, or both, the Corporation shall consider any written materials and any oral presentation or written materials submitted by the recipient at an informal conference. Based on any of these materials or the informal

conference, or both, the Corporation shall modify, withdraw, or affirm the preliminary determination through a draft final decision in writing, which shall be provided to the recipient within the later of 15 calendar days after the conclusion of the informal conference or after the recipient of written materials in opposition to the proposed determination (when no informal conference is requested). Except for decisions to withdraw the preliminary determination, the draft final decision shall include a summary of the issues raised in the informal conference and presented in any written materials. The draft final decision need not engage in a detailed analysis of all issues raised.

(g) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, the Corporation shall notify the recipient that no further appeal or review will be available under this part and may proceed to issue the final decision.

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within the later of: 30 calendar days of its receipt of the preliminary determination, or 15 calendar days of receipt of the draft final decision issued under § 1606.7 of this part, as the case may be.

(b) Within 10 business days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time, and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date, and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action, and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 calendar days after the Corporation receives the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be debarred.

§ 1606.9 Recommended decision for a termination or debarment.

(a) For termination or debarment hearings under § 1606.8 of this part, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision to the recipient and the Corporation, which may:

(1) Terminate financial assistance to the recipient commencing as of a specific date;

(2) Impose a limited reduction of funding commencing as of a specific date;

(3) Continue the recipient's current level of financial assistance under the grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(4) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision for a termination, debarment, or limited reduction of funding.

(a) If neither the Corporation nor the recipient requests review by the President of a draft final decision pursuant to § 1606.7 of this part or a recommended decision pursuant to § 1606.9, as provided for in this part, within 10 business days after receipt by the recipient, then the Corporation shall issue to the recipient a final decision containing either the draft final decision or the recommended decision, as the case may be. No further appeal or review will be available under this part.

(b) The recipient or the Corporation may seek review by the President of a draft final decision or a recommended decision. A request shall be made in writing within 10 business days after receipt of the draft final decision or recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(d) For an appeal of a draft final decision involving a limited reduction of funding pursuant to § 1606.7 of this part (for which there is no right to a hearing under § 1606.8 of this part) the President may not review the appeal if the President has had prior involvement in the proceedings under this part. If the President cannot review the appeal, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to § 1606.5(b) of this part, or by another senior Corporation employee designated by the President who has not

had prior involvement in the proceedings under this part.

(e) As soon as practicable after receipt of the request for review of a draft final decision or a recommended decision, but not later than 30 calendar days thereafter, the President or designee shall adopt, modify, or reverse the draft final decision or the recommended decision, or direct further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to § 1606.9 of this part, this decision shall conform to the requirements of § 1606.9(b) of this part.

(f) The decision of the President or designee under this section shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§ 1606.6 through 1606.10 of this part shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions in the same hearing.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under § 1606.4(b)(1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 of this part shall not apply. Instead:

(1) The President shall appoint a hearing officer, as described in § 1606.8(c), to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommended decision shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request. The recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.

(3) If neither party appeals the hearing officer's recommended decision within 10 business days of receipt of the recommended decision, the decision shall become final and the final decision shall be issued by the Corporation to the recipient within 5 business days.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to § 1606.9(b).

(d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(e) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of a recipient;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

(a) Except for the 6-year time limit for debarments in § 1606.11(d) of this part, any period of time provided in these rules may, upon good cause shown and determined, be extended in writing:

(1) By the Corporation, unless a hearing officer has been appointed;

(2) By the hearing officer, until the recommended decision has been issued; or

(3) By the President at any time.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation or imposing a limited reduction of funding.

§ 1606.13 Interim and other funding, reprogramming, implementation.

(a) Pending the completion of termination or limited reduction of funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract for financial assistance with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction of funding, the recipient loses all rights to the terminated or reduced funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize closeout or transition funding, or both, if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) The Corporation has sole discretion to determine the manner in which the final decision is implemented. The Corporation's discretion includes, but is not limited to the decision to pro-rate the amount of funds reduced over the remaining disbursements in the funding term or deduct the sum in a single disbursement, or any other method the Corporation deems appropriate.

(e) Funds recovered by the Corporation pursuant to a termination or limited reduction of funding shall be reallocated by the Corporation for basic field purposes at its sole discretion.

§ 1606.14 Recompetition.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11 of this part.

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

■ 2. The authority citation for part 1614 continues to read as follows:

Authority: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

■ 3. Amend § 1614.7 by revising paragraph (b) to read as follows:

§ 1614.7 Failure to comply.

* * * * *

(b) The withholding of funds under this section shall not be construed as any action under 45 CFR part 1606.

* * * * *

■ 4. Revise part 1618 to read as follows:

PART 1618—ENFORCEMENT PROCEDURES

Sec.

1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints.
1618.4 Duties of recipients.
1618.5 Duties of the Corporation.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(a)(3), 2996f(d), and 2996g(e).

§ 1618.1 Purpose.

In order to ensure uniform and consistent interpretation and application of the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation, and to prevent a question of whether these requirements have been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with them.

§ 1618.2 Definitions.

LSC requirements means the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

Violation means a violation by the recipient of the LSC requirements.

§ 1618.3 Complaints.

A complaint of a violation by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of recipients.

(a) A recipient shall:

(1) Advise its employees of their responsibilities under the LSC requirements;

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation and whether the violation merits a sanction based on consideration of the totality of the circumstances; and

(3) Establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for enforcement of the LSC requirements.

(b) Before suspending or terminating the employment of any person for a violation, a recipient shall consult the Corporation to ensure that its interpretation of these requirements is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's employee may have committed a violation, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements, or, after notice, has failed to take appropriate remedial or disciplinary action to ensure compliance by its employees with the LSC requirements, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a limited reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606, or may take other action to enforce compliance with the LSC requirements.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

■ 5. Revise part 1623 to read as follows:

PART 1623—SUSPENSION PROCEDURES

Sec.

1623.1 Purpose.
1623.2 Definitions.
1623.3 Grounds for suspension.
1623.4 Suspension procedures.
1623.5 Time extensions and waiver.
1623.6 Interim funding.

Authority: 42 U.S.C. 2996e(b)(1), 2996f(a)(3), and 2996f(d); Pub. L. 105–119, Title V, Secs. 501(b), 502, and 503, 111 Stat. 2440, 2510–11; Pub. L. 104–134, Title V, Secs. 503(f) and 509(c), 110 Stat. 1321, 1321–53, 1321–58, and 1321–59.

§ 1623.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and

(b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

§ 1623.2 Definitions.

For the purposes of this part the definitions in 45 CFR part 1606 shall apply and also:

Suspension means an action taken during the term of the recipient's current year's grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending prompt corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

(a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of the LSC requirements, and the Corporation has reason to believe that prompt action is necessary to:

(1) Safeguard LSC funds; or

(2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.

(b) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) Prior to a preliminary determination involving a suspension of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion of impartiality described in this section.

(b) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3 of this part, that financial assistance to a recipient should be suspended, the Corporation

shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, prompt corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 business days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 business days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 business days after the recipient's request is received.

(d) The informal meeting shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level at, or equivalent to, the level of an office director or higher.

(e) At the informal meeting, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary. The final determination shall include a summary of the issues raised in the informal conference and presented in any written materials. The final determination need not engage in a detailed analysis of all issues raised.

(g) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(h) If a suspension lasts for more than 30 days, then the recipient may seek review of the suspension by the President. A request may be made in writing on the thirty-first day or any day thereafter, and shall state, in detail, the reasons for seeking review.

(1) The President may not review the suspension appeal if the President has had prior involvement in the suspension proceedings. If the President cannot review, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to § 1623.4(a) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the suspension proceedings.

(2) The President's review shall be based on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(3) The President shall affirm, modify, or terminate the suspension through a suspension appeal decision within 15 calendar days of receipt of the appeal by the Corporation, unless the Corporation and the recipient agree to a later date.

(i) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part.

(j) Except as provided in § 1623.4(k) of this part, the total time of a suspension shall not exceed 90 calendar days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

(k) When the suspension is based on the grounds in § 1623.3(b) of this part, a recipient's funds may be suspended until an acceptable audit is completed. No appeal to the President will be available for audit-based suspensions pursuant to § 1623.3(b).

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(i) and (j), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 calendar days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be released to the recipient at the end of the suspension period.

Dated: February 6, 2013.

Victor M. Fortuno.

Vice President & General Counsel.

[FR Doc. 2013–03241 Filed 2–12–13; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CG Docket No. 12–129; FCC 12–129]

Implementation of the Middle Class Tax Relief and Job Creation Act of 2012; Establishment of a Public Safety Answering Point Do-Not-Call Registry

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations of the Commission's rules, which were published in the **Federal Register** on November 29, 2012, 77 FR 71131. The final regulations establish a do-not-call registry for public safety answering points (PSAP) and prohibit the use of automatic dialing equipment to contact those registered numbers.

DATES: Effective February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and

Governmental Affairs Bureau at (717) 338–2797 or email *Richard.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending 47 CFR 1.80 in the **Federal Register** on November 29, 2012, (77 FR 71131). The amended rules are necessary to implement the enforcement provisions of the Middle Class Tax Relief and Job Creation Act of 2012 as applicable to the PSAP Do-Not-Call registry.

Need for Correction

As published, the final regulations inadvertently created two § 1.80(b)(7)'s in the Commission's rules and needs to be corrected accordingly.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, and 47 U.S.C. 1473.

Subpart A—General Rules of Practice and Procedure

■ 2. Amend § 1.80 by redesignating the second paragraph (b)(7) as paragraph (b)(9) and republishing the heading of newly redesignated paragraph (b)(9) to read as follows:

§ 1.80 Forfeiture proceedings.

(b) * * *

(9) *Inflation adjustments to the maximum forfeiture amount.* * * *

* * * * *

[FR Doc. 2013–03230 Filed 2–12–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90 and 05–337; DA 12–1777]

Data Specifications for Collecting Study Area Boundaries

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, until July 31, 2013, the information collection associated with the Commission's Connect America Fund; High-Cost Universal Service Support, Report and Order, (*Order*), released on November 6, 2012. The Commission submitted a request for approval of a new collection under control number 3060–1181 to the OMB for review and approval, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules once it receives OMB approval.

DATES: Paragraph 16 and Appendix A of document DA 12–1777, published at 78 FR 5750, January 28, 2013, are effective February 27, 2013.

FOR FURTHER INFORMATION CONTACT: Chelsea Fallon, Assistant Division Chief, Wireline Competition Bureau, at (202) 418–7991.

SUPPLEMENTARY INFORMATION: This document announces that, on January 23, 2013, OMB approved, for a period of six months, the information collection requirements contained in the Commission's *Order,* FCC 12–1777, published at 78 FR 5750, January 28, 2013. The OMB Control Number is 3060–1181. The Commission publishes this notice as an announcement of the effective date of paragraph 16 and Appendix A of document DA 12–1777. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Judith Boley-Herman, Federal Communications Commission, Room 1–B441, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1181, in your correspondence. The Commission also will accept comments via email. Please send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on January 23, 2013, for the information collection requirements contained in paragraph 16 and Appendix A of document DA 12–1777.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1181.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1181.

OMB Approval Date: January 23, 2013.

OMB Expiration Date: July 31, 2013.

Title: Study Area Boundary Data Reporting in Esri Shapefile Format, DA 12–1777.

Form Number: N/A.

Respondents: Incumbent local exchange carriers, and state regulatory entities.

Number of Respondents and Responses: 1,443 respondents; 1,443 responses.

Estimated Time per Response: 26 hours.

Frequency of Response: Annually if changes to study area boundaries; biannually for recertification or previously submitted data.

Obligation to Respond: Required. Statutory authority for this information collection is contained in 47 U.S.C. 254(b).

Total Annual Burden: 7,924 hours for in-house work for large incumbent local exchange carriers

Total Annual Cost: $705,935.00 contracting costs for small incumbent local exchange carriers.

Nature and Extent of Confidentiality: The Commission is not requesting that

respondents submit confidential information to the Commission. Also, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: In November 2012, the Wireline Competition Bureau of the Federal Communications Commission adopted a *Report and Order* (*Order*), in WC Docket No. 10–90; WC Docket No. 05–337; DA 12–1777, 78 FR 5750, Connect America Fund; High-Cost Universal Service Support.

The *Order* adopts data specifications for collecting study area boundaries for purposes of implementing various reforms adopted as part of the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011. In the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the Commission sought comment on a process to reduce support where such an unsubsidized competitor offers voice and broadband service to a substantial majority, but not 100 percent of the study area. Study area boundaries are needed to determine whether unsubsidized competitors offer service within all or a portion of an incumbent's study area

The *Order* requires incumbent local exchange carriers (LECs) to submit esri shapefiles of their study area boundaries, with each submitted shapefile representing a single study area in each state that the incumbent LEC serves. The shapefile for each study area must depict each exchange within the study area as a closed, non-overlapping polygon. Each exchange-area polygon must constitute one record in the shapefile and must contain associated data with certain attributes used to identify the exchange, such as the exchange name and CLLI (Common Language Location Identifier) code. The Bureau will collect study area boundary data at the exchange level so that it can distinguish those exchanges that are subject to ''frozen'' support levels from those that are not, and so that the data can be updated to reflect any exchanges that have been transferred from one incumbent LEC to another.

The *Order* finds that collecting study area boundary data in an esri shapefile format best balances the need for accurate and timely data with the goal of minimizing burdens on providers. The *Order* states that the esri shapefile is the best among possible data formats. Since its introduction in the 1990s, the esri shapefile has become the industry standard for storing, depicting, and analyzing spatial data. As a result, there are multiple geographic information system (GIS) platforms capable of creating and managing esri shapefiles, and multiple software programs can convert spatial data stored in other formats (such as MapInfo) to an esri shapefile format. Incumbent LECs that do not already have esri shapefiles of their study area boundaries may either use software and information technology, and/or rely on the expertise of consultants, to develop a shapefile based on the presumably known locations of their physical plant and their customers. Thus, the benefits gained by requiring incumbent LECs to provide and verify esri shapefiles warrant the potential burdens imposed. Incumbent LECs or other entities are not expected to conduct physical surveys in order to produce the degree of accuracy required by the data specification. Incumbent LECs reasonably can be expected to know where they offer services and thus should be able to create and submit an esri shapefile to the degree of accuracy required based largely on existing information.

State entities are well situated to assist incumbent LECs with their responsibilities under this R&O. Involvement of state entities that undertake or assist with this data collection effort could reduce the burden on incumbent LECs and on Commission staff, particularly because some states already have digitized service territory boundaries. State entities wishing to submit such data should notify the Commission in writing of their intention to do so and submit that notice to WC Docket No. 10–90 via the Commission's Electronic Comment Filing System (ECFS). The Bureau will release a Public Notice identifying the deadlines for these notices (as well as the deadlines for the shapefile submissions and incumbent LEC certifications). In cases where a state entity uploads data to the Commission-sponsored Web site on behalf of one or more incumbent LECs, each incumbent LEC whose data are submitted by the state must log into the Web site to review the shapefile. If the incumbent LEC has a reasonable basis to conclude the shapefile is correct, the incumbent LEC can certify and submit the data using the same web interface. The reporting obligation set forth in the Order ultimately rests with incumbent LECs; state entities may not certify as to the accuracy of the data on behalf of incumbent LECs. If the incumbent LEC cannot certify that the data submitted by the state entities are correct, the incumbent LEC must so notify the Bureau and upload corrected data, either on its own or in conjunction with the state entity that filed it. The incumbent LEC can then certify that the study area boundary data are accurate.

After reviewing and, if necessary, correcting the study area boundary data submitted by itself or a state entity, each incumbent LEC must certify the accuracy of the data. An official of the firm, such as a corporate officer, managing partner, or sole proprietor, must provide an electronic signature certifying that he or she has examined the study area boundary shapefile and that, to the best of his or her knowledge, information, and belief, the data contained in the shapefile are accurate and correct. The certifying official may be different from the GIS specialist or other individual who developed the study area boundary shapefile, and the web interface will allow filers to enter contact information for both the certifying official and the individual most knowledgeable about the spatial data.

Once the shapefiles have been submitted and certified, the Bureau will review the study area boundaries and resolve any voids and overlaps. Overlap areas would be those shown to be served by more than one incumbent LEC, while void areas would be those shown to be served by no incumbent LEC. The Bureau will attempt to distinguish unpopulated void areas from populated void areas that are likely to be served by some incumbent LEC, in which case an error in the submitted data may need to be resolved. The Bureau may also seek help from state commissions to resolve gaps, voids, and overlap issues. During review, if boundary overlaps or void areas are found in the submitted boundary data, the Bureau will contact the filer(s) to resolve such issues. Once these issues are resolved, the Bureau will ask incumbent LECs to recertify the new, corrected boundaries. When a complete set of the reconciled boundaries has been compiled the study area boundary data will be published.

Incumbent LECs must provide updated data when their study area boundaries change. Incumbent LECs and/or state entities must submit updated data by March 15 of each year, beginning the year following the initial data submissions, showing any changes made by December 31 of the previous year. The incumbent LEC is responsible for making any necessary changes and for filing the revised shapefile. The changes cannot be made using the web interface itself; incumbent LECs will need to modify the shapefile. However, incumbent LECs can upload a revised shapefile to the same Web site used for the original filing. In addition, all incumbent LECs must recertify their

study area boundary data every two years. Filers will need to examine, through the web interface described below, the boundary data previously submitted, and then either certify that they are correct or submit revised data.

In the near future, the Bureau will issue a Public Notice providing detailed instructions and announcing the deadline for the submission of data and providing further filing information. The Commission plans to submit information required to obtain OMB review and approval to extend approval of this collection.

Federal Communications Commission.

Lisa Gelb,

Deputy Bureau Chief, Wireline Competition Bureau.

[FR Doc. 2013–03328 Filed 2–12–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2492–02]

RIN 0648–XC437

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit for golden tilefish in the South Atlantic to 300 lb (136 kg), gutted weight, per trip in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the South Atlantic golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, February 18, 2013, through December 31, 2013, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, or email: *Catherine.Hayslip@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery includes golden tilefish in the South Atlantic and is managed under the Fishery Management Plan for the Snapper-Grouper Resources of the South Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.44(c)(2), NMFS is required to reduce the trip limit in the commercial sector for golden tilefish from 4,000 lb (1,814 kg) to 300 lb (136 kg) per trip when 75 percent of the fishing year quota is met prior to September 1, by filing a notification to that effect with the Office of the Federal Register. As implemented by the final rule for Regulatory Amendment 12 (77 FR 61295, October 9, 2012), the commercial quota for golden tilefish in the South Atlantic is 541,295 lb (245,527 kg), gutted weight, as specified in 50 CFR 622.42(e)(2). Based on current statistics, NMFS has determined that 75 percent of the available commercial quota of 541,295 lb (245,527 kg), gutted weight, for golden tilefish will be reached on or before February 18, 2013. Accordingly, NMFS is reducing the commercial golden tilefish trip limit to 300 lb (136 kg), gutted weight, in the South Atlantic EEZ from 12:01 a.m., local time, on February 18, 2013, until the quota is reached and the commercial sector closes, or through December 31, 2013, whichever occurs first.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.44(c)(2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect golden tilefish because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment for this trip limit reduction would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: February 8, 2013.

Kara Meckley,

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

[FR Doc. 2013–03311 Filed 2–8–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC495

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 Pacific cod total allowable catch apportioned to vessels using pot gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 10, 2013, through 1200 hours, A.l.t., September 1, 2013.

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

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

CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2013 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 6,459 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012) and inseason adjustment to the final 2013 harvest specifications for Pacific cod (78 FR 267, January 3, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2013 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,449 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 7, 2013.

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

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

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

Dated: February 8, 2013.

Kara Meckley,

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

[FR Doc. 2013–03310 Filed 2–8–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 30
Wednesday, February 13, 2013

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

Agricultural Marketing Service

7 CFR Part 1210

[Document Number AMS–FV–11–0031]

Watermelon Research and Promotion Plan; Importer Membership Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Watermelon Research and Promotion Plan (Plan) importer membership requirements to serve on the National Watermelon Promotion Board (Board). The Board recommended to eliminate the requirement that an importer import more than 50 percent of the total volume handled and imported in order to qualify as an importer member. This change would allow for additional parties to qualify as an importer member.

DATES: Comments must be received by March 15, 2013.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, (USDA) Room 0632–S, Stop 0244, 1400 Independence Avenue SW., Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or it can be viewed at *http://www.regulations.gov*. All comments received will be posted without change, including any personal information provided. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under the Watermelon Research and Promotion Plan [7 CFR part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act (Act) [7 U.S.C. 4901–4916].

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

In addition, this rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect.

The Act allows producers, producer-packers, handlers, and importers to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not established in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601–612], AMS has examined the economic impact of this rule on the small producers, handlers, and importers that would be affected by this rule.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7 million. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this rule would be considered small entities. Producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt.

USDA's National Agricultural Statistics Service (NASS) data for the 2011 crop year was about 312 hundredweight (cwt.) of watermelons were produced per acre. The 2011 grower price published by NASS was $14.00 per hundredweight. Thus, the value of watermelon production per acre in 2011 averaged about $4,368 (312 cwt. × $14.00). At that average price, a producer would have to farm over 172 acres to receive an annual income from watermelons of $750,000 ($750,000 divided by $4,368 per acre equals 172). Accordingly, as previously noted, a majority of the watermelon producers would be classified as small businesses.

Based on the Board's data, using an average of freight on board (f.o.b.) price of $.164 per pound and the number of pounds handled in 2011, none of the watermelon handlers had receipts over the $7.5 million threshold. Therefore, the watermelon handlers would all be considered small businesses. A handler would have to ship over 45.7 million pounds of watermelons to be considered large (457,317,073 times $.164 f.o.b. equals $7,500,000).

According to the Board, there are approximately 950 producers, 230 handlers, and 137 importers who are required to pay assessments under the program.

Based on the watermelon import assessments received for the year 2011, the United States imported watermelons worth over $211 million dollars. The largest imports of watermelon came from Mexico which accounted for 89 percent of the total in 2011. Other suppliers of imported watermelon are Guatemala at 8 percent and Costa Rica at 1 percent. The remaining 2 percent of imported watermelon came from Nicaragua, Honduras, Panama, Vietnam, Canada, Dominican Republic, and Israel.

The Board's audit records show imports for the fiscal years 2009, 2010, and 2011 at $754,760, $746,043, and $855,890 respectively. Based on this data, the three-year average of imports for watermelon totals $785,564 (2,356,693 divided by 3). This represents approximately 30 percent of the total assessments paid to the Board. Currently, the Board membership distribution consists of 14 producers, 14 handlers, 8 importers, and 1 public member. A final rule to increase the number of importers on the Board was published in the July 18, 2011, **Federal Register** [76 FR 42009].

The Watermelon Research and Promotion Improvement Act of 1993 amended the Watermelon Research and Promotion Act by adding importer members to the Board among other things. At that time the industry recommended that, in order to qualify as an importer member on the Board, an individual that both handles and imports watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. A final rule was published in the **Federal Register** on February 28, 1995 [60 FR 10795] containing this and other amendments to the program.

At the time of this amendment there was a more clear division of roles among producers, handlers, and importers. In other words, those individuals that imported watermelons did not cross over into handling or producing watermelons as much as they do now. Since then, the industry has become more consolidated and of the 137 importers required to pay assessments 42 also handled watermelons and would be eligible to serve as either handler or importer member.

At its February 26, 2011, meeting, the Board voted unanimously, to modify the importer eligibility requirements to serve on the Board. The Board is having difficulty finding eligible importers to serve on the Board because of the requirement in the Plan that a person who both imports and handles watermelon will be counted as an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. The Board voted to eliminate the 50 percent requirement or more of the combined total volume of watermelons handled and imported by a person to allow more individuals to become eligible to serve on the Board as an importer. Individuals that both handle and import would be allowed to decide which part of the industry they would prefer to represent regardless of the volume handled or imported. The industry believes that this change would increase the importer representation on the Board by allowing more individuals to be eligible to serve. This action may also increase diversity representation on the Board.

The Board considered a second alternative by changing the 50 percent or more of the combined total volume of watermelons handled and imported by the person to 25 percent or more of the combined total volume of watermelons handled and imported by the person. However, the Board did not choose this option because they wanted to allow more importers to be eligible for nomination on the Board and therefore, they eliminated the percentage requirement. By eliminating the percentage requirement for the importer member, this will allow for smaller importer businesses to become eligible to serve as an importer member on the Board.

Section 1655(a) of the Act provides for referenda to be conducted to ascertain approval of changes to the Plan prior to going into effect. In order to implement the amendments to the Plan, the Secretary determines that the Plan has been approved by a majority of the producers, handlers, and importers of watermelon voting in the referendum. Accordingly, before these amendments are made to the Plan, a referendum will be conducted among eligible producers, handlers, and importers of watermelon.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], have been assigned OMB number 0581–0093, which represents the information collection and recordkeeping requirements that are imposed by the Plan that have been approved previously, except that the background form, has been approved under OMB number 0505–0001.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment.

Background

Under the Plan, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for watermelons. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 pounds of watermelons or more per year. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service and Border Protection. This action will not have any impact on the assessment rates paid by producers, handlers, and importers.

Membership on the Board consists of two producers and two handlers for each of the seven districts established by the Plan, at least one importer, and one public member. The Board currently consists of 37 members: 14 producers, 14 handlers, 8 importers, and 1 public member. A final rule to increase the number of importers on the Board was published in the July 18, 2011, **Federal Register** [76 FR 42009].

The Watermelon Research and Promotion Improvement Act of 1993 amended the Watermelon Research and Promotion Act by adding importer members to the Board among other things. At that time the industry recommended that, in order to qualify as an importer member on the Board, an individual that both handles and imports watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. A final rule was published in the **Federal Register** on February 28, 1995 [60 FR

10795] containing this and other amendments to the program. At the time of this amendment there was a more clear division of roles among producers, handlers, and importers. In other words, those individuals that imported watermelons did not cross over into handling or producing watermelons as much as they do now. Since then, the industry has become more consolidated and of the 137 importers required to pay assessments 42 also handled watermelons and would be eligible to serve as either handler or importer member.

At its February 26, 2011, meeting, the Board voted unanimously, to modify the importer eligibility requirements to serve on the Board. The Board is having difficulty finding eligible importers to serve on the Board because of the requirement in the Plan that a person who both imports and handles watermelon will be counted as an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. The Board voted to eliminate the 50 percent requirement or more of the combined total volume of watermelons handled and imported by a person to allow more individuals to become eligible to serve on the Board as an importer. Individuals that both handle and import would be allowed to decide which part of the industry they would prefer to represent regardless of the volume handled or imported. The industry believes that this change would increase the importer representation on the Board by allowing more individuals to be eligible to serve. This action may also increase diversity representation on the Board.

Accordingly, the propose rule would amend sections 1210.321(d), 1210.363(b), 1210.404(g), and 1210.602(a) which reference importer eligibility requirements to be nominated to the Board and participation in a referendum. These sections would be revised to read as follows: a person who both imports and handles watermelon may vote for importer members and serve as an importer member if that person identifies that their vote will be considered as an importer.

For changes to the Plan to become effective, the proposed amendments to the Plan must be approved by a majority of producers, handlers, and importers of watermelon voting in a referendum. Accordingly, a referendum will be conducted among eligible producers, handlers, and importers of watermelon. Specific dates for the referendum will be announced at a later date.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that the proposed amendments, if adopted, may be implemented to allow for the calendar year 2013 nomination meetings to take place before the appointments for new Board members are due. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Part 1210, Chapter XI of Title 7 is proposed to be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

■ 2. Revise § 1210.321 paragraph (d) to read as follows:

§ 1210.321 Nomination and selection.

* * * * *

(d) Nominations for importers positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: *Provided,* That a person who both imports and handles watermelon may vote for importer members and serve as an importer member if that person identifies that their vote be considered as an importer.

* * * * *

■ 3. Revise § 1210.363 paragraph (b) to read as follows:

§ 1210.363 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. *Provided,* That a person who both imports and handles watermelon may vote for importer members and serve as an importer member if that person identifies that their vote be considered as an importer. Any such referendum shall be conducted by mail ballot.

■ 4. Revise § 1210.404 paragraph (g) to read as follows:

§ 1210.404 Importer member nomination and selection.

* * * * *

(g) Any individual who both imports and handles watermelons will be considered an importer if that person identifies themselves as an importer.

■ 5. Revise § 1210.602 paragraph (a) to read as follows:

§ 1210.602 Voting.

(a) Each person who is an eligible producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to one vote in the referendum: *Provided,* That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership: *Provided further,* That the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from

other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchased from other producer's production is more than 50 percent of the producer's own production: *Provided further,* That a person who both imports and handles watermelons may vote and serve as an importer if that person identifies that their vote be considered as an importer.

* * * * *

Dated: February 5, 2013.

David R. Shipman,

Administrator.

[FR Doc. 2013–02975 Filed 2–12–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 16, 106, 110, 112, 114, 117, 120, 123, 129, 179, and 211

[Docket Nos. FDA–2011–N–0920 and FDA–2011–N–0921]

Food and Drug Administration Food Safety Modernization Act: Proposed Rules To Establish Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption and for Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is providing public meeting registration information for two FSMA related public meetings announced in the January 31, 2013, **Federal Register**. These public meetings will be held along with the February 28 to March 1, 2013, Washington, DC public meeting to discuss the proposed rules to establish standards for the growing, harvesting, packing, and holding of produce for human consumption (the produce safety proposed rule) and for current good manufacturing practice and hazard analysis and risk-based preventive controls for human food (the preventive controls proposed rule). These proposed rules are the first of several proposed rules that would establish the foundation of, and central framework for, the modern food safety system envisioned by Congress in the FDA Food Safety Modernization Act (FSMA). The purpose of the public meetings is to solicit oral stakeholder and public comments on the proposed rules and to inform the public about the rulemaking process (including how to submit comments, data, and other information to the rulemaking dockets), and to respond to questions about the proposed rules.

DATES: See section II ''How to Participate in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document for dates and times of the Chicago, IL and Portland, OR public meetings, closing dates for advance registration, and information on deadlines for submitting either electronic or written comments to FDA's Division of Dockets Management.

ADDRESSES: See section II ''How to Participate in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: *For questions about registering for these meetings, to register by phone, or to submit a notice of participation by mail, fax, or email:* Courtney Treece, Planning Professionals, Ltd., 1210 West McDermott Dr., Suite 111, Allen, TX 75013, 704–258–4983, FAX: 469–854–6992, email: *ctreece@planningprofessionals.com.*

For general questions about these meetings, to request an opportunity to make an oral presentation at one of the public meetings, to submit the full text, comprehensive outline, or summary of an oral presentation, or for special accommodations due to a disability, contact: Juanita Yates, Center for Food Safety and Applied Nutrition (HFS–009), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1731, email: *Juanita.yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FSMA (Pub. L. 111–353) was signed into law by President Obama on January 4, 2011, to better protect public health by helping to ensure the safety and security of the food supply. FSMA amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish the foundation of a modernized, prevention-based food safety system. Among other things, FSMA requires FDA to issue regulations requiring preventive controls for human and animal food and set standards for produce safety.

FSMA was the first major legislative reform of FDA's food safety authorities in more than 70 years, even though FDA has increased the focus of its food safety efforts on prevention over the past several years. For example, applying the concept of Hazard Analysis and Critical Control Point (HACCP) that was pioneered by industry in the late 1960s, FDA established HACCP-based regulations for seafood (21 CFR part 123) in 1995 (60 FR 65096, December 18, 1995) and for juice (21 CFR part 120) in 2001 (66 FR 6138, January 19, 2001). Similarly, in 1996, the U.S. Department of Agriculture's Food Safety and Inspection Service instituted HACCP-based rules for meat and poultry (9 CFR part 417) (61 FR 38806, July 25, 1996).

In the **Federal Register** of January 16, 2013 (78 FR 3503 and 78 FR 3646), FDA announced the establishment of two dockets so that the public can review the produce safety proposed rule and the preventive controls proposed rule and submit comments to the Agency. These proposed rulemakings are the first of several key proposals in furtherance of FSMA's food safety mandate. The produce safety proposed rule would establish science-based minimum standards for the safe growing, harvesting, packing, and holding of produce, meaning fruits and vegetables, grown for human consumption. The produce safety proposed rule would set forth procedures, processes, and practices that FDA expects would reduce foodborne illness associated with the consumption of produce. The produce safety proposed rule and related fact sheets are available on FDA's FSMA Web page located at *http://www.fda.gov/Food/FoodSafety/FSMA/default.htm.*

The preventive controls proposed rule would apply to human food and require domestic and foreign facilities that are required to register under the FD&C Act to have written plans that identify hazards, specify the steps that will be put in place to minimize or prevent those hazards, monitor results, and act to correct problems that arise. The preventive controls proposed rule and related fact sheets are available on FDA's FSMA Web page located at *http://www.fda.gov/Food/FoodSafety/FSMA/default.htm.*

In the **Federal Register** of January 31, 2013 (78 FR 6762), FDA announced the first public meeting in a series of three public meetings entitled ''The Food Safety Modernization Act Public Meeting on Proposed Rules for Produce Safety and for Preventive Controls for Human Food'' so that the food industry, consumers, foreign governments, and other stakeholders can evaluate and comment on the proposals. FDA also noted that the Agency intended to hold

additional public meetings in Chicago, IL and Portland, OR and that those specific locations, dates, and registration information for these meetings would appear in a separate **Federal Register** document to publish shortly. It was also noted that all three public meetings would have the same agenda and are intended to facilitate and support the proposed rules' evaluation and commenting process.

In this document, FDA is providing the locations, dates, and registration information for the Chicago, IL and Portland, OR public meetings.

II. How To Participate in the Public Meeting

FDA is holding the public meetings on the produce safety proposed rule and the preventive controls proposed rule to inform the public about the rulemaking process, including how to submit comments, data, and other information to the rulemaking docket; to respond to questions about the proposed rules; and to provide an opportunity for interested persons to make oral presentations. Due to limited space and time, FDA encourages all persons who wish to attend the public meetings to register in advance. There is no fee to register for the public meetings, and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Onsite registration will be accepted, as space permits, after all preregistered attendees are seated.

Those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meetings are asked to submit a request and to provide the specific topic or issue to be addressed. Due to the anticipated high level of interest in presenting public comment and limited time available, FDA is allocating 3 minutes to each speaker to make an oral presentation. Speakers will be limited to making oral remarks; there will not be an opportunity to display materials such as slide shows, videos, or other media during the meeting. If time permits, individuals or organizations that did not register in advance may be granted the opportunity to make an oral presentation. FDA would like to maximize the number of individuals who make a presentation at the meetings and will do our best to accommodate all persons who wish to make a presentation or express their opinions at the meeting.

FDA encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative at a single location. After reviewing the presentation requests, FDA will notify each participant before the meeting of the approximate time their presentation is scheduled to begin, and remind them of the presentation format (i.e., 3-minute oral presentation without visual media).

While oral presentations from specific individuals and organizations will be necessarily limited due to time constraints during the public meeting, stakeholders may submit electronic or written comments discussing any issues of concern to the administrative record (the docket) for the rulemaking. All relevant data and documentation should be submitted with the comments to the relevant docket (i.e., for the produce safety proposed rule, *http://www.regulations.gov/#!docketDetail;D=FDA-2011-N-0921;* and for the preventive controls proposed rule, *http://www.regulations.gov/#!docketDetail;D=FDA-2011-N-0920).*

Table 1 of this document provides information on participation in the public meetings:

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS TO THE RULEMAKING DOCKETS

	Date	Electronic address	Address	Other information
Washington, DC Public meeting.	February 28, 2013, from 8:30 a.m. to 5 p.m. and March 1, 2013, from 8:30 a.m. to 12 noon.		Jefferson Auditorium, U.S. Department of Agriculture (USDA), Wing 5 Entrance, 14th and Independence Ave. SW., Washington, DC 20024. *Photo ID Required.*	Onsite registration both days from 8 a.m. to 8:30 a.m.
Washington, DC Advance registration.	By February 20, 2013.	Individuals who wish to participate in person are asked to preregister at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm.*	We encourage you to use electronic registration if possible.[1]	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Washington, DC Request to make an oral presentation.	By February 8, 2013.	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm.*[2]		Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Washington, DC Request special accommodations due to a disability.	By February 15, 2013.	Juanita Yates, email: *Juanita.yates@fda.hhs.gov.*	See **FOR FURTHER INFORMATION CONTACT**.	

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS TO THE RULEMAKING DOCKETS—Continued

	Date	Electronic address	Address	Other information
Chicago, IL Public meeting.	March 11, 2013, from 8:30 a.m. to 5 p.m. and March 12, 2013, from 8:30 a.m. to 12 noon.		The Westin–Michigan Avenue, 909 North Michigan Ave., Chicago, IL 60611.	Onsite registration both days from 8 a.m. to 8:30 a.m.
Chicago, IL Advance registration.	By March 1, 2013.	Individuals who wish to participate in person are asked to preregister at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm*.	We encourage you to use electronic registration if possible.[1]	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Chicago, IL Request to make an oral presentation.	By February 21, 2013.	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm*.[2]		Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Chicago, IL Request special accommodations due to a disability.	By February 21, 2013.	Juanita Yates, email: *Juanita.yates@fda.hhs.gov*.	See **FOR FURTHER INFORMATION CONTACT**.	
Portland, OR Public meeting.	March 27, 2013, from 8:30 a.m. to 5 p.m. and March 28, 2013, from 8:30 a.m. to 12 noon.		Crown Plaza Portland Downtown Convention Center, 1441 NE 2nd Ave., Portland, OR 97232.	Onsite registration both days from 8 a.m. to 8:30 a.m.
Portland, OR Advance registration.	By March 18, 2013.	Individuals who wish to participate in person are asked to preregister at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm*.	We encourage you to use electronic registration if possible.[1]	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Portland, OR Request to make an oral presentation.	By March 8, 2013.	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm*.[2]		Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Portland, OR Request special accommodations due to a disability.	By March 8, 2013.	Juanita Yates, email: *Juanita.yates@fda.hhs.gov*.	See **FOR FURTHER INFORMATION CONTACT**.	
Submit electronic or written comments.	By May 16, 2013.	Docket Nos. FDA–2011–N–0920 and FDA–2011–N–0921. Preventive Controls for Human Food Proposed Rule: *http://www.regulations.gov/#!docketDetail;D=FDA-2011-N-0920*.		

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS TO THE RULEMAKING DOCKETS—Continued

	Date	Electronic address	Address	Other information
		Produce Safety Proposed Rule: *http://www.regulations.gov/#!docketDetail;D=FDA-2011-N-0921.*		

[1] You may also register via email, mail, or fax. Please include your name, title, firm name, address, and phone and FAX numbers in your registration information and send to Courtney Treece (see **FOR FURTHER INFORMATION CONTACT**). Onsite registration will also be available.

[2] You may also request to make an oral presentation at the public meeting via email. Please include your name, title, firm name, address, and phone and fax numbers as well as the full text, comprehensive outline, or summary of your oral presentation, and send to Juanita Yates (see **FOR FURTHER INFORMATION CONTACT**).

III. Comments, Transcripts, and Recorded Video

Information and data submitted voluntarily to FDA during the public meetings will become part of the administrative record for the relevant rulemaking and will be accessible to the public at *http://www.regulations.gov.* The transcript of the proceedings from the public meetings will become part of the administrative record for each of the rulemakings. Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and at FDA's FSMA Web site at *http://www.fda.gov/Food/FoodSafety/FSMA/.* It may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript for each public meeting will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Additionally, FDA will be video recording the first public meeting in Washington, DC. Once the recorded video is available, it will be accessible at FDA's FSMA Web site at *http://www.fda.gov/Food/FoodSafety/FSMA/.*

Dated: February 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03316 Filed 2–12–13; 8:45 am]

BILLING CODE 4160–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

[Docket No. ATBCB–2013–0002]

RIN 3014–AA26

Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way; Shared Use Paths

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (Access Board), issued an advance notice of proposed rulemaking (ANPRM) announcing our intent to develop accessibility guidelines for shared used paths. Shared use paths are multi-use paths designed primarily for use by bicyclists and pedestrians, including pedestrians with disabilities, for transportation and recreation purposes. Shared use paths are physically separated from motor vehicle traffic by an open space or barrier, and are either within the highway right-of-way or within an independent right-of-way. We noted in the ANPRM that we are considering including accessibility guidelines for shared use paths in the accessibility guidelines that we are developing for sidewalks and other pedestrian facilities in the public right-of-way. We subsequently issued a notice of proposed rulemaking (NPRM) requesting comments on proposed accessibility guidelines for pedestrian facilities in the public right-of-way. The NPRM did not include specific provisions for shared use paths. We are issuing this supplemental notice of proposed rulemaking (SNPRM) to include specific provisions for shared use paths in the proposed accessibility guidelines for pedestrian facilities in the public right-of-way. The proposed accessibility guidelines would apply to the design, construction, and alteration of pedestrian facilities in the public right-of-way, including shared use paths, covered by the Americans with Disabilities Act and the Architectural Barriers Act, and would ensure that the facilities are readily accessible to and usable by individuals with disabilities.

DATES: Submit comments by May 14, 2013.

ADDRESSES: Submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2013–0002.
- *Email: docket@access-board.gov.* Include docket number ATBCB 2013–0002 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Scott Windley, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0025 (voice) or (202) 272–0028 (TTY). Email *address row@access-board.gov.*

SUPPLEMENTARY INFORMATION:

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4. Comparison of Proposed Technical Provisions Applicable to Shared Use Paths and AASHTO Guide
5. Conflicts Between Shared Path Users
6. Regulatory Analyses

In this preamble, ''we,'' ''us,'' and ''our'' refer to the Architectural and Transportation Barriers Compliance Board (Access Board).

1. Executive Summary

This supplemental notice of proposed rulemaking (SNPRM) proposes to include specific provisions for shared use paths in the proposed accessibility guidelines for pedestrian facilities in the public right-of-way published in the **Federal Register** on July 26, 2011. See 76 FR 44664 (July 26, 2011). A copy of the proposed accessibility guidelines for pedestrian facilities in the public right-of-way with the specific provisions for shared use paths proposed in the SNPRM is available on our Web site at: *http://www.access-board.gov/sup.htm.*

We are required by section 502 of the Rehabilitation Act to establish and maintain accessibility guidelines for the design, construction, and alteration of facilities covered by the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA) to ensure that the facilities are readily accessible to and usable by individuals with disabilities. See 29 U.S.C. 792(b)(3). The ADA covers state and local government facilities, places of public accommodation, and commercial facilities. See 42 U.S.C. 12101 et seq. The ABA covers facilities financed with federal funds. See 42 U.S.C. 4151 et seq.

We are issuing the SNPRM in response to public comments on separate rulemakings to develop accessibility guidelines for trails and other outdoor developed areas, and for sidewalks and other pedestrian facilities in the public right-of-way. The comments noted that shared use paths are distinct from trails and sidewalks, and recommended that we develop accessibility guidelines for shared use paths. As defined in the SNPRM, shared use paths are multi-use paths designed primarily for use by bicyclists and pedestrians, including pedestrians with disabilities, for transportation and recreation purposes. Shared use paths are physically separated from motor vehicle traffic by an open space or barrier, and are either within the highway right-of-way or within an independent right-of-way.

As noted above, the SNPRM would include specific provisions for shared use paths in the proposed accessibility guidelines for pedestrian facilities in the public right-of-way. The proposed accessibility guidelines for pedestrian facilities in the public right-of-way would require pedestrian access routes to be provided within pedestrian circulation paths located in the public right-of-way, and would establish proposed technical provisions for the width, grade, cross slope, and surface of pedestrian access routes. See R204.2 and R302. Where existing pedestrian circulation paths are altered and existing physical constraints make it impracticable for the altered paths to fully comply with the proposed technical provisions, compliance would be required to the extent practicable. See R202.3.1.

The SNPRM would:

- Require the full width of a shared use path to comply with the proposed technical provisions for the grade, cross slope, and surface of pedestrian access routes (see R302.3.2);
- Permit compliance with the proposed technical provisions for the grade of pedestrian access routes to the extent practicable where physical constraints or regulatory constraints prevent full compliance (see R302.5.4 and R302.5.5);
- Prohibit objects from overhanging or protruding into any portion of a shared use path at or below 8 feet measured from the finished surface (see R210.3); and
- Require the width of curb ramps and blended transitions in shared use paths to be equal to the width of the shared use path (see R304.5.1.2).

The SNPRM is consistent with the design criteria for shared used paths in the American Association of State Highway and Transportation Officials (AASHTO) ''Guide for the Development of Bicycle Facilities'' (2012) (hereinafter referred to as the ''AASHTO Guide''). The SNPRM is not expected to increase the cost of constructing shared use paths for state and local government jurisdictions that use the AASHTO Guide.

As discussed in the preamble to the proposed accessibility guidelines for pedestrian facilities in the public right-of-way, other federal agencies are required to adopt accessibility standards for the design, construction, and alteration of facilities covered by the ADA and ABA that are consistent with our accessibility guidelines. When the other federal agencies adopt accessibility standards for the design, construction, and alteration of pedestrian facilities in the public right-of-way, including shared use paths, covered by the ADA and ABA, compliance with the standards is mandatory.

2. Background

We are conducting separate rulemakings to develop accessibility guidelines for trails and other outdoor developed areas, and for sidewalks and other pedestrian facilities in the public right-of-way.

We issued a notice of proposed rulemaking (NPRM) requesting comments on proposed accessibility guidelines for trails and other outdoor developed areas in 2007. See 72 FR 34074 (June 20, 2007). A trail would be defined for purposes of these accessibility guidelines as a pedestrian route developed primarily for outdoor recreational purposes. A pedestrian route developed primarily to connect elements, spaces, or facilities within a site is not a trail.

We requested comments on draft accessibility guidelines for sidewalks and other pedestrian facilities in the public right-of-way in 2002 and 2005. See 67 FR 41206 (June 17, 2002); and 70 FR 70734 (November 23, 2005). These accessibility guidelines would adopt the definition of sidewalk in the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD (2009) defines a sidewalk as the portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or on easements of private property that is paved or improved and intended for use by pedestrians.

Public comments on these rulemakings noted that shared use paths are distinct from trails and sidewalks in that they are used by bicyclists and pedestrians, including pedestrians with disabilities, for transportation and recreation purposes. The comments recommended that we develop accessibility guidelines for shared use paths. On March 28, 2011, we issued an advance notice of proposed rulemaking (ANPRM) announcing our intent to develop accessibility guidelines for shared use paths, and requested comments on a definition and draft technical provisions for shared use paths. See 76 FR 17064 (March 28, 2011). We noted in the ANPRM that we are considering including accessibility guidelines for shared use paths in the accessibility guidelines for pedestrian facilities in the public right-of-way since state and local transportation departments are the principal entities that design and construct shared use paths, and many of the draft technical provisions for shared use paths in the ANPRM are the same as those in the draft accessibility guidelines for pedestrian facilities in the public right-of-way (e.g., curb ramps and blended transitions, and detectable warning surfaces).

On July 26, 2011, we issued a NPRM requesting comments on proposed accessibility guidelines for pedestrian facilities in the public right-of-way. See 76 FR 44664 (July 26, 2011). The NPRM did not include specific provisions for shared use paths. The comment period on the NPRM ended on November 23, 2011. The comment period was reopened on December 5, 2011 to allow

additional time for the public to submit comments. See 76 FR 75844 (December 5, 2011). The additional comment period ended on February 2, 2012.

3. Proposed Supplements to Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

We are issuing this SNPRM to include specific provisions for shared use paths in the proposed accessibility guidelines for pedestrian facilities in the public right-of-way published in the **Federal Register** on July 26, 2011. See 76 FR 44664 (July 26, 2011). The proposed accessibility guidelines for pedestrian facilities in the public right-of-way will be codified as an appendix to 36 CFR part 1190. The SNPRM would supplement the following sections of the proposed accessibility guidelines for pedestrian facilities in the public right-of-way: R105.5 Defined Terms; R204 and R302 Pedestrian Access Routes; R210 Protruding Objects; R218 Doors, Doorways, and Gates; and R304 Curb Ramps and Blended Transitions. The proposed supplements to these sections are set forth below.

R105.5 Defined Terms

Shared Use Path

The SNPRM would add a proposed definition of shared use path in R105.5 to read as follows:

Shared Use Path. A multi-use path designed primarily for use by bicyclists and pedestrians, including pedestrians with disabilities, for transportation and recreation purposes. Shared use paths are physically separated from motor vehicle traffic by an open space or barrier, and are either within the highway right-of-way or within an independent right-of-way.

The proposed definition is based on the AASHTO Guide, which defines a shared use path as a bikeway physically separated from motor vehicle traffic by an open space or barrier, and either within the highway right-of-way or within an independent right of way. The AASHTO Guide notes that pedestrians, including pedestrians with disabilities, also use shared use paths and that they can serve transportation and recreation purposes. See AASHTO Guide, 5.1 Introduction. The U.S. Department of Transportation, Federal Highway Administration (FHWA) defines a shared use path similar to the AASHTO Guide.[1] State transportation departments also define shared use paths similar to the AASHTO Guide.[2]

As noted in the AASHTO Guide, the primary factor that distinguishes shared use paths and sidewalks is the intended user. Shared use paths are designed for use by bicyclists and pedestrians, including pedestrians with disabilities. Sidewalks are designed for use by pedestrians, including pedestrians with disabilities, and are not intended for use by bicyclists. See AASHTO Guide, 5.2.2, Shared Use Paths Adjacent to Roadways (Sidepaths).

Public Right-of-Way

The SNPRM would revise the proposed definition of public right-of-way in R105.5 to read as follows:

Public Right-of-Way. Public land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.

The NPRM proposed to define public right-of-way as public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes. Some shared use paths may cross private land. In these situations, an easement or other legal means is used to establish a right for the public to use the portion of the land that the shared use path crosses for transportation purposes. The SNPRM would revise the proposed definition of public right-of-way to include these situations.

R204 and R302 Pedestrian Access Routes

The SNPRM would revise these sections relating to pedestrian access routes.

R204.2 Pedestrian Circulation Paths

The SNPRM would revise R204.2 to read as follows:

R204.2 Pedestrian Circulation Paths. A pedestrian access route shall be provided within pedestrian circulation paths located in the public right-of-way. The pedestrian access route shall connect to accessible elements, spaces, and facilities required by this document and to accessible routes required by section 206.2.1 of appendix B to 36 CFR part 1191 or section F206.2.1 of appendix C to 36 CFR 1191 that connect building and facility entrances to public streets and sidewalks.

As proposed in the NPRM, R204.2 would require a pedestrian access route to be provided within sidewalks and other pedestrian circulation paths located in the public right-of-way. The NPRM proposed to define a pedestrian circulation path as a prepared exterior or interior surface provided for pedestrian travel in the public right-of-way. See R105.5. Sidewalks and shared use paths are types of pedestrian circulation paths. As revised by the SNPRM, the term ''pedestrian circulation paths'' in R204.2 includes sidewalks and shared use paths.

R302.3 Continuous Width

The SNPRM would revise R302.3 to read as follows:

R302.3 Continuous Width. Except as provided in R302.3.1 and R302.3.2, the continuous clear width of pedestrian access routes shall be 1.2 m (4.0 ft) minimum, exclusive of the width of the curb.

R302.3.1 Medians and Pedestrian Refuge Islands. The clear width of pedestrian access routes within medians and pedestrian refuge islands shall be 1.5 m (5.0 ft) minimum.

R302.3.2 Shared Use Paths. A pedestrian access route shall be provided for the full width of a shared use path.

As proposed in the NPRM, R302.3 would require pedestrian access routes to be 4 feet wide minimum, except R302.3.1 would require pedestrian access routes within medians and pedestrian refuge islands to be 5 feet wide minimum to allow for passing space.

The SNPRM would add a new provision at R302.3.2 that would require a pedestrian access route to be provided for the full width of a shared use path since shared use paths are typically two-directional and path users travel in each direction on the right hand side of the path, except to pass. The AASHTO Guide recommends that two-directional shared use paths should be 10 feet wide minimum. Where shared use paths are anticipated to serve a high percentage of pedestrians and high user volumes, the AASHTO Guide recommends that the paths should be 11 to 14 feet wide to enable a bicyclist to pass another path user travelling in the same direction, at the same time a path user is approaching from the opposite direction. In certain very rare circumstances, the AASHTO Guide permits the width of shared use paths to

[1] The FHWA defines a shared use path as a multi-use trail or path physically separated from motorized vehicular traffic by an open space or barrier, either within the highway right-of-way or within an independent right of way, and usable for transportation purposes. The FHWA definition of shared use path is available at: *http://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_guidance/freeways.cfm.*

[2] For example, the Washington State Department of Transportation Design Manual (July 2012) defines a shared use path as a facility physically separated from motorized vehicular traffic within the highway right-of-way or on an exclusive right-of-way with minimal cross flow by motor vehicles. The Washington State Department of Transportation Design Manual is available at: *http://www.wsdot.wa.gov/Publications/Manuals/M22–01.htm.*

be reduced to 8 feet. See AASHTO Guide, 5.2.1 Width and Clearance.

R302.5 Grade

The SNPRM would revise R302.5 to read as follows:

R302.5 Grade. The grade of pedestrian access routes shall comply with R302.5.

R302.5.1 Within Street or Highway Right-of-Way. Except as provided in R302.5.3, where pedestrian access routes are contained within a street or highway right-of-way, the grade of pedestrian access routes shall not exceed the general grade established for the adjacent street or highway.

R302.5.2 Not Within Street or Highway Right-of-Way. Where pedestrian access routes are not contained within a street or highway right-of-way, the grade of pedestrian access routes shall be 5 percent maximum.

R302.5.3 Within Pedestrian Street Crossings. Where pedestrian access routes are contained within a pedestrian street crossing, the grade of pedestrian access routes shall be 5 percent maximum.

R302.5.4 Physical Constraints. Where compliance with R302.5.1 or R302.5.2 is not practicable due to existing terrain or infrastructure, right-of-way availability, a notable natural feature, or similar existing physical constraints, compliance is required to the extent practicable.

R302.5.5 Regulatory Constraints. Where compliance with R302.5.1 or R302.5.2 is precluded by federal, state, or local laws the purpose of which is to preserve threatened or endangered species; the environment; or archaeological, cultural, historical, or significant natural features, compliance is required to the extent practicable.

As proposed in the NPRM, R302.5 would require the grade of pedestrian access routes contained within a street or highway right-of-way, except at pedestrian street crossings, to not exceed the general grade established for the adjacent street or highway; and the grade of pedestrian access routes not contained within a street or highway right-of-way to be 5 percent maximum. R302.5.1 would require the grade of pedestrian access routes contained within a pedestrian street crossing to be 5 percent maximum.

The SNPRM would renumber R302.5 to include a general provision in R302.5; the specific provision for the grade of pedestrian access routes contained within a street or highway right-of-way in R302.5.1; the specific provision for the grade of pedestrian access routes not contained within a street or highway right-of-way in R302.5.2; and the specific provision for the grade of pedestrian access routes contained within a pedestrian street crossing in R302.5.3.

The SNPRM would add new provisions at R302.5.4 and R302.5.5 that would require compliance with the grade provisions in R302.5.1 or R302.5.2 to the extent practicable where compliance is not practicable due to physical constraints and where compliance is precluded by regulatory constraints. We propose to add these new provisions in response to public comments on the ANPRM, which included draft technical provisions for grade similar to those proposed in the R302.5. The comments noted that physical or regulatory constraints may prevent full compliance with the grade provisions. Physical constraints would include existing terrain or infrastructure, right-of-way availability, a notable natural feature, or similar existing physical constraints. Regulatory constraints would include federal, state, or local laws the purpose of which is to preserve threatened or endangered species; the environment; or archaeological, cultural, historical, or significant natural features.

The proposed provisions are consistent with the AASHTO Guide. The AASHTO Guide recommends that the grade of a shared use path should not exceed 5 percent; but, where the path is adjacent to a roadway with a grade that exceeds 5 percent, the grade of the path should be less than or equal to the roadway grade. The AASHTO Guide notes that grades steeper than 5 percent are undesirable because ascents are difficult for many path users, and the descents can cause some path users to exceed the speeds at which they are competent or comfortable. See AASHTO Guide, 5.2.7 Grade.

R210 Protruding Objects

The SNPRM would revise R210 to read as follows:

R210.1 General. Protruding objects shall comply with the applicable requirements in R210.

R210.2 Pedestrian Circulation Paths Other Than Shared Use Paths. Objects along or overhanging any portion of a pedestrian circulation path other than a shared use path shall comply with R402 and shall not reduce the clear width required for pedestrian access routes.

R210.3 Shared Use Paths. Objects shall not overhang or protrude into any portion of a shared use path at or below 2.4 m (8.0 ft) measured from the finish surface.

As proposed in the NPRM, R210 would require objects along or overhanging any portion of a pedestrian circulation path to comply with the proposed technical provisions for protruding objects in R402 and to not reduce the clear width required for pedestrian access routes.

The SNPRM would renumber R210 to include a general provision in R210.1 and a specific provision for pedestrian circulation paths other than shared use paths in R210.2 that would require objects along or overhanging any portion of the path to comply with the proposed technical provisions for protruding objects in R402 and to not reduce the clear width required for pedestrian access routes, as proposed in the NPRM.

The SNPRM would add a new provision for shared use paths at R210.3 that would prohibit objects from overhanging or protruding into any portion of a shared use path at or below 8 feet measured from the finish surface.

The proposed provision for shared used paths is consistent with the AASHTO Guide. The AASHTO Guide recommends 10 feet vertical clearance along shared use paths, and 8 feet minimum vertical clearance in constrained areas. The AASHTO Guide recommends that fixed objects should not be permitted to protrude within the vertical or horizontal clearance of a shared use path. See AASHTO Guide, 5.2.1 Width and Clearance.

R218 Doors, Doorways, and Gates

The SNPRM would revise R218 to read as follows:

R218 Doors, Doorways, and Gates. Except for shared use paths, doors, doorways, and gates provided at pedestrian facilities shall comply with section 404 of Appendix D to 36 CFR to 36 CFR part 1191.

The SNPRM would not apply the technical provisions for doors, doorways, and gates referenced in R218 to shared use paths to avoid conflicts with the AASHTO Guide. The AASHTO Guide does not recommend the use of gates or other barriers to prevent unauthorized motor vehicle entry to shared use paths because gates and barriers create permanent obstacles to path users. The AASHTO Guide recommends alternative methods to control unauthorized motor vehicle entry to shared use paths, including posting regulatory signs prohibiting motor vehicle entry and targeted surveillance and enforcement. Where there is a documented history of unauthorized entry by motor vehicles despite the use of alternative methods to control such entry, the need for bollards or other vertical barriers may be justified. The AASHTO Guide includes

recommended designs for bollards where justified. The AASHTO Guide recommends the use of one bollard in the center of the shared use path. Where more than one bollard is used, the AASHTO Guide recommends an odd number of posts spaced at 6 feet. The AASHTO Guide does not recommend two posts since they direct opposing path users toward the middle, creating conflict and the possibility of a head-on collision. See AASHTO Guide, 5.3.5 Other Intersection Treatments.

R304 Curb Ramps and Blended Transitions

The SNPRM would revise R304.5.1 to read as follows:

R304.5.1 Width. The width of curb ramps and blended transitions shall comply with 304.5.1.1 or 304.5.1.2, as applicable. If provided, flared sides of curb ramp runs and blended transitions shall be located outside the width of the curb ramp run or blended transition.

R304.5.1.1 Pedestrian Circulation Paths Other Than Shared Use Paths. In pedestrian circulation paths other than shared use paths, the clear width of curb ramp runs, blended transitions, and turning spaces shall be 1.2 m (4.0 ft) minimum.

R304.5.1.2 Shared Use Paths. In shared use paths, the width of curb ramps runs and blended transitions shall be equal to the width of the shared use path.

As proposed in the NPRM, R304.5.1 would require the clear width of curb ramp runs (excluding flared sides), blended transitions, and turning spaces to be 4 feet minimum.

The SNPRM would renumber R304.5.1 to include a general provision in R304.5.1 that would clarify that if flared sides are provided at curb ramps and blended transitions, the flared sides are to be located outside the width of the curb ramp run or blended transition; and a specific provision for pedestrian circulation paths other than shared use paths in R304.5.1.1 that would require the clear width of curb ramp runs, blended transitions, and turning spaces to be 4 feet minimum, as proposed in the NPRM.

The SNPRM would add a new provision for shared use paths at R304.5.1.2 that would require the width of curb ramps runs and blended transitions to be equal to the width of the shared use path.

The proposed provision for shared used paths is consistent with the AASHTO Guide. The AASHTO Guide recommends that where curb ramps are provided on shared use paths, the curb ramps should extend the full width of the path, not including any flared sides. See AASHTO Guide, 5.3.5 Other Intersection Treatments.

4. Comparison of Proposed Technical Provisions Applicable to Shared Use Paths and AASHTO Guide

The proposed technical provisions applicable to shared used paths in the proposed accessibility guidelines for pedestrian facilities in the public right-of-way, as supplemented by the SNPRM, and the design criteria for shared use paths in the AASHTO Guide are compared in the table below.

Proposed accessibility guidelines for pedestrian facilities in the public right-of-way Proposed technical provisions applicable to shared use paths	AASHTO Guide for the development of bicycle facilities (2012) Chapter 5: design of shared use paths
R302.3.2 Shared Use Paths. A pedestrian access route shall be provided for the full width of a shared use path.	*5.2.1 Width and Clearance* The minimum paved width for a two-directional shared use path is 10 ft (3.0 m). * * * In very rare circumstances, a reduced width of 8 ft (2.4 m) may be used. * * * Wider pathways, 11 to 14 ft (3.4 to 4.2 m) are recommended in locations that are anticipated to serve a high percentage of pedestrians (30 percent or more of the total pathway volume) and higher user volumes (more than 300 total users in the peak hour).
R302.5 Grade. The grade of pedestrian access routes shall comply with R302.5. *R302.5.1 Within Street or Highway Right-of-Way.* Except as provided in R302.5.3, where pedestrian access routes are contained within a street or highway right-of-way, the grade of pedestrian access routes shall not exceed the general grade established for the adjacent street or highway. *R302.5.2 Not Within Street or Highway Right-of-Way.* Where pedestrian access routes are not contained within a street or highway right-of-way, the grade of pedestrian access routes shall be 5 percent maximum. *R302.5.3 Within Pedestrian Street Crossings.* Where pedestrian access routes are contained within a pedestrian street crossing, the grade of pedestrian access routes shall be 5 percent maximum. *R302.5.4 Physical Constraints.* Where compliance with R302.5.1 or R302.5.2 is not practicable due to existing terrain or infrastructure, right-of-way availability, a notable natural feature, or similar existing physical constraints, compliance is required to the extent practicable. *R302.5.5 Regulatory Constraints.* Where compliance with 302.5.1 or 302.5.2 is precluded by federal, state, or local laws the purpose of which is to preserve threatened or endangered species; the environment; or archaeological, cultural, historical, or significant natural features, compliance is required to the extent practicable.	*5.2.7 Grade* The maximum grade of a shared use path adjacent to a roadway should be 5 percent, but the grade should generally match the grade of the adjacent roadway. Where a shared use path runs along a roadway with a grade that exceeds 5 percent, the sidepath grade may exceed 5 percent but must be less than or equal to the roadway grade. Grades on shared use paths in independent rights-of-way should be kept to a minimum. Grades steeper than 5 percent are undesirable because the ascents are difficult for many path users, and the descents can cause some users to exceed the speeds at which they are competent or comfortable. * * * Grades on paths in independent rights-of-way should also be limited to 5 percent maximum.
R302.6 Cross Slope. Except as provided in R302.6.1 and R302.6.2, the cross slope of pedestrian access routes shall be 2 percent maximum. *R302.6.1 Pedestrian Street Crossings Without Yield or Stop Control.* Where pedestrian access routes are contained within pedestrian street crossings without yield or stop control, the cross slope of the pedestrian access route shall be 5 percent maximum.	*5.2.5 Cross Slope* As described in the previous section, 1 percent cross slopes are recommended on shared use paths, to better accommodate people with disabilities and to provide enough slope to convey surface drainage in most situations.

Proposed accessibility guidelines for pedestrian facilities in the public right-of-way Proposed technical provisions applicable to shared use paths	AASHTO Guide for the development of bicycle facilities (2012) Chapter 5: design of shared use paths
R302.6.2 Midblock Pedestrian Street Crossings. Where pedestrian access routes are contained within midblock pedestrian street crossings, the cross slope of the pedestrian access route shall be permitted to equal the street or highway grade.	
R302.7 Surfaces. The surfaces of pedestrian access routes and elements and spaces required to comply with R302.7 that connect to pedestrian access routes shall be firm, stable, and slip resistant and shall comply with R302.7.	*5.2.9 Surface Structure* Hard, all-weather pavement surfaces are generally preferred over those of crushed aggregate, sand, clay, or stabilized earth.* * * Unpaved surfaces may be appropriate on rural paths, where the intended use of the path is primarily recreational, or as a temporary measure to open a path before funding is available for paving. Unpaved pathways should be constructed of materials that are firm and stable. * * * It is important to construct and maintain a smooth riding surface on shared use paths.* * * Utility covers (i.e., manholes) and bicycle-compatible drainage grates should be flush with the surface of the pavement on all sides.* * * Railroad crossings should be smooth and should be designed at an angle between 60 and 90 degrees to the direction of travel to minimize the possibility of falls.
R302.7.1 Vertical Alignment. Vertical alignment shall be generally planar within pedestrian access routes (including curb ramp runs, blended transitions, turning spaces, and gutter areas within pedestrian access routes) and surfaces at other elements and spaces required to comply with R302.7 that connect to pedestrian access routes. Grade breaks shall be flush. Where pedestrian access routes cross rails at grade, the pedestrian access route surface shall be level and flush with the top of rail at the outer edges of the rails, and the surface between the rails shall be aligned with the top of rail.	
R302.7.2 Vertical Surface Discontinuities. Vertical surface discontinuities shall be 13 mm (0.5 in) maximum. Vertical surface discontinuities between 6.4 mm (0.25 in) and 13 mm (0.5 in) shall be beveled with a slope not steeper than 50 percent. The bevel shall be applied across the entire vertical surface discontinuity.	
R302.7.3 Horizontal Openings. Horizontal openings in gratings and joints shall not permit passage of a sphere more than 13 mm (0.5 in) in diameter. Elongated openings in gratings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.	
R302.7.4 Flangeway Gaps. Flangeway gaps at pedestrian at-grade rail crossings shall be 64 mm (2.5 in) maximum on non-freight rail track and 75 mm (3 in) maximum on freight rail track.	
R210.3 Shared Use Paths. Objects shall not overhang or protrude into any portion of a shared use path at or below 2.4 m (8.0 ft) measured from the finish surface.	*5.2.1 Width and Clearance* The desirable vertical clearance to obstructions is 10 ft (3.0 m). Fixed objects should not be permitted to protrude within the vertical or horizontal clearance of a shared use path. The recommended minimum vertical clearance that can be used in constrained areas is 8 ft (2.4 m).
R304.5.1.2 Shared Use Paths. In shared use paths, the width of curb ramps runs and blended transitions shall be equal to the width of the shared use path.	*5.3.5 Other Intersection Treatments* The opening of a shared use path at the roadway should be at least the same width as the shared use path itself. If a curb ramp is provided, the ramp should be the full width of the path, not including any flared sides if utilized.* * * Detectable warnings should be placed across the full width of the ramp.
R305.1.4 Size. Detectable warning surfaces shall extend 610 mm (2.0 ft) minimum in the direction of pedestrian travel. At curb ramps and blended transitions, detectable warning surfaces shall extend the full width of the ramp run (excluding any flared sides).	

5. Conflicts Between Shared Path Users

Public comments submitted in response to the ANPRM expressed concern about the risk of collisions between pedestrians who are blind or have low vision and bicyclists who pass them too closely at fast speeds, and at intersections where a shared use path crosses another shared use path or a sidewalk. According to the AASHTO Guide, the 85th percentile speed for recreational bicyclists is 18 miles per hour. See AASHTO Guide, 5.2.4 Design Speed. The comments noted that bicycles are relatively quiet and pedestrians who are blind or have low vision may not be aware when bicyclists are approaching and passing them or crossing their path at intersections. Pedestrians with other disabilities may also have limited awareness of approaching bicyclists. For example, individuals who are deaf or hard of hearing may not be aware of a bicycle approaching from behind even when riders indicate their presence audibly. Individuals with limited mobility who may be alert to bicyclists may find it difficult to move aside in time to avoid collision. The comments recommended that traffic on shared use paths be regulated and strictly enforced in order to protect pedestrians. For example, a comment stated that bicyclists should be required to always yield to pedestrians. The comments also recommended design solutions to avoid conflicts between users, including separate pathways for pedestrians and bicyclists; and detectable warning surfaces at intersections where a shared use path crosses another shared use path or a sidewalk. These design solutions are discussed below.

Separate Pathways for Pedestrians and Bicyclists

An organization representing individuals who are blind and have low-vision stated that ''all shared use paths present an unacceptable safety risk to blind or visually impaired pedestrians unless there is a clear separation between pedestrians and other motorized and non-motorized vehicles including bicyclists.'' The comments noted that path users cannot be expected to always follow the ''rules of the road'' and suggested that if paths cannot be physically separated that lanes for pedestrians and other users should be marked tactilely. An organization of educators and rehabilitation professionals who work with individuals who are blind suggested that blind pedestrians may have considerable difficulty maintaining the course, particularly on two-

directional shared use paths where all users are expected to travel on the right hand side of the path in each direction and bicyclists pass pedestrians and slower moving path users on their left hand side. In addition to the recommendation to physically separate pedestrians and bicyclists, the comments suggested that it may be necessary to separate the two directions of travel within each pathway, particularly on busy paths. The comments, however, acknowledged that determining what volume of users should require two-directional separation would be a challenge.

The AASHTO Guide makes a number of recommendations to minimize conflicts between pedestrians and bicyclists. These recommendations include required sight triangles to ensure that bicyclists have the needed yielding distance to avoid conflicts, and additional width around horizontal curves to allow safe distance between users. See AASHTO 5.2.8, Stopping Sight Distance. The AAHSTO Guide also recommends use of a centerline stripe within a path to provide directional separation and to indicate when passing is permitted. For paths with ''extremely heavy volume'', the AASHTO Guide recommends two alternatives for segregation of pedestrians and bicyclists. The first option is to provide separate lanes within a single path; pedestrians have a bidirectional lane and bicyclists have two one-directional lanes. Such separation is not recommended unless a minimum path width of 15 feet can be provided (10 feet for bicycles and 5 feet for pedestrians). A second alternative is to physically separate user groups, particularly where the pathway volume is ''extremely heavy'' and where sites and settings, such as one that constricts the path width, necessitate divergent pathways. Physically separated pathways also are recommended where the origins and destinations of pedestrians and bicyclists differ. The AAHSTO Guide notes that both alternatives (lane separation and physical separation) may not be effective unless the volume of bicycle traffic is sufficient to discourage pedestrians from encroaching into the bicycle lanes and that these solutions will not necessarily be needed for the full length of a shared use path. See AASHTO Guide, 5.2.1 Width and Clearance.

We agree with the comments that physical separation between pedestrians and other users would likely render shared use paths safer for, and more accessible to, individuals with disabilities and others. However, the AASHTO Guide does not recommend physical separation of user groups unless the traffic volume or other considerations make separate pathways necessary. The AASHTO Guide provides little guidance regarding methods for determining the point at which traffic volume or other considerations would justify separation of the pathways. In the absence of any data on which to base such a requirement, we are not proposing to require physically separated pathways for pedestrians and bicyclists. The impact of such a requirement if applied to the full length of all shared use paths would likely result in many not being constructed due to the increased costs associated with more land and the need to engineer and construct two pathways instead of one.

The comments suggested that enhanced signage and warnings, including audible signs and tactile pavement markings would improve the ability of blind pedestrians to remain within their lanes. In Great Britain, tactile pavement markings are used to indicate bicycle and pedestrian lanes. A ladder pattern is used to indicate the start and end of the pedestrian lane; a tramline pattern is used to indicate the start and end of the bicycle lane; and a tactile dividing line is used to indicate the separation between the lanes.[3] At least one U.S. manufacturer makes tactile pavement markings for shared use paths. We request comments on whether tactile pavement markings have been used on any shared use paths in the U.S. and the experience with such markings. We also request comments on other design solutions to reduce potential conflicts between pedestrians who are blind or have low vision and bicyclists. Comments should include factors that would make such solutions necessary.

We are considering including an advisory section in the final accessibility guidelines on separate pathways for pedestrians and bicyclists. Advisory sections are not mandatory requirements but provide guidance for entities who want to exceed the minimum requirements for accessible design. We request comments on information to include in the advisory section.

Detectable Warning Surfaces at Shared Use Path Intersections

Detectable warning surfaces consist of small truncated domes that are integral to a walking surface and that are detectable underfoot. The proposed accessibility guidelines for pedestrian facilities in the public right-of-way would require the use of detectable warning surfaces to indicate the boundary between a pedestrian route and a vehicular route where there is a curb ramp or blended transition; and the boundary of passenger boarding platforms at transit stops for buses and rail vehicles and at passenger boarding and alighting areas at sidewalk or street level transit stops for rail vehicles. See R208 and R305.

Because pedestrians who are blind would not be aware of bicyclists approaching from the left or right hand side at intersections, we are considering including a requirement in the final accessibility guidelines to provide detectable warning surfaces where a shared use path intersects another shared use path or a sidewalk to indicate the boundaries where bicyclists may be crossing the intersection. The edge of the detectable warning surface would be installed between 6 inches minimum and 12 inches maximum from the edge of the intersecting segments of the shared use paths and sidewalks. The detectable warning surface would extend 2 feet minimum in the direction of pedestrian travel and the full width of the intersecting segments. We request comments on this issue.

6. Regulatory Analyses

We prepared a preliminary regulatory assessment discussing the cost and benefits of the proposed accessibility guidelines for pedestrian facilities in the public right-of-way and an initial regulatory flexibility analysis of the impacts on small governmental jurisdictions with a population of less than 50,000 when the NPRM was issued. These regulatory analyses are available on our Web site at: *http://www.access-board.gov/prowac/.*

There is no database available on the number of shared use paths in the United States. AASHTO surveyed five state transportation departments when preparing comments on the ANPRM. The responding departments reported approximately 1,500 to 3,000 miles of existing shared use paths in their states. The Alliance for Biking and Walking surveyed more than 50 large cities about

[3] Department of Transport, ''Tactile Markings for Segregated Shared Use by Cyclists and Pedestrians'' [available at: *http://www.ukroads.org/webfiles/TAL%204–90%20Tactile%20Markings%20for%20Segregated%20Shared%20Use.pdf*]; Department for Transport, ''Guidance on the Use of Tactile Paving Surfaces, ''Chapter 5—Segregated Shared Cycle Track/Footway Surface and Central Delineator Strip [available at: *http://www.dft.gov.uk/publications/guidance-on-the-use-of-tactile-paving-surfaces/*]; and Department of Transport,'' Shared Use Routes for Pedestrians and Cyclists,'' Chapter 6—General Design Considerations, 6.18 and 6.19 [available at: *http://assets.dft.gov.uk/publications/ltn-01–12/shared-use-routes-for-pedestrians-and-cyclists.pdf*].

their bicycle and pedestrian facilities.[4] The average number of miles of existing shared use paths per city was 70 miles, and ranged from 3.1 miles in Milwaukee to 328 miles in New York City. The cities used federal funds to construct many of the shared use paths.

As discussed above, the proposed technical provisions applicable to shared use paths are consistent with the AASHTO Guide. State and local government entities that design and construct shared use paths generally use the AASHTO Guide. The SNPRM is not expected to increase the costs of constructing shared use paths for state and local government entities that use the AASHTO Guide.

We request comments on the following to assess the impacts of the SNPRM:

- The extent to which the AASHTO Guide, or other design guides and standards are used for shared use paths.
- Whether any of the proposed provisions applicable to shared use paths would result in additional costs for design work, materials, earthmoving, retaining structures, or other items compared to construction practices or design guides and standards currently used? Commenters are encouraged to identify the specific provisions that would result in additional costs and estimate the additional costs on a per mile basis to the extent possible.
- Whether any of the proposed provisions applicable to shared use paths would result in any additional costs, such as maintenance and operational costs, compared to current practices? Commenters are encouraged to identify the specific provisions that would result in additional costs and estimate the additional costs on a per mile basis to the extent possible.
- What are the benefits of the proposed provisions applicable to shared use paths?

List of Subjects in 36 CFR Part 1190

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Susan Brita,

Chair.

[FR Doc. 2013–03298 Filed 2–12–13; 8:45 am]

BILLING CODE 8150–01–P

[4] Alliance for Biking and Walking, ''Bicycling and Walking in the United States 2012 Benchmarking Report.''

The report is available at: *http://www.peoplepoweredmovement.org/site/.*

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO15

Use of Medicare Procedures To Enter Into Provider Agreements for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend the medical regulations of the Department of Veterans Affairs (VA) to allow VA to use Medicare or State procedures to enter into provider agreements to obtain extended care services from non-VA providers. In addition, this rulemaking proposes to include home health care, palliative care, and noninstitutional hospice care services as extended care services, when provided as an alternative to nursing home care. Under this proposed rule, VA would be able to obtain extended care services for veterans from providers who are closer to veterans' homes and communities.

DATES: Comments must be received by VA on or before March 15, 2013.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO15, Use of Medicare Procedures to Enter Into Provider Agreements for Extended Care Services.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel Schoeps, Office of Geriatrics and Extended Care (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–6763. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Subsection (a) of 38 U.S.C. 1710B authorizes VA to provide extended care services to eligible veterans, including geriatric evaluation, nursing home care, domiciliary services, and adult day health care. Subsection (a) of 38 U.S.C. 1720 authorizes VA to pay for the nursing home care in non-VA facilities of eligible veterans and eligible members of the Armed Forces. Section 1720(f) authorizes VA to furnish (in VA and non-VA facilities) adult day health care to enrolled veterans who would otherwise need nursing home care. Contracts between VA and these non-VA facilities are currently negotiated under Federal contract statutes and regulations (including the Federal Acquisition Regulation, which is set forth at 48 CFR chapter 1; and VA Acquisition Regulations, which are set forth at 48 CFR chapter 8).

We propose to establish a new 38 CFR 17.75, which would implement VA's authority to use Medicare procedures to enter into provider agreements. Section 105 of the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003 (Pub. L. 108–170) amended section 1720 to authorize VA to use these procedures. This amendment, which is codified at 38 U.S.C. 1720(c)(1), authorizes VA to enter into agreements with providers of nursing home care, adult day health care, and other community-based extended care services under ''the procedures available for entering into provider agreements under section 1866(a) of the Social Security Act.'' Section 1866(a) (codified at 42 U.S.C. 1395cc(a)) authorizes the Department of Health and Human Services to enter into agreements with participating Medicare providers, and specifies the terms of those agreements.

The plain language of 38 U.S.C. 1720(c)(1)(B) authorizes VA, in its discretion, to furnish extended care services through non-VA providers using the above-described noncontractual mechanism. Moreover, the legislative history of Public Law 108–170 further shows that its purpose was to improve VA's ability to furnish eligible veterans with extended care services of non-VA providers by using a noncontractual mechanism. A Senate committee report explains that Medicare procedures are simpler and less burdensome than VA contracting procedures. The report includes the following discussion of this provision:

> Under current law, VA is authorized to enter into contractual arrangements with private providers of extended care services to serve the needs of veterans. Federal reporting requirements relating to the demographics of contractor employees and applicants are required to be submitted to the Department of Labor under these contractual arrangements. The Committee has learned that, due to these reporting requirements,

many small providers of extended care services are unable, or they are unwilling, to admit VA patients. Many such providers have apparently concluded that reimbursement from VA for caring for one or two veterans is not worth the cost of compiling and reporting the data required by general Federal contract law.

The Social Security Act allows the Centers for Medicare and Medicaid Services (hereinafter, ''CMS'') to enter into provider agreements for the provision of care to both Medicare and Medicaid beneficiaries. Such agreements require that contractors comply with Federal laws concerning hiring practices. But they do not require that providers prepare reports of such compliance. Nor do they subject providers to annual audits like most Federal contracts do. Not surprisingly, CMS is more successful than VA in inducing smaller providers to provide care to its beneficiaries.

Section 102 of the Committee bill places VA contractors in a similar position as CMS contractors with respect to Federal reporting requirements. By this action, the Committee seeks to encourage VA to bring care closer to veterans' homes and community support structures by contracting with small community-based providers. Even so, however, the Committee fully anticipates and expects that VA will require compliance with all applicable Federal laws concerning employment and hiring practices.

S. Rep. No. 108–193, at 6 (2003), as reprinted in 2003 U.S.C.C.A.N. 1783, 1788. To clarify the above quotation, the Social Security Act allows for the Centers for Medicare and Medicaid Services (CMS) to enter into provider agreements with Medicare providers only. States, not CMS, enter into provider agreements with Medicaid providers. Medicare agreements enable a provider to bill and receive reimbursement for Medicare-covered services furnished by the provider. The terms of those agreements often concern the kind and quality of care to be provided. Although those CMS and State agreements do not involve the provision of care, Congress specifically authorized VA to use provider agreements under 38 U.S.C. 1720(c)(1)(B) ''for furnishing'' care. Accordingly, we propose to establish a VA regulation regarding use of provider agreements. We believe that by using these agreements, VA would be able to obtain services from providers who are closer to veterans' homes and community support structures.

Proposed § 17.75(a) would define ''[e]xtended care services'' as ''geriatric evaluation; nursing home care; domiciliary services; adult day health care; noninstitutional palliative care, noninstitutional hospice care, and home health care when they are noninstitutional alternatives to nursing home care; and respite care.'' The proposed definition is derived from 38 U.S.C. 1710B(a), which requires VA to ''operate and maintain a program to provide extended care services,'' and requires that such extended care services include geriatric evaluation, nursing home care, domiciliary services, adult day health care, respite care, and ''[s]uch other noninstitutional alternatives to nursing home care as the Secretary may furnish as medical services under [38 U.S.C. 1701(10)].'' 38 U.S.C. 1710B(a)(1)–(6).

We propose to include home health care in the definition of ''[e]xtended care services'' as a noninstitutional alternative to nursing home care because in many circumstances it would be a noninstitutional alternative to nursing home care. For example, a veteran applying for nursing home care would receive a person-centered assessment by a VA health care team. The team, working with the veteran and caregiver, would explore care needs and how these needs could be met. In this process, they may decide that a combination of skilled nursing, home health aide, and respite services would meet the veteran's needs and allow the veteran to remain at home. In this case, home health services would avert a nursing home placement. We also propose to include noninstitutional palliative and noninstitutional hospice care in the definition because they would always be alternatives to nursing home care.

We understand that Medicare and States do not necessarily enter into provider agreements for all the services listed under the proposed definition for ''extended care services.'' We are proposing only to enter into provider agreements with providers that do have a Medicare or State provider agreement for the services listed in this proposed rule as ''extended care services.'' VA would continue to use contracts and other mechanisms to ensure that veterans receive needed health care services for which they are eligible, but for which there is no available provider agreement. Additionally, many States enter into provider agreements for a broader array of services than those listed in this proposed rule. We do not intend to enter into agreements that would expand beyond the scope of those services specifically listed in the proposed definition of extended care services.

Including home health care, noninstitutional palliative care, and noninstitutional hospice care in the definition of extended care services would not require VA to consider these services as extended care services for purposes of determining whether a copayment is required. Noninstitutional hospice care is exempt from both outpatient and extended care copayments. 38 U.S.C. 1710(g)(1), 1710B(c)(2)(B). Noninstitutional palliative care is a form of home health care, and the law currently requires VA to charge the outpatient copayment for home health care. 38 U.S.C. 1710(g)(1).

As noted above, under 38 U.S.C. 1710B(a)(5), VA is required to ''operate and maintain a program to provide extended care services'' that includes ''[s]uch * * * noninstitutional alternatives to nursing home care as the Secretary may furnish as medical services under [38 U.S.C. 1701(10)]''. 38 U.S.C. 1710B(a)(5). However, section 1701 no longer contains a subsection (10).

Prior to enactment of section 801 of Public Law 110–387, 38 U.S.C. 1701(10) defined medical services to include noninstitutional extended care services provided through December 31, 2008, and defined such services as follows: ''[T]he term 'noninstitutional extended care services' means such alternatives to institutional extended care which [VA] may furnish (i) directly, (ii) by contract, or (iii) (through provision of case management) by another provider or payer.'' See 38 U.S.C. 1710(10) (2008). With the enactment of Public Law 110–387 in 2008, section 1701 was amended to essentially move subsection (10) to subsection (6)(E) of section 1701 which provides that medical services include ''[n]oninstitutional extended care services, including alternatives to institutional extended care that [VA] may furnish directly, by contract, or through provision of case management by another provider or payer.'' Public Law 110–387, title VIII, § 801 (Oct. 10, 2008). Thus, the language of former subsection (10) and current subsection (6)(E) is virtually identical, except that subsection (6)(E) does not contain the 2008 sunset provision. We therefore believe that the reference to section 1701(10) in 38 U.S.C. 1710B(a)(5) must now be read as a reference to section 1701(6)(E).

Consistent with section 1720(c)(1), we would define ''[p]rovider'' in § 17.75(a) to mean any non-VA entity that provides extended care services and is participating in Medicare under title XVIII of the Social Security Act or a State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) pursuant to a valid provider agreement. This could include physicians and other providers who provide extended care services to veterans in non-VA nursing homes.

In proposed paragraph (b), we would implement VA's authority under section 1720(c)(1) to obtain extended care

services from non-VA providers, and would set forth the conditions under which such services may be obtained. Paragraph (b)(1) would prescribe that VA may enter into provider agreements for extended care services with non-VA providers who have a Medicare provider agreement with CMS. Paragraph (b)(2) would prescribe that VA may also enter into provider agreements for extended care services with non-VA providers who do not have a Medicare provider agreement with CMS if the provider is participating in a State Medicaid plan. Section 1720(c)(1) clearly authorizes VA to enter into provider agreements with non-VA providers of extended care services that participate in the Medicare program or a State Medicaid plan. A number of States enter into provider agreements related to services not otherwise covered by Medicare. For example, States often enter into provider agreements with Medicaid adult day health care providers, which are not eligible for similar agreements under Medicare.

Proposed paragraph (c)(1) would establish the procedure that VA would use to notify a provider of the agreement that VA proposes to use to obtain extended care services from the provider. The Director of the VA medical center of jurisdiction would provide written notification identifying the applicable Medicare or State Medicaid provider agreement to be used and the changes and additional terms that would apply to the agreement with VA, and would request written acceptance of the agreement from the provider. This documentation would serve as a record for both VA and the provider that an agreement is in place and of the parties' acceptance of all the terms of the adopted agreement. Therefore, VA would not attempt to obtain services under a provider agreement from the provider until after the provider's acceptance is received. For providers with both Medicare and State Medicaid agreements, the letter would clarify which of the two provider agreements would be used as the basis for VA's provider agreement.

Paragraph (c)(2) would establish that the terms and rates of a provider's agreement with VA would be the same as the terms and rates of the provider's separate Medicare provider agreement with CMS or agreement under a State Medicaid plan, or, if a provider has agreements with both Medicare and under a State Medicaid plan, the terms and rates would be the same as the agreement with the highest rates. VA's payment under the agreement with the highest rates would serve as an incentive to encourage providers to enter into agreements with VA for the care of veterans. We interpret VA's authority under section 1720(c)(1)(B) to use Medicare procedures as also authorizing the use of rates established under the appropriate Medicare fee schedule or payment system because there are no procedures for rate negotiation in obtaining Medicare provider agreements.

Although a provider's agreement with VA would generally contain the same terms as the provider's separate Medicare provider agreement or agreement under a State Medicaid plan, VA would need unique terms for purposes of identifying VA as the Government agency entering into the agreement with the provider and paying for the provider's services for veterans. Since the purpose of this proposed rule is to address the needs of specific veterans or groups of veterans based upon location and the availability of VA resources, VA might also need unique agreement terms to limit the scope of the agreement consistent with VA's authority under section 1720(c)(1)(B). Accordingly, proposed paragraph (c)(3) would clarify that a provider's agreement with VA will not be the same as the provider's agreement with CMS under Medicare or under a State Medicaid plan to the extent that the provider's agreement with VA will identify VA as the Government agency entering into the agreement and specify that the provider's services are for specific veterans or groups of veterans. It would also make clear that the provider's agreement with VA would be administered by VA according to the procedures in this proposed rule and not under the rules applicable to the administration of Medicare provider agreements with CMS or agreements under a State Medicaid plan. In all other respects, VA intends that a provider's agreement with VA will be the same as the provider's Medicare provider agreement with CMS or under a State Medicaid plan.

Proposed paragraph (d) would delegate to the Director of the VA medical center of jurisdiction (or a designee) the authority to enter into an agreement under the proposed rule. Under paragraph (d)(1), we would also establish that the criteria for whether to enter into an agreement under this section will be based on the needs of local veterans and the ability of VA to provide for those needs. For example, where VA does not provide equivalent care in a particular locality, or where providing VA care would be more expensive than providing care through a non-VA provider, VA would enter into agreements under this section. Similarly, if resources permit, wherever possible VA would enter into an agreement with a provider selected by the veteran. This is consistent with the purpose of section 1720(c)(1)(B), which is to help veterans receive the care that they require from providers in their own communities, as well as to improve the efficiency of care delivery from an economic perspective. However, we do not interpret section 1720(c)(1) as creating any right to care pursuant to a provider agreement or any right to enter into a provider agreement with VA. We interpret the statute as authorizing care pursuant to an agreement when a Director, based upon medical judgment and evaluation of available resources, determines that an agreement is in the best interest of the veteran under the Director's care.

Under proposed paragraph (d)(2), VA would empower the veteran to select his or her preferred provider, should more than one provider exist within a given region, subject to the provider's determination to accept the veteran, clinical appropriateness and available resources at the VA medical center of jurisdiction. VA understands the significance of placing such an important life decision in the hands of the veteran and would only intervene if a provider was not able to provide the care clinically required by the veteran, or the VA medical center of jurisdiction is simply unable to accommodate the veteran's selection due to limited resources. Foreseeable strains on resources that might prevent VA from accommodating a veteran's request could include whether the veteran has special needs that can be addressed by resources in that region or whether VA has sufficient staff to monitor the veteran in a particular facility due to the facility being remote or because VA is monitoring several veterans at another facility that is distant from the veteran's preferred provider. The decision to approve or deny a particular provider for an agreement with VA would be made by the Director (or designee) according to the criteria prescribed in paragraphs (d)(2)(A), (B), and (C).

Proposed paragraph (d)(3) would establish that the factual determination of whether a provider is eligible to enter into an agreement with VA to provide extended care services for veterans will be made based on evidence of an existing Medicare provider agreement or agreement under a State Medicaid plan as verified through Web sites maintained by CMS or the appropriate State office.

Proposed paragraph (e) would govern termination of a VA provider agreement. Under paragraph (e)(1), we would allow

a provider to voluntarily terminate an agreement but we would require the provider to notify VA at least 15 days in advance of the planned termination and provide the intended date of termination. The 15-day requirement would provide VA with a reasonable amount of time to secure alternative arrangements for affected veterans. VA would require 15 days to find an arrangement that is suitable for the veteran and provides a potential for long-term care. We determined that a notice of termination period of less than 15 days would likely require an unsatisfactory short-term solution. Such a solution might require multiple relocations of, or multiple caregiver changes for, an affected veteran in order to meet their immediate health care needs. We have determined that the 15-day notice requirement would allow VA to protect veterans from the physical, mental, and emotional health risks caused by multiple changes in their care plan and/or living arrangement.

Proposed paragraph (e)(2) would set forth when VA may terminate an agreement. VA would also be required to give providers at least 15 days notice before terminating an agreement. If, however, VA finds that the health of the veteran is in immediate jeopardy, VA would be authorized to terminate the agreement with only 2 days notice. The termination of the agreement should not be confused with VA's ability to physically remove the veteran from a dangerous situation, which can be done as soon as necessary in order to protect the health of the veteran. Proposed paragraph (e)(2) thus would assert VA's right to remove a veteran from a dangerous situation prior to terminating the applicable provider agreement.

Proposed paragraph (f) would establish procedures for appeal of a Director's decision not to enter into a VA provider agreement or to terminate an agreement. A provider may appeal a decision issued by the Director by filing a written request for review with the Chief Consultant, Office of Geriatrics and Extended Care. An appeal must be filed in writing within 90 days after the date of the Director's decision. The Chief Consultant would provide written notice of the determination, which would constitute the final agency decision regarding eligibility for or termination of a VA provider agreement. The notice would explain why the decision is appropriate.

Proposed paragraph (g) would state that providers need not comply with the Service Contract Act of 1965 (set forth at 41 U.S.C. 351, et seq.). This is the law referred to in the legislative history that requires contractors to report to the Department of Labor. While this Act applies to contracts entered into by the United States for services through the use of service employees, it does not apply to Medicare providers because they do not enter into contracts with the United States—Medicare provider agreements with CMS are used instead of contracts. However, proposed paragraph (g) would require that providers comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act. This is consistent with the legislative history set forth above.

We would rescind all conflicting internal VA guidance that could be interpreted as providing an alternate benefit pertaining to extended care services. Specifically, we would rescind Veterans Health Administration (VHA) Handbooks 1143.2, ''VHA Community Nursing Home Oversight Procedures''; 1140.6, ''Purchased Home Health Care Services Procedures''; and 1140.5, ''Community Hospice Care: Referral and Purchase Procedures''; and VHA Manual M–5 Part III, Chapter 6, pertaining to Community Residential Care. This policy guidance would be reissued in connection with the final rule.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined to be a significant regulatory action under the Executive Order.

Comment Period

Although under the rulemaking guidelines in Executive Order 12866, VA ordinarily provides a 60-day comment period, the Secretary has determined that there is good cause to limit the public comment period on this proposed rule to 30 days. VA does not expect to receive a large number of comments on this proposed rule, particularly comments that are negative or that oppose this rule, because it would increase the opportunity for veterans to obtain non-VA extended care services from local providers that furnish vital and often life-sustaining medical services. Accordingly, VA has provided that comments must be received within 30 days of publication in the **Federal Register**.

Paperwork Reduction Act

The proposed rule does not contain any collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would not have a significant economic impact on any small entities because such entities would obtain only an insignificant

portion of their business from VA. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles affected by this rulemaking are 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on February 5, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: February 6, 2013.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR Part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Add an undesignated center heading and § 17.75 immediately after § 17.74 to read as follows:

Agreements for Extended Care Services

§ 17.75 Agreements for extended care services.

(a) *Definitions.* For purposes of this section:

Extended care services means geriatric evaluation; nursing home care; domiciliary services; adult day health care; noninstitutional palliative care, noninstitutional hospice care, and home health care when they are noninstitutional alternatives to nursing home care; and respite care.

Provider means any non-VA entity that provides extended care services and is participating in Medicare or a State plan under title XIX of the Social Security Act pursuant to a valid provider agreement.

(b) *Eligible providers from whom VA may obtain extended care services.* Subject to paragraph (d) of this section, VA may obtain extended care services from providers under this section only if:

(1) The provider has entered into a Medicare provider agreement under 42 U.S.C. 1395cc(a) with the Centers for Medicare & Medicaid Services (''CMS agreement''); or

(2) If the provider has not entered into a Medicare provider agreement, but the provider is participating in an agreement under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(c) *Terms of agreements.* (1) The Director of the VA medical center of jurisdiction, or designee, will send to a provider written notification that identifies the Medicare provider agreement or agreement under a State Medicaid plan that VA proposes to use as the basis for its agreement to obtain extended care services, identifies the changes and any additional terms that would apply to the provider agreement, and requests written acceptance from the provider of that agreement. VA will not obtain extended care services from the provider through a provider agreement until such acceptance is received.

(2) Provider agreements with VA under this section must reflect the following:

(i) For a provider with a valid Medicare provider agreement, the terms of the provider's agreement with VA, including the payment rates, will be the same as the terms of the provider's agreement with CMS pursuant to the Medicare Enrollment Application for Institutional Providers (OMB No. 0938–0685).

(ii) For providers with no Medicare provider agreement but one or more agreements under a State plan, the terms of the provider's agreement with VA, including the payment rates, will be the same as the terms of the provider's agreement with the State that pays the highest rates.

(iii) For providers with both a Medicare provider agreement and an agreement under a State Medicaid plan, the terms of the provider's agreement with VA, including the payment rates, will be the same as the CMS or State agreement that provides for the higher rates.

(iv) The provider shall not charge any individual, insurer, or entity (other than VA) for the items or services obtained by VA under this section.

(3) The terms of the provider's agreement with VA will be different from the provider's separate agreement with CMS or a State only to the extent that the non-VA agreement prescribes terms or procedures inconsistent with this section and that it is necessary to identify VA as the Government agency entering into the agreement with the provider and paying for the provider's services for veterans.

(d) *Decisions regarding agreements.* (1) The Director of the VA medical center of jurisdiction, or designee, will decide, based upon medical judgment regarding the health care needs of veterans in the community and the availability and feasibility of VA or local resources to efficiently provide for those needs, whether it is necessary to enter into provider agreements for extended care services.

(2) If there is more than one provider in a given region, the veteran will select his or her preferred provider, subject to:

(i) The provider's determination to accept the veteran;

(ii) The availability and feasibility of resources at the VA medical center of jurisdiction; and

(iii) The determination of the Director of the VA medical center of jurisdiction, or designee, that the services offered by

the provider would be clinically appropriate for the care of the veteran.

(3) Factual determination of whether a provider has a Medicare provider agreement or an agreement under a State Medicaid plan will be based on verification of an existing agreement. Medicare provider agreements will be verified using CMS Web sites, which list providers with agreements. State agreements will be verified using appropriate State Web sites, which list providers with agreements, or using records maintained by the appropriate State office.

(e) *Termination of agreements.* (1) A provider that wishes to terminate its agreement with VA must send written notice of its intent at least 15 days before the effective date of termination of the agreement. The notice shall include the intended date of termination.

(2) VA may terminate an agreement with any provider if the Director of the VA medical center of jurisdiction, or designee, determines that the provider's service is no longer required or that the provider is not complying with a provision of the provider agreement, and must terminate an agreement with a provider that no longer has a Medicare provider agreement with CMS or no longer participates under a State Medicaid plan. VA will provide written notice of termination at least 15 days before the effective date of termination of the provider agreement. If the Director of the VA medical center of jurisdiction, or designee, determines the health of the veteran to be in immediate jeopardy, VA will provide notice of termination at least 2 days before the effective date of termination of the provider agreement. VA may physically remove a veteran from a dangerous situation at any time in order to protect the health of the veteran prior to terminating the applicable provider agreement.

(f) *Appeals.* Appeals of a determination by the Director of the VA medical center of jurisdiction, or designee, not to enter into or to terminate a VA provider agreement must be made in writing to the Chief Consultant, Office of Geriatrics and Extended Care, no later than 90 days after the date of the decision being appealed. The decision of the Chief Consultant will constitute a final agency decision.

(g) *Compliance with Federal laws.* Under agreements entered into under this section, providers are not required to comply with reporting and auditing requirements imposed under the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.); however, providers must comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

(Authority: 38 U.S.C. 501, 1720; 42 U.S.C. 1395cc)

[FR Doc. 2013–02993 Filed 2–12–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130207066–3066–01]

RIN 0648–BC66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 37

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 37 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would revise the commercial and recreational sector's annual catch limits (ACLs) and annual catch targets (ACTs) for gray triggerfish; revise the recreational sector accountability measures (AMs) for gray triggerfish; revise the gray triggerfish recreational bag limit; establish a commercial trip limit for gray triggerfish; and establish a fixed closed season for the gray triggerfish commercial and recreational sectors. Additionally, Amendment 37 would modify the gray triggerfish rebuilding plan. The intent of this rule is to end overfishing of gray triggerfish and help achieve optimum yield (OY) for the gray triggerfish resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before March 15, 2013.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2012–0199'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0199,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of Amendment 37, which includes a draft environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. All gray triggerfish weights discussed in this proposed rule are in round weight.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks and to minimize bycatch and bycatch mortality to the extent practicable.

Status of the Gray Triggerfish Stock

The last Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for gray triggerfish was completed in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR 9 update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was additionally undergoing overfishing. The 2011 SEDAR 9 Update indicated the 2008 gray triggerfish rebuilding plan had not made adequate progress toward ending overfishing and rebuilding the stock. NMFS informed the Council of this determination in a letter dated March 13, 2012. NMFS also requested that the Council work to end overfishing of gray triggerfish immediately and to revise the gray triggerfish stock rebuilding plan.

As a way to more quickly implement measures to end overfishing and rebuild the stock, the Council requested and NMFS implemented a temporary rule to reduce the gray triggerfish commercial and recreational ACLs and ACTs (77 FR 28308, May 14, 2012). The temporary rule also established an in-season AM for the gray triggerfish recreational sector to be more consistent with the commercial sector AMs and provide for an additional level of protection to ensure that the recreational ACL is not exceeded and that the risk of overfishing is reduced. These interim measures were then extended through May 15, 2013, to ensure that the more permanent measures being developed through Amendment 37 could be implemented without a lapse in these more protective management measures (77 FR 67303, November 9, 2012).

Management Measures Contained in This Proposed Rule

This proposed rule would revise the gray triggerfish commercial and recreational sector ACLs and ACTs (commercial ACT expressed as commercial quota in the regulatory text), revise the gray triggerfish recreational sector AMs, revise the gray triggerfish recreational bag limit, establish a commercial trip limit for gray triggerfish, and establish a fixed closed season for the gray triggerfish commercial and recreational sectors.

ACLs and ACTs

This rule would revise the ACLs for the gray triggerfish commercial and recreational sectors. This rule would also revise the ACTs (commercial ACT expressed as a quota in the regulatory text) for both sectors.

The Council's Scientific and Statistical Committee (SSC) reviewed the gray triggerfish 2011 SEDAR 9 Update. The SSC recommended that the gray triggerfish acceptable biological catches (ABC) for the 2012 and 2013 fishing years be set at 305,300 lb (138,346 kg). The current gray triggerfish stock ABC is 595,000 lb (269,887 kg). Based on this recommendation, the commercial and recreational ACLs and ACTs for the gray triggerfish need to be updated.

The Magnuson-Stevens Act requires that the FMP contain a mechanism for specifying ACLs at a level such that overfishing does not occur. An ACT is a management target established to account for management uncertainty in controlling the actual catch at or below the ACL. An ACT is used in the system of AMs so that the ACL is not exceeded. Therefore, a sector ACT should be set below the sector ACL to allow the sector to be closed when the ACT is projected to be reached.

In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC (73 FR 38139, July 3, 2008). These allocations are used to set the commercial and recreational sector-specific ACLs. The ABC recommended by the SSC is 305,300 lb (138,482 kg) and the combined sector ACLs are equal to the ABC. Based on the allocations established in Amendment 30A to the FMP, this proposed rule would set a reduced commercial ACL of 64,100 lb (29,075 kg), and a reduced recreational ACL of 241,200 lb (109,406 kg).

The Generic Annual Catch Limit Amendment developed by the Council and implemented by NMFS (76 FR 82044, December 29, 2011) established a standardized procedure to set sector-specific ACTs based on the ACLs. ACTs are intended to account for management uncertainty and provide a buffer that better ensures a sector does not exceed its designated ACL. The Council chose to use this procedure, which resulted in a 5 percent buffer between the commercial ACL and ACT, and a 10 percent buffer between the recreational ACL and ACT. Therefore, this proposed rule would set the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), and the recreational ACT at 217,100 lb (98,475 kg). The proposed ACLs and ACTs in this rule are the same as those currently in place as implemented through the temporary rule (77 FR 28308, May 14, 2012). The current commercial gray triggerfish quota functions as the commercial ACT.

AMs

To reduce the risk of overfishing, Amendment 30A to the FMP established gray triggerfish AMs. AMs are management controls that are implemented to prevent ACLs from being exceeded (in-season AMs), and to correct or mitigate overages of the ACL if they occur (post-season AMs). For the commercial sector, there are currently both in-season and post-season AMs. The in-season AM closes the commercial sector after the commercial quota (commercial ACT) is reached or projected to be reached. Additionally, if the commercial ACL is exceeded despite the quota closure, the post-season AM would reduce the following year's commercial quota (commercial ACT) by the amount of the prior-year's commercial ACL overage.

For the recreational sector, there is currently no in-season AM, but a post-season AM is in effect. For the recreational sector, if the recreational ACL is exceeded, NMFS will reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not exceed the recreational ACT during the following year.

In 2008, recreational landings exceeded both the recreational ACT and ACL. In 2009, the recreational ACT was exceeded. However, in 2010, recreational landings did not exceed the ACT or ACL. Reduced 2010 recreational landings may be attributable to fishery closures implemented that year as a result of the Deepwater Horizon MC252 oil spill. Based on recent trends in recreational landings and anticipated future recreational effort, the Council and NMFS have determined that implementing an in-season AM would reduce the risk of exceeding the ACL in the future. This proposed rule would

replace the current post-season AM with an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached. This proposed rule would also add an overage adjustment that would apply if the recreational sector ACL is exceeded and gray triggerfish are overfished. This post-season AM would reduce the recreational ACL and ACT for the following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

Commercial Trip Limit

Currently, there is no trip limit for the commercial sector. This rule proposes to establish a commercial trip limit for gray triggerfish of 12 fish. This commercial trip limit would be applicable until the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

Seasonal Closure of the Commercial and Recreational Sectors

This proposed rule would establish a seasonal closure of the gray triggerfish commercial and recreational sectors in the Gulf from June through July, each year. This fixed seasonal closure would assist rebuilding of the gray triggerfish stock by prohibiting harvest during the gray triggerfish peak spawning season. Additionally, June and July are the months that have the highest percentage of recreational landings.

Recreational Bag Limit

Gray triggerfish currently have a recreational bag limit that is part of the 20-fish aggregate reef fish bag limit. As part of this 20-fish aggregate, there is currently no specific limit for recreational gray triggerfish landings as long as the total is 20 fish or less. This proposed rule would establish a 2-fish gray triggerfish recreational bag limit within the 20-fish aggregate reef fish bag limit. This recreational bag limit would be applicable until the recreational ACT is reached or projected to be reached during a fishing year and the recreational sector is closed.

Other Action Contained in Amendment 37

Amendment 37 would revise the rebuilding plan for gray triggerfish. The gray triggerfish stock is currently in the 5th year of a rebuilding plan that began in 2008. Amendment 37 would modify the rebuilding plan in response to the results from the 2011 SEDAR update assessment and subsequent SSC review and recommendations for the gray triggerfish ABC. The modified rebuilding plan would be based on a constant fishing mortality rate that does not exceed the fishing mortality rate at OY.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the FMP, Amendment 37, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to end overfishing of gray triggerfish and rebuild the gray triggerfish stock by the end of 2017 to achieve OY. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements.

This rule, if implemented, is expected to directly affect approximately 400 vessels that have a valid (non-expired) or renewable commercial Gulf reef fish permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after permit expiration. Although over 900 vessels have a commercial Gulf reef fish permit, which is required to possess and sell quantities of gray triggerfish in excess of the recreational bag limit, only an average of 382 vessels per year harvested gray triggerfish during the period 2005 through 2009. More recent commercial landings data is either not available (2011 to current) or is not expected to be representative of normal fishing performance, *i.e.,* the 2010 fishing year as a result of the Deepwater Horizon MC252 oil spill and associated fisheries closures. The average annual dockside revenue for commercial vessels that harvested gray triggerfish during this period was approximately $87,000 per vessel (2010 dollars).

This rule, if implemented, is also be expected to directly affect 1,366 vessels that possess a valid or renewable charter/headboat permit for Gulf reef fish (for-hire). The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the for-hire permit does not distinguish between charterboats and headboats, an estimated 69 headboats operate in the Gulf. The average charterboat is estimated to earn approximately $77,000 (2010 dollars) in annual revenue, and the average headboat is estimated to earn approximately $234,000 (2010 dollars).

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The revenue threshold for a business involved in the for-hire fishing industry is $7.0 million (NAICS code 713990, recreational industries). All commercial and for-hire vessels expected to be directly affected by this proposed rule are believed to be small business entities.

Amendment 37, on which this proposed rule is based, addresses five basic actions: (1) Revision of the gray triggerfish rebuilding plan; (2) specification of the commercial and recreational gray triggerfish ACLs and ACTs; (3) establishment of a gray triggerfish commercial sector closed season and trip limit; (4) establishment of a gray triggerfish recreational closed season and bag limit; and (5) revision of the AMs for the gray triggerfish recreational sector.

Rebuilding plans are not contained in the regulatory text associated with this proposed rule and are therefore outside the scope of the Regulatory Flexibility Act (RFA). Further, revision of the rebuilding plan would be an administrative action and, as a result, would not be expected to have any direct economic effects on any small entities. Direct effects of a rebuilding plan would only be expected to accrue to any resultant harvest restrictions implemented through a future rulemaking to achieve the goals of the

rebuilding plan. The proposed harvest restrictions encompass modification of the sector ACTs, fishing seasons, commercial trip limits, and recreational bag limits. The expected economic effects of these proposed modifications are discussed below.

AMs are intended to ensure harvest overages do not occur and to correct or mitigate for overages if they do occur. In-season AMs are specifically intended to prevent or minimize harvest overages. The establishment of AMs, or their modification, would be an administrative action that would only be expected to have indirect effects on small entities. These effects would occur if the AMs are triggered. Because the proposed action would only modify and not implement the current AMs, no direct effects would be expected to accrue to any small entities. As a result, this component of the proposed rule is also outside the scope of the RFA.

However, because the potential implementation of the proposed in-season AM would be expected to restrict fishing operations and potentially result in direct short-term reductions in revenue and profit, further discussion of the potential significance of these effects is provided. The proposed in-season gray triggerfish recreational sector AM would result in closure of the gray triggerfish recreational season if the recreational sector ACT is reached or is projected to be reached. As a result, harvest and possession would be prohibited. Few, if any, fishing trips would be expected to be cancelled in response to a prohibition on the harvest and possession of gray triggerfish because anglers rarely target gray triggerfish: It was identified as a primary target species for less than 1/10th of 1 percent of all fishing trips (2005–2009). Rather, gray triggerfish are often harvested incidental to fishing for other reef fish species. Because other, more desirable reef species would still be available for recreational harvest, any prohibition on the harvest or possession of gray triggerfish would not be expected to have a significant impact on a substantial number of small entities.

Because gray triggerfish is not a significantly targeted species, the proposed overage adjustment if the recreational ACL is exceeded would also be expected to result in minimal, if any, reduction in revenue to small entities. Because of the combination of in-season closure authority, low total harvest and target effort, and the expected recovery of gray triggerfish, overage adjustments would be expected to be infrequent and, if necessary, require only minimal reductions in the recreational ACT. Therefore, few, if any, recreational trips would be expected to be lost and the revenue to small entities would not be expected to be significantly affected.

Although Amendment 37 contained three proposed actions associated with the commercial harvest of gray triggerfish—specification of the ACT, establishment of the closed season, and establishment of a commercial trip limit—the expected economic effects of this rule would be determined primarily by the specification of the ACT. Individually, assuming no change in fishing behavior, the proposed commercial sector closed season and trip limit would be expected to result in a reduction in total annual revenue for all vessels that harvest gray triggerfish of approximately $26,000 and $72,000, respectively. All reductions are expressed in 2010 dollars. Combined, these two measures would be expected to result in a reduction in total annual revenue of approximately $88,000. This result is less than the total of the two individual proposed actions, approximately $98,000, because the proposed closed season would negate the expected effects of the trip limit during that period. However, the combined effects of these two proposed actions would not be expected to be sufficient to constrain commercial gray triggerfish harvest to the ACT and avoid an in-season closure. The proposed ACT, 60,900 lb (27,624 kg), would be expected to require a reduction in expected annual commercial harvest of approximately 118,000 lb (53,524 kg). The combined effects of the proposed commercial sector seasonal closure and trip limit would be a reduction in annual commercial harvest of approximately 92,000 lb (41,730 kg). Because commercial harvest would be prohibited when the commercial ACT is reached, the full necessary commercial sector harvest reduction would be expected to occur as a result of the three measures combined (seasonal closure, trip limit, and closure when the ACT is reached). Thus, although the total effect of the proposed seasonal closure and trip limit would be an expected reduction in annual revenue of approximately $88,000, the net effect of the proposed commercial ACT, seasonal closure, and trip limit would be a reduction in annual revenue of approximately $112,000. Distributed across all commercial sector entities expected to be directly affected by these proposed measures (382 vessels), the average expected effect would be a reduction in annual revenue of approximately $300 per entity, or less than one percent of the average annual revenue per vessel of $87,000. Although some vessels may be expected to experience a reduction in revenue by more than the average, overall, any reduction would not be expected to be significant because of the small amount of gray triggerfish traditionally harvested by commercial reef fish fishermen.

Impacts on the recreational sector are expected to be similar to those affecting the commercial sector. The proposed gray triggerfish recreational ACT, seasonal closure, and recreational bag limit would be expected to individually result in an annual reduction in producer surplus, used as a proxy for profit, of approximately $295,000, $232,000, and $137,000, respectively. All reductions are expressed in 2010 dollars and equal the combined effects of the proposed actions across all affected entities. Combined, the proposed seasonal closure and bag limit would be expected to result in an annual reduction in producer surplus of approximately $310,000, which would be less than the effects of the two individual proposed actions combined because of the interactive effects of the two proposed measures. The combined effects of these two proposed measures exceeds the expected effects of the proposed recreational ACT because the estimated reduction in harvest under the proposed seasonal closure and bag limit exceeds the reduction necessary to limit harvest to the proposed gray triggerfish recreational ACT and avoid an in-season closure. Thus, for the proposed actions affecting the recreational sector, the net expected economic effect would be determined by the combined effects of the proposed seasonal closure and bag limit rather than the proposed ACT.

Unlike the case for the commercial sector, the number of vessels within the for-hire fleet that take trips targeting gray triggerfish cannot be determined with available data. If the projected reduction in producer surplus is distributed across all Gulf reef fish for-hire vessels (1,366 vessels), the average annual reduction in producer surplus would be approximately $230 (2010 dollars) per vessel, or approximately 1 percent in average annual profit per vessel (approximately $22,800 (2010 dollars)). Because all vessels would not be expected to target gray triggerfish, however, the average reduction in producer surplus per affected vessel would be expected to increase. However, the estimates of expected reduction in producer surplus associated with the proposed actions affecting the recreational sector were generated using a worst-case

assumption. Specifically, the projected reductions in producer surplus were based on the assumption that recreational angler effort, and associated for-hire revenue, would be reduced proportionate to the change in allowable harvest. As previously discussed, gray triggerfish is regarded as a bycatch or general harvest species, harvested in connection with general reef fish fishing (no target species) or as a result of fishing for other reef fish species. As a result, instead of cancelling fishing trips, few if any for-hire vessels would be expected to experience a reduction in customer traffic, and associated revenue, as a result of either the proposed seasonal closure or reduced recreational bag limit. Instead, substitution of another target species during the proposed closed season and continued fishing at the proposed lower bag would be expected. As a result, the proposed actions affecting the recreational sector would not be expected to significantly reduce profits for a significant number of small for-hire entities.

In summary, the proposed rule, if implemented, would not be expected to have a significant impact on a substantial number of small entities and, as a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

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

Dated: February 8, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

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

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

■ 2. In § 622.34, paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Seasonal closure of the commercial and recreational sectors for gray triggerfish.* The commercial and recreational sectors for gray triggerfish in or from the Gulf EEZ are closed from June 1 through July 31, each year. During the closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

■ 3. In § 622.39, paragraph (b)(1)(v) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section—20. In addition, within the 20-fish aggregate reef fish bag limit, no more than two fish may be gray triggerfish.

* * * * *

■ 4. In § 622.42, paragraph (a)(1)(vi) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(vi) Gray triggerfish—60,900 lb (27,624 kg), round weight.

* * * * *

■ 5. In § 622.44, paragraph (g) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(g) *Gulf gray triggerfish.* Until the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vi) is reached—12 fish. See § 622.43(a)(1)(i) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

* * * * *

■ 6. In § 622.49, paragraph (a)(2) is revised to read as follows:

§ 622.49 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(2) *Gray triggerfish*—(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL and ACT (commercial quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(ii) *Recreational sector.* (A) Without regard to overfished status, if gray triggerfish recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACT specified in paragraph (a)(2)(ii)(C) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gray triggerfish in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) In addition to the measures specified in paragraphs (a)(2)(ii)(A) of this section, if gray triggerfish recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(2)(ii)(C) of this section, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(C) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

[FR Doc. 2013–03372 Filed 2–12–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 30

Wednesday, February 13, 2013

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

Natural Resources Conservation Service

Request for Nominations to the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice of Request for Nominations to the Agricultural Air Quality Task Force.

SUMMARY: The Secretary of Agriculture invites nominations of qualified candidates to be considered for a 2-year term on the Agricultural Air Quality Task Force (AAQTF) which was established by the Federal Agriculture Improvement and Reform Act of 1996 to provide recommendations to the Secretary of Agriculture on agricultural air quality issues. This notice solicits nominations for membership on the AAQTF.

DATES: *Effective Date:* This is effective February 13, 2013.

ADDRESSES: Nominations should be postmarked no later than April 1, 2013 to: Greg Johnson, Designated Federal Official, Department of Agriculture, Natural Resources Conservation Service, 1201 Lloyd Boulevard, Suite 1000, Portland, Oregon 97232, or by email at *greg.johnson@por.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Greg Johnson, Designated Federal Official, Department of Agriculture, Natural Resources Conservation Service, 1201 Lloyd Boulevard, Suite 1000, Portland, Oregon 97232; telephone: (503) 273–2424; fax: (503) 273–2401; email: *greg.johnson@por.usda.gov*.

SUPPLEMENTARY INFORMATION:

AAQTF Purpose

Section 391 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 7 U.S.C. 5405, requires the Chief of the Natural Resource Conservation Service (NRCS) to establish a task force to address air agricultural quality issues. The task force advises the Secretary of Agriculture on the role of the Secretary for providing oversight and coordination related to agricultural air quality. The requirements of the Federal Advisory Committee Act, 5 U.S.C. App.2., apply to this task force.

The task force will:

1. Strengthen vital research efforts related to agricultural air quality;
2. Determine the extent to which agricultural activities contribute to air pollution;
3. Determine cost-effective ways in which the agricultural industry can improve air quality;
4. Coordinate and ensure intergovernmental cooperation on research activities related to agricultural air quality issues to avoid duplication and ensure data quality and sound interpretation of data; and
5. Advise the Secretary of Agriculture on the role of the Secretary for providing oversight and coordination related to agricultural air quality.

AAQTF Membership

The task force expects to meet 2–3 times each year, with meetings held at various locations across the United States. A task force member will serve for a term of 2 years, starting with the date of charter establishment for this task force. The Chief of NRCS serves as Chair of the task force. The task force is composed of United States citizens representing a broad spectrum of individuals with interest in agricultural air quality issues. This includes, but is not limited to, representatives from the agricultural production/processing sector, as well as those from academia, agribusiness, regulatory organizations, environmental organizations, and local or state agencies.

Nominees to the AAQTF will be evaluated on a number of criteria, including expertise in or experience with agricultural air quality research, agricultural production, and air quality environmental or regulatory issues.

Serving as a task force member will not constitute employment by, or the holding of, an office of the United States for the purpose of any Federal law. Persons selected for membership on the task force will not receive compensation from NRCS for their service as task force members except that while away from home or regular place of business, the member will be eligible for travel expenses paid by NRCS, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service, under section 5703 of Title 5, U.S.C.

Additional information about the AAQTF may be found on the World Wide Web at *http://www.airquality.nrcs.usda.gov/wps/portal/nrcs/detail/national/air/taskforce/*.

Member Nominations

Any interested person or organization may nominate qualified individuals for membership. Interested candidates may nominate themselves. Previous nominees and task force members who wish to be considered for membership on the task force must submit a new nomination with updated information, including a new background disclosure form (Form AD–755).

Nominations should be typed and include the following:

1. A brief summary, of no more than two pages, explaining the nominee's qualifications to serve on the AAQTF and addressing the criteria described above;
2. Resume, which provides the nominee's background, experience, and educational qualifications;
3. A completed background disclosure form (Form AD–755) signed by the nominee (*http://www.fsa.usda.gov/Internet/FSA_File/ad755.pdf*);
4. Any recent publications by the nominee relative to air quality (if appropriate); and
5. Up to two letters of endorsement (optional).

Send written nominations to: Greg Johnson, Designated Federal Official, Department of Agriculture, Natural Resources Conservation Service, 1201 Lloyd Boulevard, Suite 1000, Portland, Oregon 97232; email to *greg.johnson@por.usda.gov*. The Designated Federal Official will acknowledge receipt of nominations.

Equal Opportunity Statement

To ensure that recommendations of the task force take into account the needs of underserved and diverse communities served by USDA, membership will include, to the extent practicable, individuals representing minorities, women, and persons with disabilities. USDA prohibits

discrimination in all of its programs and activities on the basis of race, sex, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital status or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed this 31 day of January 2013, in Washington, DC.

Jason A. Weller,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 2013–03247 Filed 2–12–13; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the United States Department of Agriculture (USDA) Rural Development administers rural utilities programs through the Rural Utilities Service (RUS). The USDA Rural Development invites comments on the following information collections for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by April 15, 2013.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435. EMAIL: *Michele.Brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this 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 including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, Stop 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. FAX: (202) 720–8435. EMAIL: *Michele.Brooks@wdc.usda.gov.*

Title: Emergency and Imminent Community Water Assistance Grants.

OMB Control Number: 0572–0110.

Type of Request: Extension of an existing information collection package.

Abstract: Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Programs, is a funding agency. Grants under this RUS program may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include counties, cities, townships, incorporated towns and villages, boroughs, authorities, districts, and other political subdivisions of a state. Public bodies also include Indian Tribes on Federal and State reservations and other Federally-recognized Indian tribal groups in rural areas. Applicants will provide information to be collected as part of the application and grant process through certain documentation, certifications, or completed forms. These procedures are codified at 7 CFR part 1778.

Estimate of Burden: Public reporting for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit Institutions.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4 hours.

Copies of this information collection can be obtained from Anne Mayberry, Program Development and Regulatory Analysis, at (202) 690–1756, FAX (202) 720–8345 or email: *anne.mayberry@wdc.usda.gov.*

Dated: February 8, 2013.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013–03346 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1881]

Expansion/Reorganization of Foreign-Trade Subzone 70T; Marathon Petroleum Company LP; Detroit, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, submitted an application to the Board for authority to expand Site 1 of Subzone 70T and remove Site 3 of the subzone at the Marathon Petroleum Company LP refinery in Detroit, Michigan. (B–42–2012, docketed 6/1/2012);

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 33716–33717) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand and reorganize Subzone 70T is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 6th day of February 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–03352 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1883]

Approval for Expansion of Manufacturing Authority; Foreign-Trade Zone 104; Mitsubishi Power Systems Americas, Inc. (Power Generation Turbines); Pooler, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Savannah Airport Commission, grantee of FTZ 104, has requested an expansion of the scope of manufacturing authority on behalf of Mitsubishi Power Systems Americas, Inc. (MPSA), operator of Site 12, to include additional finished products and foreign components (FTZ Docket 11–2012, filed 2–23–2012);

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 12799–12800, 3–2–2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand scope of FTZ manufacturing authority to include additional finished products and foreign components, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 6th day of February 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–03308 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1879]

Reorganization/Expansion of Foreign-Trade Zone 90 Under Alternative Site Framework, Onondaga County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the County of Onondaga, New York, grantee of Foreign-Trade Zone 90, submitted an application to the Board (FTZ Docket B–61–2012, docketed 8/6/2012) for authority to reorganize and expand under the ASF with a service area of Onondaga, Cayuga, Oswego and Madison Counties, New York, in and adjacent to the Syracuse Customs and Border Protection port of entry, FTZ 90's existing Site 1 would be removed, and the grantee proposes two new magnet sites (Sites 2 and 3);

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 47815–47816, 8/10/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 90 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 3 if not activated by January 31, 2018.

Signed at Washington, DC, this 6th day of February 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–03362 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1878]

Reorganization of Foreign-Trade Zone 70 Under Alternative Site Framework, Detroit, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, submitted an application to the Board (FTZ Docket B–46–2012, docketed 6/20/2012) for authority to reorganize under the ASF with a service area of Macomb, Monroe, Oakland, Washtenaw and Wayne Counties, Michigan, in and adjacent to the Detroit Customs and Border Protection port of entry, FTZ 70's existing 3, 5, 12, 14 and 19 would be categorized as magnet sites, existing Sites 2, 4, 6, 8–11, 13, 15, 17, 18, 20–26, 29–31, 33–42 and 49–51 would be categorized as usage-driven sites, Site 15A would be removed, parcels from Site 5 would be renumbered as Sites 43 and 44, parcels from Site 11 would be renumbered as Sites 45 and 46 and parcels from Site 14 would be renumbered as Sites 47 and 48;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 38037–38038, 6/26/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 70 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to five-year ASF sunset provisions for magnet sites that would terminate authority for Sites 3, 5, 12, 14 and 19 if not activated by January 31, 2018, and to three-year ASF sunset provisions for usage-driven sites that would terminate authority for Sites 2, 4, 6, 8–11, 13, 15, 17, 18, 20–26, and 29–31 and 33–51 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by January 31, 2016.

Signed at Washington, DC, this 6th day of February 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–03363 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') published its *Preliminary Results* of administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge (''narrow woven ribbons'') on August 8, 2012.[1] The period of review (''POR'') is September 1, 2010, through August 31, 2011. The Department invited interested parties to comment on the *Preliminary Results.* Based on an analysis of the comments received, the Department made no changes to the margins assigned in the *Preliminary Results.* The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Robert Bolling, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4081 or (202) 482–3434, respectively.

Background

On August 8, 2012, the Department published its *Preliminary Results.* On September 7, 2012, Hubscher Ribbon Corp., Ltd. (''Hubschercorp'') submitted a case brief for this administrative review.[2] On September 12, 2012, the Department received a rebuttal brief from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively, ''Petitioner'').[3] No other party submitted comments.

Extension of Final Results Due to Government Closure During Hurricane Sandy

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days.[4] Therefore, the revised deadline for the final results of this review is now February 6, 2013.

Scope of the Order

The merchandise covered by this order includes narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof.[5]

The merchandise subject to the order is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by the order is dispositive.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China'' (dated concurrently with this notice) (''Issues and Decision Memorandum'') and the Memorandum to the File from Karine Gziryan, Senior Financial Analyst, Office 4, NME Unit, ''Antidumping Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Proprietary Memorandum regarding Corroboration of Adverse Facts Available Rate'' (dated concurrently with this notice) (''Final Corroboration Memo''), which is hereby adopted by this notice. The issue that parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty

[1] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 47363 (August 8, 2012) (''*Preliminary Results*'').

[2] *See* Letter from Hubschercorp to the Secretary of Commerce, ''Narrow Woven Ribbons With Woven Selvedge from China, Antidumping Duty: Case Brief'' (September 7, 2012).

[3] *See* Letter from Petitioner to the Secretary of Commerce, ''Rebuttal Brief on Behalf of Petitioner Berwick Offray LLC and Its Wholly-Owned Subsidiary Lion Ribbon Company, Inc.'' (September 12, 2012).

[4] *See* Memorandum For the Record from Paul Piquado, Assistant Secretary for Import Administration, ''Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy'' (October 31, 2012).

[5] *See* Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review issued concurrently with this notice for a complete description of the Scope of the Order.

[6] *See Notice of Antidumping Duty Orders: Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010), as amended in *Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (September 17, 2010) (''*Orders*'').

Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov*, and is available to all parties in the Central Records Unit, which is in room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on an analysis of the comment received, the Department made no changes to the margins assigned in the *Preliminary Results.*

Non-Market Economy Country

The PRC has been treated as a non-market economy (''NME'') in every proceeding conducted by the Department. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the ''Act''), any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME. Therefore, the Department continues to treat the PRC as an NME for purposes of these final results and, accordingly, applied the NME methodology.

Separate Rates

In proceedings involving NMEs, the Department maintains a rebuttable presumption that all companies within the NME are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[7] The Department's policy is to assign all exporters of merchandise under consideration that are in an NME this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[8] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[9] and further developed in *Silicon Carbide.*[10] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

In the *Preliminary Results,* the Department found that Weifang Dongfang Ribbon Weaving Co., Ltd. (''Weifang Dongfang'') demonstrated its eligibility for separate-rate status.[11] No party commented on this preliminary determination. For the final results, the Department continues to find that the evidence placed on the record of this administrative review by Weifang Dongfang demonstrate both a *de jure* and *de facto* absence of government control and, therefore, is eligible for separate-rate status.

Calculation of Separate Rate

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. The Department selected two respondents for review, Precious Planet Ribbons & Bows Co., Ltd. (''Precious Planet'') and Hubschercorp. On January 24, 2012, Precious Planet timely withdrew its request for an administrative review of its sales.[12] On May 29, 2012, Hubschercorp indicated that it would no longer participate in the administrative review and failed to further answer the Department's questionnaires.[13] For those companies not selected for review, only Weifang Dongfang submitted timely information as requested by the Department and remains subject to the review as a cooperative separate rate respondent.

We note that the Act and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Section 735(c)(5)(A) of the Act instructs that in most investigations we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. Furthermore, Congress, in the Statement of Administrative Action (''SAA''), stated that when ''the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis* * * * (t)he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available.''[14] However, Congress also stated that ''if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, (the Department) may use other reasonable methods.''[15]

In this instance, because one of the two selected respondents, Precious Planet, timely withdrew its request for an administrative review of its sales, the only rate determined in this review for a selected respondent, Hubschercorp, is based entirely on facts available.

We note that the Department has used other reasonable means to assign separate-rate margins to non-reviewed companies in instances in which the use of an ''average'' of calculated zero rates, *de minimis* rates, or rates based entirely on facts available was not possible.[16] In *Vietnam Shrimp AR3 Final,* the Department assigned to those separate

[7] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008).

[8] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (''*Sparklers*'').

[9] *Id.*

[10] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[11] *See Preliminary Results,* 77 FR at 47366.

[12] *See* Letter from Precious Planet to the Secretary of Commerce, ''Narrow Woven Ribbons With Woven Selvedge from China, Antidumping Duty: Revised Withdrawal of Request for Administrative Review'' (January 24, 2012).

[13] *See* Letter from Hubschercorp's to the Secretary of Commerce, ''Narrow Woven Ribbons With Woven Selvedge from China, Antidumping Duty: Withdrawal from Administrative Review'' (May 29, 2012).

[14] *See* SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4200.

[15] *Id.*

[16] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191, 47194 (September 15, 2009) (''*Vietnam Shrimp AR3 Final*'').

rate companies with no history of an individually calculated rate the margin determined for cooperative separate rate respondents from the underlying investigation.[17] However, for those separate rate respondents that had received a calculated rate in a prior segment, concurrent with or more recent than the calculated rate in the underlying investigation, the Department assigned that calculated rate as the company's separate rate in the review at hand.[18]

In this review, we preliminarily found that a reasonable method was to assign to the separate rate company Weifang Dongfang, with no history of an individually calculated rate, the margin calculated for cooperative separate rate respondents in the underlying investigation, 123.83 percent.[19] No parties commented on this separate rate and we continue to assign this separate rate for the final results.

The PRC-Wide Entity

In addition to the separate-rate certification discussed above, there were two companies, Stribbons (Guangzhou) Ltd. (''Stribbons Guangzhou''), Stribbons (Nanyang) MNC, Ltd. (''Stribbons MNC''), (collectively ''MNC Stribbons'' [20]) for which we initiated a review in this proceeding and which previously had a separate rate. However, in accordance with the Department's established NME methodology, a party's separate rate status must be established in each segment of the proceeding in which the party is involved.[21] Because these companies did not file a timely (*i.e.,* within 60 calendar days after publication of Initiation Notice [22]) separate rate certification to demonstrate eligibility for a separate rate in this administrative review, or certify that they had no shipments,[23] we preliminarily determined that these companies were part of the PRC-wide entity. In addition, because Precious Planet withdrew timely the only request for review and did not have a prior separate rate status, it is also part of the PRC-wide entity. No parties commented on these determinations and we continue to find these companies part of the PRC-wide entity for these final results.

We note that MNC Stribbons filed a request to be selected as a voluntary respondent after one of the selected respondents withdrew from the proceeding. However, MNC Stribbons made this request after it had missed the 60-day deadline to demonstrate its eligibility for a separate rate (*i.e.,* failed to provide a timely separate rate certification) and the Department returned its submissions in accordance with 19 CFR 351.302(d).[24]

Use of Facts Otherwise Available and AFA

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Hubschercorp did not respond to the Department's Section D questionnaire or Sections A and C supplemental questionnaires in this administrative review, and informed the Department that it would no longer participate in this review.[25] As a result, Hubschercorp failed to provide requested information that is necessary for the Department to calculate an antidumping duty rate for Hubschercorp in this administrative review. This information includes complete product characteristics related to control numbers of products sold in the United States, FOPs, consumption rates of FOPs, and production processes data. Without this information, it is not possible for the Department to determine or calculate an antidumping margin.

Hubschercorp withheld requested information, significantly impeded this proceeding and did not provide the Department with the information necessary to calculate an antidumping duty margin. Therefore, pursuant to section 776(a)(1) and (2)(A) and (C) of the Act, the Department finds that the use of total facts available is appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[26] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [27] Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' [28] We find that Hubschercorp did not act to the best of its ability in this administrative review, within the meaning of section 776(b) of the Act, because it failed to respond to the Department's requests for information and failed to provide timely information. Therefore, we preliminarily determined that an adverse inference was warranted in selecting from the facts otherwise available with respect to this company.[29] No parties disagreed with this determination and we continue to apply facts available with an adverse inference to Hubschercorp for these final results.

Selection of the Adverse Facts Available (''AFA'') Rate

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

In the SAA, Congress expressly stated that the choice of AFA must ''ensure

[17] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49463 (August 13, 2010).

[18] *Id.*

[19] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808, 41812 (July 19, 2010) (''Final LTFV Determination'').

[20] MNC Stribbons filed their Separate Rate Certification on behalf of two companies under collective name MNC Stribbons, however, the Department initiated our administrative review on two companies Stribbons Guangzhou and Stribbons MNC, and we will continue to treat these two companies as two separate entities.

[21] *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1405–06 (Fed. Cir. 1997) (affirming the Department's presumption of State control over exporters in NME cases).

[22] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 67133, 67134 (October 31, 2011).

[23] *See id.*

[24] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4 to Mr. James Cannon, Williams Mullen, representing Stribbons (Guangzhou) Ltd. and Stribbons (Nanyang) MNC Ltd., dated January 13, 2012 (''Rejection Letter'').

[25] *See* Hubschercorp's May 29, 2012, submission.

[26] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002).

[27] *See* SAA, at 870.

[28] *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (''*Nippon*'').

[29] *See Nippon,* 337 F.3d at 1382–83.

that the party does not obtain a favorable result by failing to corroborate than if it had cooperated fully. In employing adverse inferences, ''one factor'' the Department ''will consider is the extent to which a party may benefit from its own lack of cooperation.'' [30] The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to select the highest rate on the record of the proceeding and to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [31]

As a result, we have assigned to Hubschercorp a rate of 247.65 percent, which is the highest rate alleged in the petition, as noted in the initiation of the less-than-fair-value (''LTFV'') investigation, adjusted with the surrogate value for labor rate used in the final determination.[32]

Corroboration of Secondary Information

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[33] To be considered corroborated, the Department must find the secondary information is both reliable and relevant.[34]

To determine whether the information is reliable, we placed information from the LTFV investigation on the record of this segment of the proceeding, and reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis for purposes of these final results, including source documents as well as publicly available information.[35] Based on our examination of the information, we have determined that the margins in the petition are reliable for the purposes of this administrative review.[36]

To determine the relevance of the petition margin, we placed the model-specific rates calculated for the mandatory respondent, Yama Ribbons and Bows Co., Ltd. (''Yama''), in the LTFV investigation on the record of this segment of the proceeding and compared the 247.65 percent rate with those model-specific rates. We find that this margin is relevant because the petition rate fell within the range of model-specific margins calculated for the mandatory respondent in the LTFV investigation, this is the first review under this order (*i.e.,* only one segment removed from the LTFV investigation), and Hubschercorp exported merchandise during the POR that was specifically produced by Yama.[37]

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin.[38] Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. No information on the administrative record discredits the selected AFA rate.

Based on the above, for these final results, the Department finds the highest rate derived from the petition (*i.e.,* 247.65 percent) is, therefore, corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we have assigned Hubschercorp this rate, as AFA, in this administrative review. For further discussion of the corroboration of this rate, *see* Issues and Decision Memorandum at Comment 1, Final Corroboration Memo, and the Preliminary Corroboration Memo.

Final Results of Review

The Department determined that the dumping margins for the POR are as follows:

Exporter	Weighted-average margin (percentage)
Hubscher Ribbon Corp., Ltd. (d/b/a Hubschercorp) [39]	247.65
Weifang Dongfang Ribbon Weaving Co., Ltd.	123.83
PRC-wide Entity [40]	247.65

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. In this case, the Department determined that the assessment rate for the separate rate respondent Weifang Dongfang will be the separate rate of 123.83 percent from the previous period less the 0.39 percent export subsidy rate [41] which will be equal to 123.44 percent. The Department also determined that the assessment rate for Hubschercorp will be the highest petition rate of 247.65 percent less the 0.39 percent export subsidy rate [42] which will be equal to 247.26 percent. Additionally, the Department will instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the PRC-wide rate of 247.65 percent less the 0.39 percent export subsidy rate [43] which will equal 247.26 percent. Accordingly, the Department is adjusting the assessment rates of Weifang Dongfang, Hubschercorp and the PRC-wide entity for export subsidies

[30] *See* SAA, at 870.

[31] *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65084 (November 7, 2006).

[32] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 74 FR 39291 (August 6, 2009) (''*LTFV Initiation''*) and *Final LTFV Determination,* 75 FR at 41812, and accompanying Issues and Decision Memorandum at Comment 1.

[33] *See* 19 CFR 351.308(d); *see also* SAA, at 870.

[34] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[35] *See LTFV Initiation,* 74 FR at 39294–39296.

[36] *See* Issues and Decision Memorandum, at Comment 1.

[37] *See id.;* Final Corroboration Memo; and the Memorandum to the File from Karine Gziryan, Analyst, entitled, ''Placement of Proprietary Model-Specific Margins from the Less-Than-Fair-Value Investigation on the Record and Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2010–2011 Antidumping Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the PRC,'' dated July 31, 2012 (''Preliminary Corroboration Memo'').

[38] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin).

[39] We note that Hubscher Ribbons Corp., Ltd. (d/b/a Hubschercorp) is a third-country reseller from Canada.

[40] For the reasons stated above, the Department has concluded that the PRC-wide Entity includes Stribbons (Guangzhou) Ltd.; Stribbons (Nanyang) MNC Ltd. and Precious Planet.

[41] *See See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 41801 (July 19, 2010) (''*Final CVD Determination''*).

[42] *See Final CVD Determination.*

[43] *See Final CVD Determination.*

in the same manner that the Department adjusted each company's cash deposit rate. *See* Cash Deposit Requirements section below. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

While the Department did not conduct a companion countervailing duty (''CVD'') administrative review, in the final determination of the CVD investigation on narrow woven ribbons from the PRC, the Department determined that the product under investigation benefitted from an export subsidy.[44] Accordingly, the Department will instruct CBP to require an antidumping cash deposit equal to the weighted-average amount by which the normal value exceeds the export price, as indicated above, reduced by an amount, as appropriate, determined to constitute an export subsidy in the *Final CVD Determination.* Therefore, for Hubschercorp, the separate rate respondent, Weifang Dongfang and the PRC-wide entity the Department will instruct CBP to require an antidumping duty cash deposit for each entry equal to the weighted-average margins indicated above adjusted for the export subsidy rate determined in the *Final CVD Determination.* The adjusted cash deposit rates are 123.44 percent for Weifang Dongfang and 247.26 percent for Hubschercorp and the PRC-wide entity.[45]

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Hubschercorp, a third-country reseller from Canada, the cash deposit rate will be that established in the final results of this review; (2) for Weifang Dongfang, a PRC exporter which has a separate rate, the cash deposit rate will be that established in the final results of this review; (3) for previously investigated PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (4) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 247.26 percent;[46] and (5) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department presuming that the exporter or producer paid or reimbursed the antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of the final results of this review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February, 5, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

APPENDIX

Comment in the Issues and Decision Memorandum

Comment 1: Use of the Highest Petition Rate as Adverse Facts Available

[FR Doc. 2013–03236 Filed 2–12–13; 8:45 am]

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[44] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 41801 (July 19, 2010) (''*Final CVD Determination*'').

[45] *See* Memorandum from Karine Gziryan to Robert Bolling regarding the adjusted cash deposit rate (dated concurrently with this notice) for further detail on the calculation of these adjustments.

[46] *See Final LTFV Determination,* 75 FR at 41812.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857]

Welded Large Diameter Line Pipe From Japan: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2012, the Department of Commerce (the Department) initiated the second sunset review of the antidumping duty order on welded large diameter line pipe (line pipe) from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, and no response from a respondent interested party, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. The magnitude of the margin of dumping likely to prevail if the order were revoked is identified in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* February 13, 2013.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2012, the Department initiated the sunset review of the antidumping duty order on line pipe from Japan pursuant to section 751(c) of the Act. *See Sunset Initiation.* The Department received a notice of intent to participate from United States Steel Corporation on October 10, 2012, and a notice of intent to participate from American Cast Iron Pipe Company (ACIPCO); Berg Steel Pipe Company; Dura-Bond Pipe LLC; Stupp Corporation; and Welspun Tubular LLC USA on October 11, 2012 (collectively,

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 59897 (October 1, 2012) (*Sunset Initiation*).

domestic interested parties). All domestic interested parties provided information within the deadline specified in 19 CFR 351.218(d)(1)(i), and provided information required under 19 CFR 351.218(d)(1)(ii). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i) on October 31, 2012. No respondent interested parties submitted responses. As a result of the timely filed, substantive response from the domestic interested parties, the Department conducted an expedited sunset review of the order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30. 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope in the accompanying decision memorandum remains dispositive. *See* ''Issues and Decision Memorandum'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memorandum).

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of the continuation or recurrence of dumping and the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, Room 7046, of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on line pipe from Japan would likely lead to continuation or recurrence of dumping. Further, the Department finds that the magnitude of the margin of dumping that is likely to prevail if the order was revoked is 30.80 percent for Nippon Steel Corporation, Kawasaki Steel Corporation, and for all other Japanese producers and exporters of subject merchandise.

Notification

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: January 31, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–03364 Filed 2–12–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC485

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-Pollock Groundfish Fishery

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to decrease the fee rate for the non-pollock groundfish fishery to repay the $35,000,000 reduction loan to finance the non-pollock groundfish fishing capacity reduction program.

DATES: The non-pollock groundfish program fee rate decrease is effective January 1, 2013.

ADDRESSES: Send questions about this notice to Paul Marx, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Paul Marx, (301) 427–8799.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorize fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorize reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104–447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (''BSAI'') non-pollock groundfish fishery (''reduction fishery'') as set forth in the Act.

The longline catcher processor subsector (the ''Longline Subsector'') is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act.

The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery.

All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364), and published the final notice on September 29, 2006 (71 FR 57696).

NMFS allocated the $35,000,000 reduction loan (A loan) to the reduction fishery and this loan is repayable by fees from the fishery.

On September 24, 2007, NMFS published in the **Federal Register** (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007, as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012 of 50 CFR part 600's subpart M.

NMFS published, in the **Federal Register** on November 2, 2009 (74 FR 56592), a notice to decrease the A Loan fee rate to $0.016 per pound effective January 1, 2010. On November 12, 2010, NMFS published a notice (75 FR 69401) to decrease the fee rate to $0.015 per pound, effective January 1, 2011. NMFS published a notice on November 30, 2011 (76 FR 74048) to further decrease the fee rate once more to $0.0145 per pound effective January 1, 2012.

NMFS published a final rule to implement a second $2,700,000 reduction loan (B loan) for this fishery in the **Federal Register** on September 24, 2012 (77 FR 58775). The loan was disbursed December 18, 2012 with fee collection of $0.001 per pound to begin January 1, 2013. This fee is in addition to the A Loan fee.

II. Purpose

The purpose of this notice is to adjust the fee rate for the reduction fishery in accordance with the framework rule's § 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee to a rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined for the reduction fishery that the current fee rate of $0.0145 per pound is more than is needed to service the A loan. Therefore, NMFS is decreasing the fee rate to $0.0111 per pound which NMFS has determined is sufficient to ensure timely loan repayment. The fee rate for the B loan will remain $0.001 per pound.

Subsector members may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/.*

Please visit the NMFS Web site for additional information at: *http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm.*

III. Notice

The new fee rate for the non-pollock Groundfish fishery is effective January 1, 2013.

From and after this date, all subsector members paying fees on the non-pollock groundfish fishery shall begin paying non-pollock groundfish fishery program fees at the revised rate. Any over-payments of landings made using the previous higher fee rate will be credited to future landings.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 24, 2007 (72 FR 54219).

Authority: The authority for this action is Public Law 108–447, 16 U.S.C. 1861a (b-e), and 50 CFR 600.1000 *et seq.*

Dated: February 7, 2013.

Gary Reisner,

Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2013–03350 Filed 2–12–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC398

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approved Monitoring Service Providers

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

ACTION: Notice, approved monitoring service providers.

SUMMARY: NMFS has approved four companies to provide dockside and/or at-sea monitoring services to Northeast (NE) multispecies vessels in fishing year (FY) 2013. Regulations implementing Amendment 16 to the NE Multispecies Fishery Management Plan (Amendment 16) require third-party monitoring service providers to apply to, and be approved by, NMFS in a manner consistent with the Administrative Procedure Act in order to be eligible to provide dockside and/or at-sea monitoring services to sectors.

ADDRESSES: Copies of the list of NMFS-approved sector monitoring service providers are available at *http://www.nero.noaa.gov/sfd/sfdmultisector.html* or by sending a written request to:

- Fax: (978) 281–9135, Attn: Mark Grant.
- Mail: 55 Great Republic Drive, Gloucester, MA 01930, Attn: Mark Grant.

For service provider contact information, see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, (978) 281–9145, fax (978) 281–9135, email *Mark.Grant@NOAA.gov.*

SUPPLEMENTARY INFORMATION: Amendment 16 expanded the sector management program, including adding a requirement to ensure accurate monitoring of both sector at-sea catch and dockside landings, and common pool dockside landings (75 FR 18262; April 9, 2010). Framework Adjustment 45 to the FMP (Framework 45, 76 FR 23042, April 25, 2011) revised several dockside monitoring requirements.

Standards for Approving Sectors

Regulations at 50 CFR 648.87(b)(4) describe the criteria for NMFS approval of interested at-sea and dockside service providers. Once approved, providers must document having met performance requirements in order to maintain eligibility (§ 648.87(b)(4)(ii)). NMFS can disapprove any previously approved service provider during the FY if the service provider in question ceases to meet the performance standards. NMFS must notify service providers of disapproval in writing.

NMFS first approved service providers for FY 2010, based upon the completeness of their application addressing the regulatory requirements (§ 648.87(b)(4)(i)), and a determination of the applicant's ability to perform the duties and responsibilities of a monitoring service provider. In FY 2011, NMFS approved service providers based on completeness of applications, determination of ability, and performance during FY 2010. NMFS did not approve any providers for FY 2012 because there was no dockside monitoring requirement and at-sea monitoring was provided solely by NMFS.

NMFS is approving service providers for FY 2013 (beginning May 1, 2013) based on: (1) Completeness of applications; (2) determination of the applicant's ability to perform the duties and responsibilities of a sector monitoring service provider; and (3) performance as NMFS-funded providers in FY 2012.

NE multispecies sectors are required to design and implement independent, third-party at-sea monitoring in FY 2013, and are responsible for the costs of these monitoring requirements, unless otherwise instructed by NMFS. The regulations currently require the NE multispecies fishery to hire and pay for dockside monitoring in FY 2013. In December 2012, the New England Fishery Management Council approved measures to modify the at-sea

monitoring program and eliminate the requirement for dockside monitoring for both sector and common pool vessels. As this measure has not yet been approved, and a sector may elect to retain dockside monitoring through its operations plan, NMFS is also approving dockside monitoring service providers.

Approved Monitoring Service Providers

NMFS received complete applications from three service providers intending to provide dockside and/or at-sea monitoring services, and one service provider intending to provide only at-sea monitoring services. All four applicants were previously approved and provided dockside and/or at-sea monitoring services to sectors. The Regional Administrator has approved the following service providers as eligible to provide dockside monitoring and/or at-sea monitoring services in FY 2013:

TABLE 1—APPROVED FY 2013 PROVIDERS

Provider name	At-Sea monitoring	Dockside monitoring	Address	Phone	Fax	Web site
A.I.S., Inc	X	X	89 North Water Street, New Bedford, MA 02747.	(508) 990–9054	(508) 990–9055	*www.aisobservers.com*
MRAG Americas.	X	X	65 Eastern Ave., Unit B2C, Essex, MA 01929.	(978) 768–3880	(978) 768–3878	*www.mragamericas.com*
Atlantic Catch Data Ltd..	X	X	99 Wyse Road, Suite 815, Dartmouth, Nova Scotia, CANADA B3A 4S5.	(902) 422–4745	(902) 422–9780	*www.atlanticcatchdata.ca*
East West Technical Services, LLC.	.....	X	34 Batterson Drive, New Britain, CT 06053.	(860) 223–5165	(860) 223–6005	*www.ewts.com*

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

Dated: February 8, 2013.

Kara Meckley,

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

[FR Doc. 2013–03371 Filed 2–12–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC238

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey on the Mid-Atlantic Ridge in the Atlantic Ocean, April 2013, Through June 2013

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: We have received an application from the Lamont-Doherty Earth Observatory (Observatory), in collaboration with the National Science Foundation (Foundation), for an Incidental Harassment Authorization to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey on the Mid-Atlantic Ridge in the north Atlantic Ocean in international waters, from April 2013 through May 2013. Per the Marine Mammal Protection Act, we are requesting comments on our proposal to issue an Incidental Harassment Authorization to the Observatory and the Foundation to incidentally harass by Level B harassment only, 28 species of marine mammals during the 20-day seismic survey.

DATES: Comments and information must be received no later than March 15, 2013.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* Please include 0648–XC238 in the subject line. We are not responsible for email comments sent to other addresses other than the one provided here. Comments sent via email to *ITP.Cody@noaa.gov,* including all attachments, must not exceed a 10-megabyte file size.

All submitted comments are a part of the public record and we will post to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The following associated documents are also available at the same internet address:

The Foundation's draft environmental analysis titled, ''Marine geophysical survey by the R/V MARCUS G. LANGSETH on the mid-Atlantic Ridge, April–May 2013,'' for their federal action of funding the Observatory's seismic survey. LGL Ltd., Environmental Research Associates (LGL), prepared this analysis on behalf of the Foundation pursuant to Executive Order 12114: Environmental Effects Abroad of Major Federal Actions. The Foundation's environmental analysis evaluates the effects of the proposed seismic survey on the human environment including impacts to marine mammals. We will prepare a separate National Environmental Policy Act (NEPA: 42 U.S.C. 4321 *et seq.*) analysis to evaluate the environmental effects related to the scope of our federal action which is the proposed issuance of an incidental take authorization to the Observatory and the Foundation. We plan to incorporate the Foundation's environmental analysis, in whole or part, by reference, into our NEPA document as that analysis provides a detailed description of the planned survey and its anticipated effects on marine mammals. This notice and the referenced document present detailed information on the scope of our federal action under NEPA (i.e., potential impacts to marine mammals from

issuing the proposed IHA including measures for mitigation, and monitoring) and we will consider comments submitted in response to this notice as we prepare our NEPA analysis.

The public can view documents cited in this notice by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, National Marine Fisheries Service, Office of Protected Resources, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice of a proposed authorization to the public for review and public comment: (1) We make certain findings; and (2) the taking is limited to harassment.

We shall grant authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking. We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application from the Observatory on December 7, 2012, requesting that we issue an Incidental Harassment Authorization (Authorization) for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a marine seismic survey in the north Atlantic Ocean in international waters from April 8, 2013, through May 13, 2013. We received a revised application from the Observatory on December 23, 2012 and January 17, 2013, which reflected updates to the mitigation safety zones, incidental take requests for marine mammals, and information on marine protected areas. Upon receipt of additional information, we determined the application complete and adequate on January 18, 2013.

Project Purpose—The Observatory plans to conduct a two-dimensional (2–D) seismic survey on the Mid-Atlantic Ridge in the north Atlantic Ocean. Specifically, the proposed survey would image the Rainbow massif to determine the characteristics of the magma body that supplies heat to the Rainbow hydrothermal field; determine the distribution of the different rock types that form the Rainbow massif; document large- and small-scale faults in the vicinity and investigate their role in controlling hydrothermal fluid discharge.

Vessel—The Observatory plans to use one source vessel, the R/V *Marcus G.* LANGSETH (LANGSETH), a seismic airgun array, a single hydrophone streamer, and ocean bottom seismometers (seismometers) to conduct the seismic survey. In addition to the operations of the seismic airgun array and hydrophone streamer, and the seismometers, the Observatory intends to operate a multibeam echosounder and a sub-bottom profiler continuously throughout the proposed survey.

Marine Mammal Take—Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun arrays, may have the potential to cause behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal take associated with these activities and the Observatory requested an authorization to take 28 species of marine mammals by Level B harassment.

In the Observatory's application, they did not request authorization to take marine mammals by Level A Harassment because their environmental analyses estimate that marine mammals would not be exposed to levels of sound likely to result in Level A harassment (we refer the reader to Appendix B of the Foundation's NEPA document titled, ''2011 Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (2011 PEIS) for Marine Seismic Research funded by the National Science Foundation or Conducted by the U.S. Geological Survey,'' (NSF/USGS, 2011) at *http://www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis-with-appendices.pdf* for details). Consequently, the Observatory's request for take by Level A harassment is zero animals for any species.

We do not expect that the use of the multibeam echosounder, the sub-bottom profiler, or the ocean bottom seismometer would result in the take of marine mammals and will discuss our reasoning later in this notice. Also, we do not expect take to result from a collision with the LANGSETH during seismic acquisition activities because the vessel moves at a relatively slow speed (approximately 8.3 kilometers per hour (km/h); 5.2 miles per hour (mph); 4.5 knots (kts)), for a relatively short period of time (approximately 20 operational days). It is likely that any marine mammal would be able to avoid the vessel during seismic acquisition activities. The Observatory has no recorded cases of a vessel strike with a marine mammal during the conduct of over eight years of seismic surveys covering over 160,934 km (86,897.4 nmi) of transect lines.

Description of the Proposed Specified Activities

Survey Details

The Observatory's proposed seismic survey on the Mid-Atlantic Ridge in the north Atlantic Ocean would commence

on April 8, 2013, and end on May 13, 2013. The LANGSETH would depart from St. George's, Bermuda, on April 8, 2013, and transit to the proposed survey area in international waters approximately 300 km (186.4 miles (mi)) offshore of Pico and Faial Islands in the Azores. At the conclusion of the proposed survey activities, the LANGSETH would arrive in Ponta Delgada, Azores on May 13, 2012. The proposed study area would encompass an area on the Mid-Atlantic Ridge bounded by the following coordinates: Approximately 35.5 to 36.5° North by 33.5 to 34.5° West.

Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, we propose to issue an authorization that is effective from April 8, 2013, to June 24, 2013.

Typically, 2–D surveys acquire data along single track lines with wide intervals; cover large areas; provide a coarse sampled subsurface image; and project less acoustic energy into the environment than other types of seismic surveys. During the survey, the LANGSETH would deploy an 36-airgun array as an energy source, an 8-kilometer (km)-long (3.7 mi-long) hydrophone streamer, and 46 seismometers. The seismometers are portable, self-contained passive receiver systems designed to sit on the seafloor and record seismic signals generated primarily by airguns and earthquakes.

The LANGSETH would transect approximately 2,582 km (1.6 mi) of transect lines which are spaced 1 to 2 meters (m) (3.2 to 6.6 feet (ft)) apart from one another (see Figure 1 in the Observatory's application). As the LANGSETH tows the airgun array along the transect lines, the hydrophone streamer would receive the returning acoustic signals and transfer the data to the vessel's onboard processing system. The seismometers also record and store the returning signals for later analysis. The LANGSETH would retrieve the seismometers at the conclusion of the survey.

The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) would require approximately 20 days. At the proposed survey area, the LANGSETH would conduct seismic acquisition activities in a grid pattern using the seismometers as a receiver over a total of approximately 1,680 km (1,044 mi) of survey lines and would also conduct seismic acquisition activities in multichannel seismic (MCS) mode using the 8-km (3.7 mi) streamer as the receiver over a total of approximately 900 km (559 mi). The seismic lines are over water depths of approximately 900 to 3,000 m (2,952 ft to 1.9 mi). Approximately 2,565 km (1,594 mi) of the survey effort would occur in depths greater than 1,000 m (3,280 ft). The remaining effort (17 km; 10.5 mi) would occur in water depths of 100 to 1,000 m (328 to 3,280 ft).

The proposed data acquisition would include approximately 480 hours of airgun operations (i.e., 20 days over 24 hours), with airgun discharges occurring on either a 3.25 minute interval with the seismometers or a 16-second interval for the MCS seismic portion. The Observatory would conduct all planned seismic activities with on-board assistance by the scientists who have proposed the study, Drs. J.P. Canales and R. Sohn of Woods Hole Oceanographic Institution and Dr. R. Dunn of the University of Hawaii. The vessel is self-contained and the crew would live aboard the vessel for the entire cruise.

Vessel Specifications

R/V LANGSETH

The LANGSETH, owned by the Foundation and operated by the Observatory, is a seismic research vessel with a quiet propulsion system that avoids interference with the seismic signals emanating from the airgun array. The vessel is 71.5 m (235 ft) long; has a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds. Its two 3,550 horsepower (hp) Bergen BRG–6 diesel engines drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is not used during seismic acquisition. The cruising speed of the vessel outside of seismic operations is 18.5 km/h (11.5 mph; 10 kts).

The LANGSETH would tow the 36-airgun array, as well as the hydrophone streamer during the first and last surveys, along predetermined lines. When the LANGSETH is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to five degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The vessel also has an observation tower from which protected species visual observers (observer) would watch for marine mammals before and during the proposed seismic acquisition operations. When stationed on the observation platform, the observer's eye level would be approximately 21.5 m (71 ft) above sea level providing the observer an unobstructed view around the entire vessel.

Acoustic Source Specifications

Seismic Airguns

The LANGSETH would deploy an 36-airgun array, with a total volume of approximately 6,600 cubic inches (in^3). The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz). The array configuration consists of four identical linear strings, with 10 airguns on each string; the first and last airguns would be spaced 16 m (52 ft) apart. Of the 10 airguns, nine would fire simultaneously while the tenth airgun would serve as a spare in case of failure of one of the other airguns. The LANGSETH would distribute the array across an area of approximately 24 x 16 m (78.7 x 52.5 ft) and would tow the array approximately 30 m (98.4 ft) behind the vessel at a tow depth of 12 m (39.4 ft) (see Figure 2–11, page 2–25 in the Foundation's 2011 PEIS) (NSF/USGS, 2011). During firing, the airguns would emit a brief (approximately 0.1 s) pulse of sound; during the intervening periods of operations, the airguns are silent.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. We express sound pressure level as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for sound pressure levels are dB re: 1 μPa. Sound pressure level (in decibels (dB)) = 20 log (pressure/reference pressure).

Sound pressure level is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square. Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to sound pressure level in this document refer to the root mean square unless otherwise noted. Sound

pressure level does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun array on the LANGSETH is 236 to 265 dB re: 1 $\mu Pa_{(p-p)}$ and the root mean square value for a given airgun pulse is typically 16 dB re: 1 μPa lower than the peak-to-peak value (Greene, 1997; McCauley *et al.,* 1998, 2000a). However, the difference between root mean square and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, the Observatory predicted the received sound levels in relation to distance and direction from the 36-airgun array and the single Bolt 1900LL 40-in^3 airgun.

Appendix H of the Foundation's PEIS (NSF/USGS, 2011) provides a detailed description of the modeling for marine seismic source arrays for species mitigation. These are the source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation because of the directional nature of the sound from the airgun array. We refer the reader to the Observatory's authorization application and the Foundation's PEIS for additional information.

Predicted Sound Levels for the Airguns

The Observatory has developed a model (Diebold *et al.,* 2010) that predicts received sound levels as a function of distance from the airguns for the 36-airgun array and the single 40-in^3 airgun. Their modeling approach uses ray tracing (i.e., a graphical representation of the effects of refracting sound waves) for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor).

Additionally, Tolstoy *et al.,* (2009) reported results for propagation measurements of pulses from the LANGSETH*'s* 36-airgun array in shallow-water (approximately 50 m (164 ft)) and deep-water depths (approximately 1,600 m (5,249 ft)) in the Gulf of Mexico in 2007 and 2008. Results of the Gulf of Mexico calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth and that sound propagation varied with array tow depth.

The Observatory used the results from their algorithm for acoustic modeling (Diebold *et al.,* 2010) to calculate the exclusion zones for the 36-airgun array and the single airgun. These values designate mitigation zones used during power downs or shutdowns for marine mammals. The Observatory uses the mitigation zones to estimate take (described in greater detail in Chapter 7 of the application) for marine mammals.

Comparison of the Tolstoy *et al.* (2009) calibration study with the Observatory's model (Diebold *et al.,* 2010) for the LANGSETH*'s* 36-airgun array indicated that the Observatory's model represents the actual received levels, within the first few kilometers and the locations of the predicted exclusions zones. Thus, the comparison of results from the Tolstoy *et al.* (2009) calibration study with the Observatory's model (Diebold *et al.,* 2010) at short ranges for the same array tow depth are in good agreement (see Figures 12 and 14 in Diebold *et al.,* 2010). As a consequence, isopleths falling within this domain can be predicted reliably by the Observatory's model.

In contrast, for actual received levels at longer distances, the Observatory found that their model (Diebold *et al.,* 2010) was a more robust tool for estimating mitigation radii in deep water as it did not overestimate the received sound levels at a given distance. To estimate mitigation radii in intermediate water depths, the Observatory applied a correction factor (multiplication) of 1.5 to the deep water mitigation radii. We refer the reader to Appendix H of the Foundation's PEIS (NSF/USGS, 2011) for a detailed description of the modeling for marine seismic source arrays for species mitigation.

Table 1 summarizes the predicted distances at which one would expect to receive three sound levels (160-, 180-, and 190-dB) from the 36-airgun array and a single airgun. To avoid the potential for injury or permanent physiological damage (Level A harassment), serious injury, or mortality we have concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa and 190 dB re: 1 μPa, respectively (NMFS, 1995, 2000). The 180-dB and 190-dB level shutdown criteria are applicable to cetaceans and pinnipeds, respectively, specified by us (NMFS, 1995, 2000). Thus the Observatory used these received sound levels to establish the mitigation zones. We also assume that marine mammals exposed to levels exceeding 160 dB re: 1 μPa may experience Level B harassment.

TABLE 1—MODELED DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 AND 180 dB RE: 1 μPa COULD BE RECEIVED DURING THE PROPOSED SURVEY OVER THE MID-ATLANTIC RIDGE IN THE NORTH ATLANTIC OCEAN, DURING APRIL THROUGH JUNE, 2013

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances[1] (m)	
			160 dB	180 dB
Single Bolt airgun (40 in^3)	12	>1,000	388	100
		100 to 1,000	582	100
36-Airgun Array (6,600 in^3)	12	>1,000	6,908	1,116
		100 to 1,000	10,362	1,674

[1] Diebold, J.B., M. Tolstoy, L. Doermann, S.L. Nooner, S.C. Webb, and T.J. Crone. 2010. R/V Marcus G. Langseth seismic source: Modeling and calibration. Geochem. Geophys. Geosyst.

Ocean Bottom Seismometers

The Observatory proposes to place 46 seismometers on the sea floor prior to the initiation of the seismic survey. Each seismometer is approximately 0.9 m (2.9 ft) high with a maximum diameter of 97 centimeters (cm) (3.1 ft). An anchor, made of a rolled steel bar grate which measures approximately 7 by 91 by 91.5 cm (3 by 36 by 36 inches) and weighs 45 kilograms (99 pounds) would anchor the seismometer to the seafloor.

After the Observatory completes the proposed seismic survey, an acoustic signal would trigger the release of each of the 46 seismometers from the ocean floor. The LANGSETH*'s* acoustic release transponder, located on the vessel, communicates with the seismometer at a frequency of 9 to13 kilohertz (kHz). The maximum source level of the release signal is 242 dB re: 1 μPa with an 8-millisecond pulse length. The received signal activates the seismometer's double burn-wire release assembly which then releases the seismometer from the anchor. The seismometer then floats to the ocean surface for retrieval by the LANGSETH. The steel grate anchors from each of the seismometers would remain on the seafloor.

The LANGSETH crew would deploy the seismometers one-by-one from the stern of the vessel while onboard protected species observers will alert them to the presence of marine mammals and recommend ceasing deploying or recovering the seismometers to avoid potential entanglement with marine mammal. Thus, entanglement of marine mammals is highly unlikely.

Although placement of the seismometers is dispersed over approximately1,500 square km (km^2) (579 square mi (mi^2) of seafloor habitat and may disturb benthic invertebrates, we and the Observatory expect these impacts to be localized and short-term because of natural sedimentation processes and the natural sinking of the anchors from their own weight resulting in no long-term habitat impacts. Also, the deep water habitat potentially affected by the placement of the seismometers is not designated as a marine protected area.

Multibeam Echosounder

The LANGSETH would operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted echosounder emits brief pulses of sound (also called a ping) (10.5 to 13.0 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from 2 to 15 ms long in water depths up to 2,600 m (8,530 ft). The echosounder uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-Bottom Profiler

The LANGSETH would also operate a Knudsen Chirp 3260 sub-bottom profiler concurrently during airgun and echosounder operations to provide information about the sedimentary features and bottom topography. The profiler is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component is 3.5 kHz and a hull-mounted transducer on the vessel directs the beam downward in a 27° cone. The power output is 10 kilowatts (kW), but the actual maximum radiated power is three kilowatts or 222 dB re: 1 μPa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

We expect that acoustic stimuli resulting from the proposed operation of the single airgun or the 36-airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. We assume that during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the echosounder and sub-bottom profiler would already be affected by the airguns. We also expect these disturbances to result in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

We do not expect that the movement of the LANGSETH, during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 kts; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Twenty-eight marine mammal species under our jurisdiction may occur in the proposed survey area, including seven mysticetes (baleen whales), and 21 odontocetes (toothed cetaceans) during April through May, 2013. Six of these species are listed as endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including: the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), north Atlantic right (*Eubalaena glacialis*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales.

Based on the best available data, the Observatory does not expect to encounter the following species because of these species rare and/or extralimital occurrence in the survey area. They include the: Atlantic white-sided dolphin (*Lagenorhynchus acutus*), white-beaked dolphin (*Lagenorhynchus albirostris*), harbor porpoise (*Phocoena phocoena*), Clymene dolphin (*Stenella clymene*), Fraser's dolphin (*Lagenodelphis hosei*), spinner dolphin (*Stenella longirostris*), melon-headed whale (*Peponocephala electra*), Atlantic humpback dolphin (*Souza teuszii*), long-beaked common dolphin (*Delphinus capensis*), and any pinniped species. Accordingly, we did not consider these species in greater detail and the proposed authorization would only address requested take authorizations for the 28 species.

Of these 28 species, the most common marine mammals in the survey area would be the: short-beaked common dolphin (*Delphinus delphis*), striped dolphin (*Stenella coeruleoalba*), and short-finned pilot whale (*Globicephala macrorhynchus*).

Table 2 presents information on the abundance, distribution, and conservation status of the marine mammals that may occur in the proposed survey area during April through June, 2013.

TABLE 2—ABUNDANCE ESTIMATES, MEAN DENSITY, AND ESA STATUS OF MARINE MAMMALS THAT MAY OCCUR IN THE PROPOSED SEISMIC SURVEY AREA OVER THE MID-ATLANTIC RIDGE IN THE NORTH ATLANTIC OCEAN, DURING APRIL THROUGH JUNE, 2013.

[See text and Table 2 in the Observatory's application for further details]

Species	Abundance in the N. Atlantic Ocean	ESA [a]	Estimated Density (#/100 km^2) [b]
Mysticetes:			
North Atlantic right whale	396 [1]	EN	0
Humpback whale	11,570 [2]	EN	0
Minke whale	121,000 [3]	NL	0
Bryde's whale	Not available	NL	0.19
Sei whale	12–13,000 [4]	EN	0.19
Fin whale	24,887 [5]	EN	4.46
Blue whale	937 [6]	EN	1.49
Odontocetes:			
Sperm whale	13,190 [7]	EN	3.71
Pygmy sperm whale	395 [1]	NL	0
Dwarf sperm whale	395 [1]	NL	0
Cuvier's beaked whale	3,513 [1,8]	NL	0
Mesoplodon spp.	3,513 [1,8]	NL	7.04
True's beaked whale	3,513 [1,8]	NL	7.04
Gervais beaked whale	3,513 [1,8]	NL	7.04
Sowerby's beaked whale	3,513 [1,8]	NL	7.04
Blainville's beaked whale	3,513 [1,8]	NL	7.04
Northern bottlenose whale	40,000 [9]	NL	0
Rough-toothed dolphin	Not available	NL	0
Common bottlenose dolphin	81,588 [10]	NL	8.35
Pantropical spotted dolphin	4,439 [1]	NL	0
Atlantic spotted dolphin	50,978 [1]	NL	20.03
Striped dolphin	94,462 [1]	NL	185.50
Short-beaked common dolphin	120,741 [4]	NL	379.52
Risso's dolphin	20,479 [4]	NL	3.83
Pygmy killer whale	Not available	NL	0
False killer whale	Not available	NL	1.17
Killer whale	Not available	NL	0
Long-finned pilot whale	12,619,[1] 780,000 [11]	NL	0
Short-finned pilot whale	24,674,[1] 780,000 [11]	NL	120.96

[a] ESA status codes: NL—not listed under the ESA; EN—Endangered; T—Threatened
[b] The Observatory used Waring *et al.*, 2008 to calculate density from sightings, effort, mean group sizes, and values for f(0) for the southern part of the survey area.
[1] Western North Atlantic, in U.S. and southern Canadian waters (Waring *et al.*, 2012)
[2] Likely negatively biased (Stevick *et al.*, 2003)
[3] Central and Northeast Atlantic (IWC, 2012)
[4] North Atlantic (Cattanach *et al.*, 1993)
[5] Central and Northeast Atlantic (Víkingsson *et al.*, 2009)
[6] Central and Northeast Atlantic (Pike *et al.*, 2009).
[7] For the northeast Atlantic, Faroes-Iceland, and the U.S. east coast (Whitehead, 2002).
[8] *Ziphius* and *Mesoplodon spp.* combined
[9] Eastern North Atlantic (NAMMCO, 1995)
[10] Offshore, Western North Atlantic (Waring *et al.*, 2012)
[11] *Globicephala sp.* combined, Central and Eastern North Atlantic (IWC, 2012)

Refer to Section 4 of the Observatory's application and Sections 3.6.3.4 and 3.7.3.4 of the 2011 PEIS (NSF/USGS, 2011) for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the proposed project area. We have reviewed these data and determined them to be the best available scientific information for the purposes of the proposed incidental harassment authorization.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift is not an injury (Southall *et al.,* 2007). Although we cannot exclude the possibility entirely, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, we expect some behavioral disturbance, but we expect the disturbance to be localized. We refer the reader to a more comprehensive review of these issues in the 2011 PEIS (NSF/USGS, 2011).

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined

tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.* 2005, 2006a; Weir 2008a for sperm whales), (MacLean and Koski, 2005; Bain and Williams, 2006 for Dall's porpoises). The relative responsiveness of baleen and toothed whales are quite variable.

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

We expect that the masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds will be limited, although there are very few specific data on this. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. We understand that some baleen and toothed whales continue calling in the presence of seismic pulses, and that some researchers have heard these calls between the seismic pulses (e.g., Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies have found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Several studies have reported hearing dolphins and porpoises calling while airguns were operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example, blue whales are found to increase call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Dilorio and Clark, 2009). The North Atlantic right whales exposed to high shipping noise increased call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.,* 2000).

In general, we expect that the masking effects of seismic pulses would be minor, given the normally intermittent nature of seismic pulses.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into the water from haul-outs or rookeries). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

- Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.,* 1995; Southall *et al.,* 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be

disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. There are less detailed data available for some other species of baleen whales and small toothed whales, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away from the area. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson *et al.,* 1995). They avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km (2.5 to 9.3 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B(5) of the Foundation's Assessment have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single, 20-in^3 airgun with source level of 227 dB re: 1 μPa (p-p). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1 to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and two km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Data collected by observers during several seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa. However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). Although, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

A few studies have documented reactions of migrating and feeding (but not wintering) gray whales to seismic surveys. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) root mean square basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) observed

localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009 and reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2011). The western Pacific gray whale population did not appear affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2011). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—There is little systematic information available about reactions of toothed whales to noise pulses. There are few studies on toothed whales similar to the more extensive baleen whale/seismic pulse work summarized earlier in this notice. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008, Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales (*Delphinapterus leucas)* exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales (*Ziphius cavirostris*) may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are underway

within the vicinity of the animals (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the Stranding and Mortality section in this notice). These types of strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes. However, other data suggest that some odontocete species, including harbor porpoises, may be more responsive than might be expected given their poor low-frequency hearing. Reactions at longer distances may be particularly likely when sound propagation conditions are conducive to transmission of the higher frequency components of airgun sound to the animals' location (DeRuiter *et al.,* 2006; Goold and Coates, 2006; Tyack *et al.,* 2006; Potter *et al.,* 2007).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (Southall *et al.,* 2007).

Researchers have studied temporary threshold shift in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of temporary threshold shift let alone permanent hearing damage, (i.e., permanent threshold shift, in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions).

Temporary Threshold Shift—This is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing temporary threshold shift, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, temporary threshold shift can last from minutes or hours to (in cases of strong shifts) days. For sound exposures at or somewhat above the temporary threshold shift threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. There are few data on sound levels and durations necessary to elicit mild temporary threshold shift for marine mammals, and none of the published data focus on temporary threshold shift elicited by exposure to multiple pulses of sound. Southall *et al.* (2007) summarizes available data on temporary threshold shift in marine mammals. Table 1 (introduced earlier in this document) presents the estimated distances from the LANGSETH*'s* airguns at which the received energy level (per pulse, flat-weighted) would be greater than or equal to 180 or 190 dB re: 1 μPa.

To avoid the potential for Level A harassment, serious injury or mortality we (NMFS 1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. We do not consider the established 180 criterion to be the level above which temporary threshold shift might occur. Rather, it is a received level above which, in the view of a panel of bioacoustics specialists convened by us before temporary threshold shift measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. We also assume that cetaceans exposed to levels exceeding 160 dB re: 1 μPa may experience Level B harassment.

For toothed whales, researchers have derived temporary threshold shift information for odontocetes from studies on the bottlenose dolphin and beluga. The experiments show that exposure to a single impulse at a received level of 207 kilopascals (or 30 psi, p-p), which is equivalent to 228 dB re: 1 Pa (p-p), resulted in a 7 and 6 dB temporary threshold shift in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). For the one harbor porpoise tested, the received level of airgun sound that elicited onset of temporary threshold shift was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of temporary threshold shift occurs at similar received levels in all odontocetes (cf. Southall *et al.,* 2007). Some cetaceans apparently can incur temporary threshold shift at considerably lower sound exposures than are necessary to elicit temporary threshold shift in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce temporary threshold shift. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, one could suspect that received levels causing temporary threshold shift onset may also be higher in baleen whales (Southall *et al.,* 2007).

In pinnipeds, researchers have not measured temporary threshold shift thresholds associated with exposure to brief pulses (single or multiple) of underwater sound. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur temporary threshold shift at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The indirectly estimated temporary threshold shift threshold for pulsed sounds (in sound pressure level) would be approximately 181 to 186 dB re: 1 μPa (Southall *et al.,* 2007), or a series of pulses for which the highest sound exposure level values are a few decibels lower.

Permanent Threshold Shift—When permanent threshold shift occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause permanent threshold shift in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild temporary threshold shift, there has been further speculation about the

possibility that some individuals occurring very close to airguns might incur permanent threshold shift (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild temporary threshold shift are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing temporary threshold shift onset might elicit permanent threshold shift.

Relationships between temporary and permanent threshold shift thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. Permanent threshold shift might occur at a received sound level at least several decibels above that inducing mild temporary threshold shift if the animal were exposed to strong sound pulses with rapid rise times. Based on data from terrestrial mammals, a precautionary assumption is that the permanent threshold shift threshold for impulse sounds (such as airgun pulses as received close to the source) is at least six decibels higher than the temporary threshold shift threshold on a peak-pressure basis, and probably greater than 6 dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause permanent threshold shift as compared with temporary threshold shift, it is considerably less likely that permanent threshold shift would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance''.

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of mid-frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Refer to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used in marine waters for commercial seismic surveys or (with rare exceptions) for seismic research. These methods have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays.

However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, the co-occurrence of a Lamont-Doherty's seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.,* 2007).

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to the bends), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different from one another, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse

sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct correlation between the potential effects of military sonar on marine mammals and those caused by seismic surveys using airguns. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, two Cuvier's beaked whales stranded in the Gulf of California, Mexico while Lamont-Doherty's R/V *Maurice Ewing* had been operating a 20-airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005).

We anticipate no injuries of beaked whales during the proposed study because of:

(1) The likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels; and

(2) Differences between the sound sources operated by the LANGSETH and those involved in the naval exercises associated with strandings.

Non-Auditory Physiological Effects

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

Multibeam Echosounder

The Observatory would operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause temporary threshold shift.

Navy sonars linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During the Observatory's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the animal. The following section outlines possible effects of an echosounder on marine mammals.

Masking—Marine mammal communications would not be masked appreciably by the echosounder's signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the echosounder's signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz

echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those that would be emitted by the Observatory's echosounder, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an echosounder.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the echosounder proposed for use by the LANGSETH is quite different than sonar used for navy operations. The echosounder's pulse duration is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the echosounder's beam for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the echosounder relative to that from naval sonar.

Based upon the best available science, we believe that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the echosounder is not likely to result in the harassment of marine mammals.

Sub-Bottom Profiler

The Observatory would also operate a sub-bottom profiler from the source vessel during the proposed survey. The profiler's sounds are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the LANGSETH has a maximum source level of 222 dB re: 1 μPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a profiler more powerful than that on the LANGSETH—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause temporary threshold shift.

Masking—Marine mammal communications would not be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the profiler are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the profiler are considerably weaker than those from the echosounder. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The profiler operates simultaneously with other higher-power acoustic sources. Many marine mammals would move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the profiler

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below this section.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in

surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the LANGSETH would be audible to marine mammals over a large distance, it is unlikely that animals would respond behaviorally (in a manner that we would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, we do not expect the LANGSETH*'s* movements to result in Level B harassment.

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph;13 kts).

The Observatory's proposed operation of one vessel for the proposed survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during the proposed survey is unlikely due to the LANGSETH*'s* slow operational speed, which is typically 4.6 kts (8.5 km/h; 5.3 mph). Outside of seismic operations, the LANGSETH*'s* cruising speed would be approximately 11.5 mph (18.5 km/h; 10 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the LANGSETH has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: The LANGSETH*'s* bridge offers good visibility to visually monitor for marine mammal presence; observers posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the observers receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately 8.0 km (4.9 mi) of equipment and cables. This large of an array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of becoming entangled due to slow speed of the survey vessel and onboard monitoring efforts. The Observatory has no recorded cases of entanglement of marine mammals during the conduct of over 8 years of seismic surveys covering over 160,934 km (86,897.4 nmi) of transect lines.

In May, 2011, there was one recorded entanglement of an olive ridley sea turtle (*Lepidochelys olivacea*) in the LANGSETH*'s* barovanes after the conclusion of a seismic survey off Costa Rica. There have cases of baleen whales, mostly gray whales (Heyning, 1990), becoming entangled in fishing lines. The probability for entanglement of marine mammals is considered not significant because of the vessel speed and the monitoring efforts onboard the survey vessel.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e., fish and invertebrates). Additionally, no physical damage to any habitat is

anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. The next section discusses the potential impacts of anthropogenic sound sources on common marine mammal prey in the proposed survey area (i.e., fish and invertebrates).

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects–The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as the Observatory, and we know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated temporary threshold shift in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only temporary threshold shift (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)) likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (i.e., the cutoff frequency) at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

An experiment of the effects of a single 700 in^3 airgun was conducted in Lake Meade, Nevada (USGS, 1999). The data were used in an Environmental Assessment of the effects of a marine reflection survey of the Lake Meade fault system by the National Park Service (Paulson *et al.,* 1993, in USGS, 1999). They suspended the airgun 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates were hired by USGS to monitor the effects of the surveys, and concluded that airgun operations were not responsible for the

death of any of the fish carcasses observed, and the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a worst-case scenario, mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet, Alaska. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. The Minerals Management Service noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary and also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is in Appendix E of the 2011 PEIS (NSF/USGS, 2011).

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Tenera Environmental (2011b) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.,* 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes.

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that

increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. The received sound pressure level was 157 ± 5 dB re: 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). It was noted however, than no behavioral impacts were exhibited by crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The Observatory has reviewed the following source documents and have incorporated a suite of proposed mitigation measures into their project description.

(1) Protocols used during previous Foundation and Observatory-funded seismic research cruises as approved by us and detailed in the Foundation's 2011 PEIS;

(2) Previous incidental harassment authorizations applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the Observatory, and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;
(2) Proposed exclusion zones;
(3) Power down procedures;
(4) Shutdown procedures;
(5) Ramp-up procedures; and
(6) Speed and course alterations.

Vessel-Based Visual Mitigation Monitoring

The Observatory would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (i.e., greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the LANGSETH would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated 180-dB exclusion zone.

During seismic operations, at least four protected species observers would be aboard the LANGSETH. The Observatory would appoint the observers with our concurrence and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the LANGSETH would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, the Observatory would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The LANGSETH is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly;

that is done primarily with the reticles in the binoculars.

When the observers see marine mammals within or about to enter the designated exclusion zone, the LANGSETH would immediately power down or shutdown the airguns. The observer(s) would continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Proposed Exclusion Zones—The Observatory would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 1 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160- and 180-dB) from the 36-airgun array and a single airgun. The 180-dB level shutdown criteria are applicable to cetaceans as specified by us (2000). The Observatory used these levels to establish the exclusion zones.

If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the LANGSETH crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

Power Down Procedures–A power down involves decreasing the number of airguns in use such that the radius of the 180-dB zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the LANGSETH would operate one airgun (40 in^3). The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. A shutdown occurs when the LANGSETH suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the 180-dB exclusion zone before the animal enters that zone. Likewise, if a mammal is already within the zone when first detected, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in^3 airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 1), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down—Following a power-down, the LANGSETH crew would not resume full airgun activity until the marine mammal has cleared the 180-dB exclusion zone (see Table 1). The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

The LANGSETH crew would resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew would resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

We estimate that the LANGSETH would transit outside the original 180-dB exclusion zone after an 8-minute wait period. This period is based on the 180-dB exclusion zone for the 36-airgun array towed at a depth of 12 m (39.4 ft) in relation to the average speed of the LANGSETH while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The LANGSETH*'s* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the LANGSETH*'s* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shutdown Procedures—The LANGSETH crew would shutdown the operating airgun(s) if a marine mammal is seen within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an animal is initially seen within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Considering the conservation status for north Pacific right whales, the LANGSETH crew would shutdown the airgun(s) immediately in the unlikely event that this species is observed, regardless of the distance from the vessel. The LANGSETH would only begin ramp-up would only if the north Pacific right whale has not been seen for 30 minutes.

Resuming Airgun Operations After a Shutdown—Following a shutdown in excess of eight minutes, the LANGSETH crew would initiate a ramp-up with the smallest airgun in the array (40-in^3). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sights a marine mammal, the LANGSETH crew would implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the LANGSETH crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the LANGSETH crew would not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone

for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew would not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-Up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. The Observatory would follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when shut down has exceeded that period. The Observatory has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40 in^3). The crew would add airguns in a sequence such that the source level of the array would increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, the Observatory would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, the Observatory would not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The Observatory would not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones.

Speed and Course Alterations

If during seismic data collection, the Observatory detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the LANGSETH would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed and/or course can result in an extended period of time to realign onto the transect. However, if the animal(s) appear likely to enter the exclusion zone, the LANGSETH would undertake further mitigation actions, including a power down or shut down of the airguns.

We have carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Proposed Monitoring

The Observatory proposes to sponsor marine mammal monitoring during the present project to supplement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Incidental Harassment Authorization. The Observatory understands that this monitoring plan would be subject to review by us, and that we may require refinements to the plan. The Observatory planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, the Observatory is prepared to discuss coordination of its monitoring program with any other related work that might be conducted by other groups working insofar as it is practical and desirable.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can be used in conjunction with visual observations to improve detection, identification, and localization of cetaceans. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustic detect cetaceans.

The passive acoustic monitoring system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). The LANGSETH crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system

can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the LANGSETH in addition to the four visual observers. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the LANGSETH is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the LANGSETH is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which the Observatory must report to the Office of Protected Resources.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the Observatory would conduct the seismic study.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Proposed Reporting

The Observatory would submit a report to us and to the Foundation within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov*. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Observatory shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with the Observatory to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Observatory may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Observatory discovers an injured or dead marine

mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the Observatory will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov.* The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We would work with the Observatory to determine whether modifications in the activities are appropriate.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Observatory would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov,* within 24 hours of the discovery. The Observatory would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We propose to authorize take by Level B harassment for the proposed seismic survey. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to result in the behavioral disturbance of some marine mammals. There is no evidence that planned activities could result in serious injury or mortality within the specified geographic area for the requested authorization. The required mitigation and monitoring measures would minimize any potential risk for serious injury or mortality.

The following sections describe the Observatory's methods to estimate take by incidental harassment and present their estimates of the numbers of marine mammals that could be affected during the proposed seismic program. The estimates are based on a consideration of the number of marine mammals that could be harassed by seismic operations with the 36-airgun array during approximately 5,572 km^2 (2,151 mi^2) of transect lines on the Mid-Atlantic Ridge in the north Atlantic Ocean, as depicted in Figure 1 of the application.

We assume that during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the echosounder and sub-bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, we expect that the marine mammals would exhibit no more than short-term and inconsequential responses to the echosounder and profiler given their characteristics (e.g., narrow downward-directed beam) and other considerations described previously. Based on the best available information, we do not consider that these reactions constitute a ''take'' (NMFS, 2001). Therefore, the Observatory did not provide any additional allowance for animals that could be affected by sound sources other than the airguns.

Ensonified Area Calculations—Because the Observatory assumes that the LANGSETH may need repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey; they have increased the proposed number of line-kilometers for the seismic operations by 25 percent (i.e., contingency lines).

Density Information—The Observatory based the density estimates on information calculated from sightings, effort, mean group sizes, and values for f(0) for the southern part of the survey area in Waring et al. (2008), which extends from the Azores at approximately 38° N to 53° N. The allocated densities calculated for undifferentiated ''common/striped dolphins'' to common and striped dolphins in proportion to the calculated densities of the two species. The density calculated for ''unidentified dolphin'' was allocated to bottlenose, Atlantic spotted, and Risso's dolphins, species that could occur in the proposed survey area based on their presence in the Azores, in proportion to the number of sightings in the OBIS database for those species around the Azores. The density calculated for ''unidentified small whale'' was allocated to the false killer whale, the one small whale species that could occur in the proposed survey area based on its presence in the Azores. The four ''long-finned/short-finned pilot whales'' sighted in the southern part of the survey area by Waring et al. (2008) were assumed to be short-finned pilot whales based on OBIS sightings around the Azores. The density calculated for the one ''sei/Bryde's whale'' sighting in the southern part of the survey area was allocated to sei and Bryde's whales in equal proportions. The authors' calculated value of f(0) for the sei whale was used for calculating densities of Bryde's, fin, and blue whales, and that for ''small Delphinidae'' was used for calculating densities of *Mesoplodon spp.,* dolphins, the false killer whale, and the short-finned pilot whale. Because the survey effort in the southern stratum of Waring *et al.* (2008) is limited (1,047 km; 650 mi), the survey area is north of the proposed seismic area (38–52° N versus 36–36.5° N), and the survey was conducted during a somewhat different season (June versus April–May), there is some uncertainty about the representativeness of the data and the assumptions used in the calculations.

Exposure Estimation—The Observatory estimated the number of different individuals that could be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa on one or more occasions by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeat exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160-dB radius around the operating airguns, excluding areas of overlap. Some individuals may be exposed multiple times since the survey tracklines are spaced close together, however, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 re: 1 μPa (rms) was calculated by multiplying:

(1) The expected species density (in number/km^2), times

(2) The anticipated area to be ensonified to that level during airgun operations (5,571 km^2; (2,151 mi^2).

The Observatory's estimates of exposures to various sound levels assume that the proposed surveys would be carried out in full (i.e., approximately 20 days of seismic airgun operations), however, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25 percent to accommodate lines that may need to be repeated, equipment testing, account for repeat exposure, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPa DURING THE PROPOSED SEISMIC SURVEY OVER THE MID-ATLANTIC RIDGE IN THE NORTH ATLANTIC OCEAN, DURING APRIL THROUGH JUNE, 2013

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa[1]	Requested or adjusted take authorization[2]	Regional population[3]	Approx. percent of regional population[3]
Mysticetes:				
North Atlantic right whale	0	0	0	0
Humpback whale	0	[4]2	0	0
Minke whale	0	[4]3	0	0
Bryde's whale	1	1	N/A	N/A
Sei whale	1	1	13,000	0.01
Fin whale	25	25	24,887	0.10
Blue whale	8	8	937	0.89
Odontocetes		21		0.16
Sperm whale	21		13,190	
Pygmy sperm whale	0	0	395	0
Dwarf sperm whale	0	0	395	0
Cuvier's beaked whale	0	[4]7	3,513	0.2
Mesoplodon spp.				
True's beaked whale				
Gervais beaked whale	39	39		1.12
Sowerby's beaked whale				
Blainville's beaked whale			3,502	
Northern bottlenose whale	0	[4]4	~40,000	0
Rough-toothed dolphin	0	0	N/A	0
Common bottlenose dolphin	47	47	81,588	0.06
Pantropical spotted dolphin	0	0	4,439	0
Atlantic spotted dolphin	112	112	50,978	0.22
Striped dolphin	1,034	1,034	94,462	1.09
Short-beaked common dolphin	2,115	2,115	120,741	1.75
Risso's dolphin	21	21	20,479	0.10
Pygmy killer whale	0	0	N/A	0
False killer whale	7	7	N/A	N/A
Killer whale	0	[4]5	N/A	0
Long-finned pilot whale	0	0	780,000	0
Short-finned pilot whale	674	674	780,000	0.09

N/A = Not Available.
[1] Estimates are based on densities in Table 2 and an ensonified area of (5,571 km^2; (2,151 mi^2)
[2] Requested or adjusted take includes a 25 percent contingency for repeated exposures due to the overlap of parallel survey tracks.
[3] Regional population size estimates are from Table 2.
[4] Requested take authorization increased to group size for species for which densities were not calculated but for which there were OBIS sightings around the Azores.

Encouraging and Coordinating Research

The Observatory would coordinate the planned marine mammal monitoring program associated with the seismic survey on the Mid-Atlantic Ridge in the north Atlantic Ocean with other parties that may have interest in the area and/or may be conducting marine mammal studies in the same region during the seismic surveys.

Negligible Impact and Small Numbers Analysis and Determination

We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document and based on the following factors, the specified activities associated with the marine seismic surveys are not likely to cause permanent threshold shift, or other non-auditory injury, serious injury, or death. They include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, we expect marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and that we would likely avoid this impact through the incorporation of the required monitoring and mitigation measures (including power-downs and shutdowns); and

(3) The likelihood that marine mammal detection ability by trained visual observers is high at close proximity to the vessel.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of the Observatory's planned marine seismic surveys, and we do not propose to authorize injury, serious injury or mortality for this survey. We anticipate only behavioral disturbance to occur during the conduct of the survey activities.

Table 4 in this document outlines the number of requested Level B harassment takes that we anticipate as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock.

Further, the seismic surveys would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While we anticipate that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 20 days. Additionally, the seismic survey would be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for shorter less than day.

Of the 28 marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA, including: The blue, fin, humpback, north Atlantic right, sei, and sperm whales. These species are also categorized as depleted under the MMPA. With the exception of the north Atlantic right whale, the Observatory has requested authorized take for these listed species.

As mentioned previously, we estimate that 28 species of marine mammals under our jurisdiction could be potentially affected by Level B harassment over the course of the proposed authorization. For each species, these take numbers are small (most estimates are less than or equal to two percent) relative to the regional or overall population size and we have provided the regional population estimates for the marine mammal species that may be taken by Level B harassment in Table 4 in this document.

Our practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

We have preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a proposed survey on the Mid-Atlantic Ridge in the north Atlantic Ocean in international waters, from April 2013 through June 2013, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While these species may make behavioral modifications, including temporarily vacating the area during the operation of the airgun(s) to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led us to preliminary determine that this action would have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that the Observatory's planned research activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the required measures mitigate impacts to affected species or stocks of marine mammals to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the Marine Mammal Protection Act also requires us to determine that the authorization would not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (on the Mid-Atlantic Ridge in the north Atlantic Ocean in international waters) that implicate section 101(a)(5)(D) of the Marine Mammal Protection Act.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the Endangered Species Act, including the blue, fin, humpback, north Atlantic right, sei, and sperm whales. The Observatory did not request take of endangered north Atlantic right whales because of the low likelihood of encountering these species during the cruise.

Under section 7 of the Act, the Foundation has initiated formal consultation with the Service's, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. We (i.e., National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division), have also initiated formal consultation under section 7 of the Act with the Endangered Species Act Interagency Cooperation Division to obtain a Biological Opinion (Opinion) evaluating the effects of issuing an incidental harassment authorization for threatened and endangered marine mammals and, if appropriate, authorizing incidental take. Both agencies would conclude the formal section 7 consultation (with a single Biological Opinion for the Foundation's Division of Ocean Sciences and NMFS' Office of Protected Resources, Permits and Conservation Division federal actions) prior to making a determination on whether or not to issue the authorization. If we issue the take authorization, the Foundation and the Observatory must comply with the mandatory Terms and Conditions of the Opinion's Incidental Take Statement which would incorporate the mitigation and monitoring requirements included

in the Incidental Harassment Authorization.

National Environmental Policy Act (NEPA)

To meet our NEPA requirements for the issuance of an IHA to the Observatory, we intend to prepare an Environmental Assessment (EA) titled ''Issuance of an Incidental Harassment Authorization to the Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical on the Mid-Atlantic Ridge in the north Atlantic Ocean, from April 2013 through June 2013.'' This EA would incorporate as appropriate the Foundation's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) titled, ''Marine geophysical survey by the R/V MARCUS G. *Langseth* on the mid-Atlantic Ridge, April–May 2013,'' by reference pursuant to 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). Prior to making a final decision on the IHA application, we would decide whether or not to issue a Finding of No Significant Impact (FONSI).

The Foundation's environmental analysis is available for review at the addresses set forth earlier in this notice. This notice and the documents it references provide all relevant environmental information related to our proposal to issue the IHA. We invite the public's comment and will consider any comments related to environmental effects related to the proposed issuance of the IHA submitted in response to this as we conduct and finalize our NEPA analysis.

Proposed Authorization

As a result of these preliminary determinations, we propose to authorize the take of marine mammals incidental to the Observatory's proposed marine seismic surveys on the Mid-Atlantic Ridge in the north Atlantic Ocean from April 2013, through June 2013, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the incidental harassment authorization would not exceed one year from the date of its issuance.

Information Solicited

We request interested persons to submit comments and information concerning this proposed project and our preliminary determination of issuing a take authorization (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, we will forward copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 6, 2013.

Matthew J. Brookhart,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–03321 Filed 2–12–13; 8:45 am]

BILLING CODE 3510–22–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, March 5, 2013. A business meeting will be held the following day on Wednesday, March 6, 2013. Both the hearing and business meeting are open to the public and will be held at the Commission's office building located at 25 State Police Drive, West Trenton, New Jersey.

Public Hearing. The public hearing on March 5, 2013 will run from 1:00 p.m. until approximately 4:00 p.m. The list of projects scheduled for hearing, with descriptions, is currently available in a long form of this notice posted on the Commission's Web site, *www.drbc.net.* Draft dockets and resolutions for hearing items will be posted on the Web site approximately ten days prior to the hearing date. Because hearings on particular projects may be postponed to allow additional time for the commission's review, interested parties are advised to check the Web site periodically prior to the hearing date. Postponements, if any, will be duly noted there.

Public Meeting. The business meeting on March 6, 2013 will begin at 12:15 p.m. and will include the following items: adoption of the Minutes of the Commission's December 5, 2012 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, consideration of items for which a hearing has been completed, and a public dialogue session. The Commissioners also may consider action on matters not subject to a public hearing.

There will be no opportunity for additional public comments at the March 6 business meeting on items for which a hearing was completed on March 5 or a previous date. Commission consideration on March 6 of items for which the public hearing is closed may result in either approval of the docket or resolution as proposed, approval with changes, denial, or deferral. When the commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the commission on a future date.

Advance sign-up for oral comment. Individuals who wish to comment for the record at the public hearing on March 5th or to address the Commissioners informally during the public dialogue portion of the meeting on March 6 are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

Addresses for written comment. Written comment on items scheduled for hearing may be delivered by hand at the public hearing or submitted in advance of the hearing date to: Commission Secretary, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522 or by email to *paula.schmitt@drbc.state.nj.us.* Written comment on dockets should also be furnished directly to the Project Review Section at the above address or fax number or by email to *william.muszynski@drbc.state.nj.us.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Updates. Items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Other meeting items also are subject to change. Please check the Commission's Web site, *www.drbc.net,* closer to the meeting date for changes that may be made after the deadline for filing this notice.

Additional Information, Contacts. The list of projects scheduled for hearing, with descriptions, is currently available in a long form of this notice posted on the Commission's Web site, *www.drbc.net.* Draft dockets and resolutions for hearing items will be posted as hyperlinks from the notice at

the same location approximately ten days prior to the hearing date. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Project Review Section Assistant Victoria Lawson at 609–883–9500, ext. 216.

Dated: February 7, 2013.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2013–03281 Filed 2–12–13; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI)

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of an open meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and information pertaining to members of the public submitting third–party written and oral comments.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

NACIQI'S Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

SUMMARY: This notice sets forth the agenda for the June 6–7, 2013 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI); and provides information to members of the public on submitting written comments and on requesting to make oral comments at the meeting. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act (HEA) of 1965, as amended.

Meeting Date and Place: The NACIQI meeting will be held on June 6–7, 2013, from approximately 8:00 a.m. to approximately 5:30 p.m., at a location to be determined in the Washington DC area. The exact location will be published in the **Federal Register** and on the Department's Web site at *http://www2.ed.gov/about/bdscomm/list/naciqi.html#meetings* by May 6, 2013.

Meeting Agenda: Below is a list of agencies, including their current and requested scopes of recognition, scheduled for review during the June 6–7, 2013 meeting:

Petitions for Continued Recognition

Accrediting Agencies

1. Accrediting Council for Continuing Education and Training (ACCET) (Current Scope: The accreditation of institutions of higher education throughout the United States that offer non-collegiate continuing education programs and those that offer occupational associate degree programs and those that offer such programs via distance education.)

2. Accreditation Council on Optometric Education (ACOE) (Current Scope: The accreditation in the United States of professional optometric degree programs, optometric technician (associate degree) programs, and optometric residency programs, and for the preaccreditation categories of Preliminary Approval for professional optometric degree programs and Candidacy Pending for optometric residency programs in Department of Veterans Affairs facilities.)

3. Association of Advanced Rabbinical and Talmudic Schools (AARTS) (Current Scope: The accreditation and pre-accreditation (''Correspondent'' and ''Candidate'') within the United States of advanced rabbinical and Talmudic schools.) (Requested Scope: The accreditation and pre-accreditation (''Correspondent'' and ''Candidate'') within the United States of advanced rabbinical and Talmudic schools which grant postsecondary degrees such as Baccalaureate, Masters, Doctorate, First Rabbinic and First Talmudic degrees.)

4. Commission on Accreditation of Healthcare Management Education (CAHME) (Current Scope: The accreditation throughout the United States of graduate programs in healthcare management.)

5. National Association of Schools of Dance, Commission on Accreditation (NASD) (Current Scope: The accreditation throughout the United States of freestanding institutions, and units offering dance and dance-related programs (both degree- and non-degree-granting), including those offered via distance education.) (Requested Scope: The accreditation throughout the United States of freestanding institutions, and units offering dance and dance-related programs (both degree- and non-degree-granting), including those offered via distance and correspondence education.)

6. National Association of Schools of Art and Design, Commission on Accreditation (NASAD)(Current Scope: The accreditation throughout the United States of freestanding institutions, and units offering art/design and art/design-related programs (both degree- and non-degree-granting), including those offered via distance education.) (Requested Scope: The accreditation throughout the United States of freestanding institutions, and units offering art/design and art/design-related programs (both degree- and non-degree-granting), including those offered via distance and correspondence education.)

7. National Association of Schools of Music, Commission on Accreditation (NASM) (Current Scope: The accreditation throughout the United States of freestanding institutions, and units offering music and music-related programs (both degree- and non-degree-granting), including those offered via distance education.) (Requested Scope: The accreditation throughout the United States of freestanding institutions, and units offering music and music-related programs (both degree- and non-degree-granting), including those offered via distance and correspondence education.)

8. National Association of Schools of Theatre, Commission on Accreditation (NAST) (Current Scope: The accreditation throughout the United States of freestanding institutions, and units offering theatre and theatre-related programs (both degree-and non-degree-granting), including those offered via distance education.) (Requested Scope:

The accreditation throughout the United States of freestanding institutions, and units offering theatre and theatre-related programs (both degree- and non-degree-granting), including those offered via distance and correspondence education.)

9. New England Association Of Schools and Colleges, Commission on Institutions of Higher Education (NEA–CIHE) (Current Scope: The accreditation and preaccreditation (''Candidacy status'') of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees, and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.) (Requested Scope: The accreditation and pre-accreditation (''Candidacy status'') of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees, and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions. This recognition extends jointly, to the Commission for accreditation and pre-accreditation decisions and to the Board of Trustees of the Association and the Commission for the appeal of adverse actions.)

10. North Central Association of Colleges and Schools, The Higher Learning Commission (NCA–HLC) (Current Scope: The accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including the tribal institutions and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Institutional Actions Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy. This recognition also extends to the Review Committee of the Accreditation Review Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or candidacy and for initial candidacy or initial accreditation when there is a consensus decision by the Review Committee.) (Requested Scope: The accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including the tribal institutions and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Institutional Actions Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy and to the Appeal Body jointly with the Board of Trustees of the Commission for decisions related to initial candidacy or accreditation or reaffirmation of accreditation.)

Petitions for Recognition Based on a Compliance Report

Accrediting Agencies

1. Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) (Current Scope: The accreditation and preaccreditation (''Candidacy'' status) throughout the United States of first-professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine and professional post-graduate doctoral programs in acupuncture and in Oriental Medicine (DAOM), as well as freestanding institutions and colleges of acupuncture or Oriental medicine that offer such programs.)

2. Accrediting Council for Independent Colleges and Schools (ACICS) (Current Scope: The accreditation of private postsecondary institutions throughout the United States offering certificates or diplomas, and postsecondary institutions offering associate, bachelor's, or master's degrees in programs designed to educate students for professional, technical, or occupational careers, including those that offer those programs via distance education.)

3. American Bar Association (ABA) (Current Scope: The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs. This recognition also extends to the Accreditation Committee of the Section of Legal Education (Accreditation Committee) for decisions involving continued accreditation (referred to by the agency as ''approval'') of law schools.)

4. American Psychological Association (APA) (Current Scope: The accreditation in the United States of doctoral programs in clinical, counseling, school and combined professional-scientific psychology; predoctoral internship programs in professional psychology; and postdoctoral residency programs in professional psychology.)

5. Commission on Accrediting of the Association of Theological Schools (ATSUSC) (Current Scope: The accreditation and pre-accreditation (''Candidate for Accredited Membership'') of theological schools and seminaries, as well as schools or programs that are parts of colleges or universities, in the United States, offering post baccalaureate degrees in professional and academic theological education, including delivery via distance education.)

6. American Dental Association, Commission on Dental Accreditation (CODA) (Current Scope: The accreditation of predoctoral dental education programs (leading to the D.D.S. or D.M.D. degree), advanced dental education programs, and allied dental education programs that are fully operational or have attained ''Initial Accreditation'' status, including programs offered via distance education.)

7. Council On Occupational Education (COE) (Current Scope: The accreditation and preaccreditation (''Candidacy Status'') throughout the United States of postsecondary occupational education institutions offering non-degree and applied associate degree programs in specific career and technical education fields, including institutions that offer programs via distance education.)

8. Transnational Association Of Christian Colleges and Schools (TRACS) (Current Scope: The accreditation and pre-accreditation (''Candidate'' status) of Christian postsecondary institutions in the United States that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees, including institutions that offer distance education.)

State Approval Agency for Nurse Education

1. Maryland Board of Nursing (MBN) (Current Scope: State agency for the approval of nurse education.

Submission of Written Comments: Written comments must be received by March 4, 2013, in the *accreditationcommittees@ed.gov* mailbox and include the subject line ''Written Comments: re (agency name).'' The email must include the name, title, affiliation, mailing address, email address, telephone and facsimile numbers and Web site (if any) of the person/group making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency's compliance report must relate to the issues raised and the criteria for recognition cited in the Secretary's letter that requested the report. Comments about the renewal of an agency's recognition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate, which are available at *http://www.ed.gov/admins/finaid/accred/index.html*. Third parties having concerns about agencies regarding matters outside the scope of the petition should report those concerns to the Department. Only material submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and the NACIQI in their deliberations. Please do not send material directly to the NACIQI members.

Submission of Requests To Make an Oral Comment: There are two methods the public may use to make a third-party oral comment of three to five minutes. All comments must concern one of the agencies scheduled for review at the June 6–7, 2013 meeting, and must relate to the Criteria for Recognition of accrediting agencies or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate. These criteria are available at: *http://www.ed.gov/admins/finaid/accred/index.html*

Method One: Submit a request by email to the *accreditationcommittees@ed.gov* mailbox. Please do not send material directly to NACIQI members. Requests must be received by March 4, 2013, and include the subject line ''Oral Comment Request: re (agency name).'' The email must include the name, title, affiliation, mailing address, email address, telephone and facsimile numbers and Web site (if any) of the person/group requesting to speak. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak for a maximum of five minutes each. Each request must concern the recognition of a single agency or institution tentatively scheduled in this notice for review, be no more than one page (maximum), and must include:

1. The name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak; and,

2. A brief summary of the principal points to be made during the oral presentation.

Method Two: Register at the meeting location on June 6 or June 7, 2013, to make an oral comment during the NACIQI's deliberations concerning a particular agency or institution scheduled for review that day. The requestor must provide his or her name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any). A total of up to fifteen minutes during each agency review will be allotted for commenters who register on June 6 or June 7, 2013. Individuals or groups will be selected on a first-come, first-served basis. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who signed up the day of the meeting.

If a person or group requests, in advance, to make comments they cannot also register for an oral presentation opportunity on June 6 or June 7, 2013. The oral comments made will become part of the official record and will be considered by the Department and NACIQI in their deliberations. No individual or group in attendance or making oral presentations may distribute written materials at the meeting.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 219–7035, fax: (202) 219–7005, or email: *Carol.Griffiths@ed.gov*.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–03314 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Notice of Availability of Draft Section 3116 Basis for Determination for Closure of H Tank Farm at the Savannah River Site

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the *Draft Section 3116 Basis for Determination for Closure of the H Tank Farm at the Savannah River Site* (Draft HTF 3116 Basis Document) for public

comment. DOE prepared the Draft HTF 3116 Basis Document pursuant to section 3116(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA), which provides that the Secretary of Energy may, in consultation with the U.S. Nuclear Regulatory Commission (NRC), determine that certain waste from reprocessing of spent nuclear fuel is not high-level radioactive waste if the provisions set forth in section 3116(a) are satisfied. To make this determination, the Secretary of Energy must determine that the waste in the HTF: (1) Does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste; (2) has had highly radioactive radionuclides removed to the maximum extent practical; and (3)(A) does not exceed concentration limits for Class C low-level waste and will be disposed of in compliance with the performance objectives in 10 CFR Part 61, Subpart C and pursuant to a State approved closure plan or State-issued permit; or (3)(B) exceeds concentration limits for Class C low-level waste but will be disposed of in compliance with the performance objectives of 10 CFR Part 61, Subpart C; pursuant to a State approved closure plan or State-issued permit; and pursuant to plans developed by DOE in consultation with the NRC. Although not required by the NDAA, DOE is making the Draft HTF 3116 Basis Document available for public comment. The Draft HTF 3116 Basis Document demonstrates that the cleaned and stabilized HTF tanks, ancillary structures and their stabilized residuals at HTF closure meet the public dose limits and other criteria in section 3116. DOE is consulting with the NRC and will consider public comments before preparing a final HTF 3116 Basis Document and issuing a Secretarial determination under section 3116.

DATES: The comment period will end on May 1, 2013. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The Draft HTF Section 3116 Basis document is available on the Internet at h*ttp://sro.srs.gov/f_htankfarmsdocuments.htm.*

Written comments on the draft HTF Section 3116 Basis document may be submitted by U.S. mail to the following address: Ms. Sherri Ross, DOE–SR, Building 704–S, Room 43, U.S. Department of Energy, Savannah River Operations Office, Aiken, SC 29802 (ATTN: H-Tank Farm Draft Basis).

Alternatively, comments may also be filed electronically by email to *sherri.ross@srs.gov*, or by Fax at (803) 208–7414.

SUPPLEMENTARY INFORMATION: The HTF is a 45-acre site, located at the Savannah River Site (SRS) near Aiken, South Carolina. The HTF consists of 29 underground radioactive waste storage tanks and supporting ancillary structures. The major HTF ancillary structures are three evaporator systems, transfer lines, eight diversion boxes, one catch tank, a concentrate transfer system, ten pump pits, nine pump tanks, and eleven valve boxes. There are four waste tank types (Type I, II, III/IIIA, and IV) in HTF with operating capacities ranging from 750,000 gallons to 1,300,000 gallons. The waste tanks have varying degrees of secondary containment and in-tank structural features such as cooling coils and columns. All HTF waste tanks are constructed of carbon steel. The HTF tanks and ancillary structures contain, in part, waste from the prior reprocessing of spent nuclear fuel, and from various SRS production, processing and laboratory facilities.

DOE is in the process of closing the HTF and is engaged in an expansive campaign to clean, stabilize, and close the tanks and ancillary structures in the HTF, using a process that includes removing bulk waste from tanks and applicable ancillary structures, followed by deployment of tested technologies to remove the majority of the remaining waste. After completing cleaning operations, a small amount of residual radioactive waste will remain in the tanks and ancillary structures. DOE plans to stabilize the residuals in the tanks and certain ancillary structures in place with grout, followed by a closure cap system for the HTF. Tank waste storage and removal operations in the HTF are governed by a South Carolina Department of Health and Environmental Control (SCDHEC) industrial wastewater operating permit. Removal of tanks from service and stabilization of the HTF waste tanks and ancillary structures will be carried out pursuant to a State-approved closure plan, the *Industrial Wastewater General Closure Plan for H-Area Waste Tank Systems*. Specific Closure Modules for each tank or ancillary structure or groupings of tanks and ancillary structures will be developed and submitted to SCDHEC for approval. After SCDHEC approval of the specific and final closure configuration documentation and grouting, the applicable tank or ancillary structure will be removed from the State's industrial wastewater permit. Where appropriate, the Draft HTF 3116 Basis Document draws upon DOE's experience in cleaning and closing tanks at the similar F-Area Tank Farm at SRS, for which the Secretary of Energy issued a Section 3116 Determination in March 2012.

As demonstrated and documented in the Draft HTF 3116 Basis Document, the stabilized HTF tanks, ancillary structures and residuals at closure meet the public dose performance objective and other criteria set forth in section 3116(a) of the NDAA. DOE is consulting with the NRC pursuant to section 3116, and will consider this consultation as well as public comments before preparing a final HTF 3116 Basis Document. DOE anticipates that the final HTF 3116 Basis Document will serve as a predicate for the Secretary to determine whether or not the stabilized HTF tanks, ancillary structures and residuals at closure meet the criteria in section 3116(a), are not high-level radioactive waste, and may be disposed of in place as low-level waste.

Issued in Washington, DC, on February 6, 2013.

Mark A. Gilbertson,

Deputy Assistant Secretary for Site Restoration.

[FR Doc. 2013–03305 Filed 2–12–13; 8:45 am]

BILLING CODE 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: ER12–1643–001.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Order No. 755 Regulation Mkt. Compliance Changes to be effective 12/31/9998.
Filed Date: 2/6/13.
Accession Number: 20130206–5047.
Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER12–2277–003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits 2013–02–05 SA 2457 G631–2–3 Term to be effective 4/6/2013.
Filed Date: 2/5/13.
Accession Number: 20130205–5158.
Comments Due: 5 p.m. e.t. 2/26/13.

Docket Numbers: ER13–886–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc.

submits tariff filing per 35.13(a)(2)(iii: 02–05–2013 SA 2456 Termination Emmet Cty Energy-ITC to be effective 4/6/2013.

Filed Date: 2/5/13.

Accession Number: 20130205–5156.

Comments Due: 5 p.m. e.t. 2/26/13.

Docket Numbers: ER13–887–000.

Applicants: PJM Interconnection, L.L.C.

Description: Request for Limited Waiver of PJM Interconnection, L.L.C.

Filed Date: 2/6/13.

Accession Number: 20130206–5015.

Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER13–888–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO filing of Agreement No. 1953 between National Grid and Erie Blvd. Hydropowr to be effective 11/9/2012.

Filed Date: 2/6/13.

Accession Number: 20130206–5040.

Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER13–889–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 02–05–2013 SA 2509 ITC-Tuscola Wind E&P to be effective 2/7/2013.

Filed Date: 2/6/13.

Accession Number: 20130206–5044.

Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER13–890–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of Original Service Agreement No. 3259 to be effective 1/4/2013.

Filed Date: 2/6/13.

Accession Number: 20130206–5049.

Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER13–891–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Non-Queue 69 Safe Harbor ISA—Original Service Agreement No. 3504 to be effective 1/7/2013.

Filed Date: 2/6/13.

Accession Number: 20130206–5050.

Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER13–892–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of Original SA No. 2711 in Dkt No. ER11–2707–000 to be effective 1/10/2013.

Filed Date: 2/6/13.

Accession Number: 20130206–5055.

Comments Due: 5 p.m. e.t. 2/27/13.

Docket Numbers: ER13–893–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of Original SA No. 3149 -Docket No. ER12–518–000 to be effective 1/10/2013.

Filed Date: 2/6/13.

Accession Number: 20130206–5056.

Comments Due: 5 p.m. e.t 2/27/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–17–000.

Applicants: Northern Maine Independent System Administrator, Inc.

Description: Application of Northern Maine Independent System Administrator, Inc. for Authorization to Issue Securities Pursuant to Section 204 of the Federal Power Act.

Filed Date: 2/5/13.

Accession Number: 20130205–5178.

Comments Due: 5 p.m. e.t. 2/26/13.

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: February 6, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–03301 Filed 2–12–13; 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: RP13–540–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Revisions to FM, Waiver and Indemnification Sections to be effective 3/6/2013.

Filed Date: 2/4/13.

Accession Number: 20130204–5130.

Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–541–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 02/04/13 Negotiated Rates—JP Morgan Ventures Corp (HUB)—6025–89 to be effective 2/2/2013.

Filed Date: 2/4/13.

Accession Number: 20130204–5134.

Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–542–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits Petition for partial waiver of tariff to defer Pipeline Safety Cost Tracker update filing.

Filed Date: 2/5/13.

Accession Number: 20130205–5067.

Comments Due: 5 p.m. e.t. 2/8/13.

Docket Numbers: RP13–543–000.

Applicants: White River Hub, LLC.

Description: Sec. 6.18 Request to Acquire Released Capacity to be effective 3/11/2013.

Filed Date: 2/5/13.

Accession Number: 20130205–5091.

Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–544–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 02/05/13 Negotiated Rates—Sequent Energy Management (HUB)—3075–89 to be effective 2/4/2013.

Filed Date: 2/5/13.

Accession Number: 20130205–5094.

Comments Due: 5 p.m. e.t. 2/19/13.

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: RP13–124–003.

Applicants: Hardy Storage Company, LLC.

Description: NAESB 2.0 Compliance to be effective 12/1/2012.

Filed Date: 2/4/13.

Accession Number: 20130204–5137.

Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–40–002.
Applicants: National Grid LNG, LP.
Description: NAESB v.3.0.0 to be effective 12/1/2012.
Filed Date: 2/4/13.
Accession Number: 20130204–5058.
Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–43–002.
Applicants: Bluewater Gas Storage, LLC.
Description: Bluewater Feb 5 NAESB compliance to be effective 12/1/2012.
Filed Date: 2/5/13.
Accession Number: 20130205–5087.
Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–44–002.
Applicants: SG Resources Mississippi, L.L.C.
Description: SG Resources Feb 5 NAESB Compliance to be effective 12/1/2012.
Filed Date: 2/5/13.
Accession Number: 20130205–5089.
Comments Due: 5 p.m. e.t. 2/19/13.

Docket Numbers: RP13–45–002.
Applicants: Pine Prairie Energy Center, LLC.
Description: Pine Prairie Revise NAESB filing to be effective 12/1/2012.
Filed Date: 2/5/13.
Accession Number: 20130205–5090.
Comments Due: 5 p.m. e.t. 2/19/13.

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: February 6, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2013–03300 Filed 2–12–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0036; FRL–9376–6]

Access Interpreting; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Access Interpreting in accordance with the CBI regulations. Access Interpreting has been awarded a contract to perform work for OPP, and access to this information will enable Access Interpreting to fulfill the obligations of the contract.

DATES: Access Interpreting will be given access to this information on or before February 19, 2013.

FOR FURTHER INFORMATION CONTACT: MaryC Simmons, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6452: email address: *simmons.maryc@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2013–0036. Publicly available docket materials are available either in the electronic docket *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Contractor Requirements

Under Contract No. EP10H000109, this contract is to provide the Environmental Protection Agency, Office of Human Resources (OHR) with Sign Language interpreting services. The contractor shall provide professional interpreters who shall make every effort to arrive at scheduled assignments 15 minutes prior to the start of the assignment, concurrent with general interpreting standards. Contract interpreters whom the Contractor sends must have a cell phone or text pager that will allow them to get instant messages for quick communication of last minute changes.

The work will be performed in a space to be designated by EPA, primarily at EPA Headquarters and other Washington, DC area EPA facilities. Occasional travel will be involved. The sign language personnel will report to the location specified by the EPA Headquarters Interpreting Coordinator, also identified as the Project Officer under this contract. There will be some requests for interpreters in different areas of the United States. The contractor must have the ability to procure services in different locations throughout the country. The Contractor must primarily serve Deaf and hard of hearing persons as a major function of their business and be stationed in the Washington, DC metropolitan area.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Access Interpreting prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Access Interpreting is required to submit for EPA approval a security

plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Access Interpreting until the requirements in this document have been fully satisfied. Records of information provided to Access Interpreting will be maintained by EPA Project Officers for this contract. All information supplied to Access Interpreting by EPA for use in connection with this contract will be returned to EPA when Access Interpreting has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contract, Government property, Security measures.

Dated: January 30, 2013.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2013–03330 Filed 2–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012; FRL–9378–3]

Pollinator Summit: Status of Ongoing Collaborative Efforts To Protect Pollinators; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Chemical Safety and Pollution Prevention, in conjunction with the United States Department of Agriculture, will facilitate a public meeting with parties engaged in activities to reduce potential acute exposure of honey bees and pollinators to pesticides. Invited presenters will provide briefings on current activities in three key areas related to improving seed treatment techniques; reducing the generation of dust that occurs during planting operations; and raising awareness of current best management practices that are available to mitigate potential acute pesticide exposure to pollinators. Pollinators are an important component of agricultural production, critical to food and ecosystems, and must be protected so that they can continue to play this important role. The intended outcome of this meeting is to share information and look for areas of collaboration to lessen the unintended impacts of pesticides on pollinators during coming and future growing seasons. This meeting complements EPA's ongoing work through the Pesticide Program Dialogue Committee (PPDC) to support and take action to improve pollinator health.

DATES: The meeting will be held on March 5, 2013 from 8:00 a.m. to 5:00 p.m. e.s.t.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), First Floor Conference Center, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mary Clock-Rust, Environmental Fate and Effects Division, (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–2718; fax number: (703) 305–6309 email address: *clock-rust.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are engaged in activities to reduce potential exposure of honey bees and pollinators to pesticides. This action is directed to the public in general, and may be of particular interest to, but is not limited to the following entities: Agricultural workers and farmers; beekeepers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; animal welfare organizations; pesticide users and growers; pest consultants, state, local and tribal governments and academia. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I request to participate in this meeting?

This meeting is open to the public and seating is limited. Please use the following email address to make a reservation for seating: *Pollinator_summit@epa.gov.* Persons interested in attending the meeting remotely should contact the person listed under **FOR FURTHER INFORMATION CONTACT** to obtain details to access the webinar of this meeting. Comments may be made during the public comment session of the meeting; invited presenters will provide briefings and information on their current activities.

II. Background

EPA is convening a public meeting to facilitate the exchange of information among parties engaged in various activities related to improving the safety of pollinators around agricultural crops. While there are several factors affecting honey bee health, pesticides are among these variables; and, new research is rapidly becoming available on practices and technology aimed at reducing exposure of pollinators to pesticides. Specifically, this summit will focus on the pesticide treated seed, including the technology of seed treatment and the management of dust that can be associated with planting treated seed and which may lead to pesticide exposure to bees. The public meeting will also include best management techniques associated with commercial agriculture and bees. This summit complements EPA's on-going work with the PPDC Workgroup on Pollinator Protection, which is addressing pesticide labeling, best management practices, enforcement, communication and education. This public summit is being held to increase the awareness among the participants and the public of the rapidly changing understanding of, and response to protecting pollinators at agricultural crops.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 7, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2013–03332 Filed 2–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0026; FRL–9378–5]

Pesticide Products; Registration Applications for a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing an active ingredient not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before March 15, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Registration Division (RD) (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Registration Applications

EPA has received applications to register pesticide products containing an active ingredient not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30-day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html*). *EPA received the following applications to register* pesticide products containing an active ingredient not included in any currently registered products:

EPA File Symbol: 62719–AAU, 62719–AAN, 62719–AAR, 62719–AAE, and 62719–AAG. *Docket ID Number:* EPA–HQ–OPP–2012–0919. *Applicant:* Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Halauxifen-methyl. *Product Type:* Herbicide. *Proposed Uses:* Cereal grain crops, including winter wheat, spring wheat, barley and triticale. *Contact:* Maggie Rudick, (703) 347–0257, email address: *rudick.maggie@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 7, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–03333 Filed 2–12–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2013–0112]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 12–02–Credit Guarantee Facility Disbursement Approval Request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank has developed an electronic disbursement approval processing system for guaranteed lenders with Credit Guarantee Facilities. After a Credit Guarantee Facility (CGF) has been authorized by Ex-Im Bank and legal documentation has been completed, the Lender will obtain and

review the required disbursement documents (e.g. invoices, bills of lading, Exporter's Certificates, etc.) and will disburse the proceeds of the loan for eligible goods and services. The Lender will access and complete an electronic questionnaire through ExIm Online inputting key data and requesting approval of the disbursement. Ex-Im Bank's action (approved or declined) will be posted on the Lender's history page.

This form will enable Ex-Im Bank to identify the specific details of the export transaction. These details are necessary for determining the eligibility of disbursements for approval.

The application can be reviewed at: *www.exim.gov/pub/pending/EIB 12–02 CGF Disbursement Request.pdf*.

DATES: Comments should be received on or before April 15, 2013 to be assured of consideration.

ADRESSESES: Comments maybe submitted electronically on *www.regulations.gov* or by mail to Kit Arendt, Export-Import Bank of the United States, 811 Vermont Ave. NW. Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 12–01 Medium-Term Master Guarantee Agreement. Disbursement Approval Request.

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The number of respondents: 50.

Time to Complete: 60 minutes.

The frequency of response: Annual.

Total number of responses received 50.

Reviewing time per hour: 60 minutes.

Responses per year: 50.

Reviewing time per year: 25 hours.

Average Wages per hour: $30.25.

*Average cost per year (time * wages):* $756.

Benefits and overhead: 20%.

Total Government Cost: $908.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2013–03265 Filed 2–12–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0101]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank has developed an electronic disbursement approval processing system for guaranteed lenders with transactions documented under Medium-term Master Guarantee Agreements. After an export transaction has been authorized by Ex-Im Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (e.g. invoices, bills of lading, Exporter's Certificates, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through Ex-Im Bank's automatic application system (ExIm Online). Ex-Im Bank's action (approved or declined) will be posted on the lender's history page.

The information collected will assist in determining that each disbursement under a Medium-Term Guarantee meets all of the terms and conditions for approval.

The application can be reviewed at: *www.exim.gov/pub/pending/eib12-01* MT MGA Disbursement Approval Request.

DATES: Comments should be received on or before April 15, 2013 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Kit Arendt, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

OMB Number: 3048–XXXX.

Type of Review: New.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The number of respondents: 150.

Time to complete: 30 minutes.

The frequency of response: Annual.

Total number of responses received : 150.

Annual hour burden; and 75 Hours.

Reviewing time per hour: 15 minutes.

Responses per year: 150.

Reviewing time per year: 37.5 hours.

Average wages per hour: $30.25.

Average cost per year: (time * wages) $1,134.

Benefits and overhead: 20%.

Total government cost: $1,361.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2013–03213 Filed 2–12–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) will hold its final meeting. Working groups Next Generation Alerting, E9–1–1 Location Accuracy, Network Security Best Practices, DNSSEC Implementation Practices for ISPs, Secure BGP Deployment, Botnet Remediation, Alerting Issues Associated with CAP Migration, 9–1–1 Prioritization, and Consensus Cybersecurity Controls will be presenting reports for a vote by the Council.

DATES: March 6, 2013.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on March 6, 2013, from 9:00 a.m. to 1:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554. The CSRIC is a federal advisory committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure the security, reliability, and interoperability of communications systems. On March 19, 2011, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2013. Working Groups are described in more detail at *http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii*.

The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live*. The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03327 Filed 2–12–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2013–06]

Filing Dates for the Massachusetts Senate Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Massachusetts has scheduled special elections on April 30, 2013, and June 25, 2013, to fill the U.S. Senate seat vacated by Secretary John F. Kerry.

Committees required to file reports in connection with the Special Primary Election on April 30, 2013, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on June 25, 2013, shall file a 12-day Pre-Primary Report, 12-day Pre-General, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Massachusetts Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on April 18, 2013; a 12-day Pre-General on June 13, 2013; and a 30-day Post-General Report on July 25, 2013. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on April 18, 2013. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2013 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Massachusetts Special Primary or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Massachusetts Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Massachusetts Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,100 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTION

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in Only the Special Primary (04/30/13) Must File:			
April Quarterly	WAIVED		
Pre-Primary	04/10/13	04/15/13	04/18/13
July Quarterly	06/30/13	07/15/13	07/15/13
Semi–Annual Filing Committees Involved in Only the Special Primary (04/30/13) Must File:			
Pre-Primary	04/10/13	04/15/13	04/18/13
Mid-Year	06/30/13	07/31/13	07/31/13

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in Both the Special Primary (04/30/13) and Special General (06/25/13) Must File:			
April Quarterly	WAIVED		
Pre-Primary	04/10/13	04/15/13	04/18/13
Pre-General	06/05/13	06/10/13	06/13/13
July Quarterly	WAIVED		
Post-General	07/15/13	07/25/13	07/25/13
October Quarterly	09/30/13	10/15/13	10/15/13
Semi-Annual Filing Committees Involved in Both the Special Primary (04/30/13) and Special General (06/25/13) Must File:			
Pre-Primary	04/10/13	04/15/13	04/18/13
Pre-General	06/05/13	06/10/13	06/13/13
Post-General	07/15/13	07/25/13	07/25/13
Mid-Year	WAIVED		
Year-End	12/31/13	01/31/14	01/31/14
Quarterly Filing Committees Involved In Only the Special General (06/25/13) Must File:			
Pre-General	06/05/13	06/10/13	06/13/13
July Quarterly	WAIVED		
Post-General	07/15/13	07/25/13	07/25/13
October Quarterly	09/30/13	10/15/13	10/15/13
Semi-Annual Filing Committees Involved in Only the Special General (06/25/13) Must File:			
Pre-General	06/05/13	06/10/13	06/13/13
Post-General	07/15/13	07/25/13	07/25/13
Mid-Year	WAIVED		
Year-End	12/31/13	01/31/14	01/31/14

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

Dated: February 6, 2013.

On behalf of the Commission,

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–03225 Filed 2–12–13; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Docket No. 2013–05]

Filing Dates for the South Carolina Special Elections in the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special party nominating convention.

SUMMARY: The South Carolina Green Party will select their party's nominee at a Special Party Convention on March 9, 2013. Committees required to file reports in connection with the Special Green Party Convention shall file a 12-day Pre-Convention Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: On January 8, 2013, the Commission approved the filing dates for the Special Primary, Runoff and General Elections that will be held in the First Congressional District to fill the U.S. House seat vacated by Senator Tim Scott. The Special General Election date is May 7, 2013. The Democratic and Republican parties will nominate candidates for that election in Special Primary Elections on March 19, 2013, with Special Runoff Elections held on April 2, 2013, if necessary. At the time the Commission approved the filing requirements for the Special Primary, Runoff and General Elections, no special nominating conventions had been scheduled by any of the other certified political parties in South Carolina.

The Commission has received additional information that the South Carolina Green Party has scheduled a convention on March 9, 2013, to select their nominee for the Special General Election. Committees required to file reports in connection with the Special Green Party Convention on March 9, 2013, shall file a 12-day Pre-Convention Report. The date for the Special General is unchanged and, as such, this **Federal Register** Notice only includes information on the filing requirements in connection with the special nominating convention. The reporting requirements in connection with the South Carolina Special General Election

were published in the **Federal Register** on February 4, 2013 (78 FR 7781).

Principal Campaign Committees

All principal campaign committees of candidates who participate in the South Carolina Special Green Party Convention shall file a 12-day Pre-Convention Report on February 25, 2013. (See charts below for the closing date for the report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2013 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the South Carolina Special Green Party Convention or Special General Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the South Carolina Special Green Party Convention or Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the South Carolina Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,100 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR SOUTH CAROLINA SPECIAL ELECTIONS

Report	Close of books[1]	Reg./cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in Only the Special Green Party Convention (03/09/13) Must File:			
Pre-Convention	02/17/13	02/22/13	02/25/13
April Quarterly	03/31/13	04/15/13	04/15/13
Semi–annual Filing Committees Involved in Only The Special Green Party Convention (03/09/13) Must File:			
Pre-Convention	02/17/13	02/22/13	02/25/13
Mid-Year	06/30/13	07/31/13	07/31/13

[1] These dates indicate the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: February 6, 2013.

On behalf of the Commission,

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–03226 Filed 2–12–13; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012194.

Title: The G6 Alliance Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (Operating as one Party); Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; and Orient Overseas Container Line, Limited.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: The agreement authorizes the parties to charter and exchange space on one another's vessels and to coordinate and cooperate with respect to the parties' transportation services and operations in the trade between ports in North Asia, South Asia, Middle East (including the Persian Gulf region), Spain, Italy, Egypt, Panama, Jamaica, and Canada, on the one hand, and U.S. East Coast ports via the Panama and Suez canals, on the other hand, as well as ports and points served via such U.S. and foreign ports.

Agreement No.: 201220.

Title: Exclusive Agreement for Terminal Services and Stevedoring Services.

Parties: Lake Charles Harbor & Terminal District and Federal Marine Terminals, Inc. (FMT).

Filing Party: C. Jonathan Benner; Thompson Coburn LLC; 1909 K Street NW. Suite 600, Washington, DC 20006.

Synopsis: The agreement permits FMT to provide, on an exclusive basis, all terminal services and stevedoring services only for the cargo handled within the public areas of the Lake Charles city docks.

Dated: February 8, 2013.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–03325 Filed 2–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 13–02]

Lisa Anne Cornell and G. Ware Cornell, Jr. v. Princess Cruise Lines, Ltd. (Corp), Carnival PLC, and Carnival Corporation; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Lisa

Anne Cornell and G. Ware Cornell, Jr., hereinafter ''Complainants,'' against Princess Cruise Lines, Ltd (Corp), Carnival plc, and Carnival Corporation hereinafter ''Respondents.''

Complainant alleges that: Respondent Princess Cruise Lines, Ltd (Corp) ''is a California corporation which operates pursuant to the Shipping Act of 1984 as a common carrier for hire of passengers from ports in the United States;'' Respondent Carnival plc ''is a corporation established under the laws of the United Kingdom which does business under the names of Cunard Line, P&O Cruises, and P&O Cruises Australia as a common carrier for hire of passengers from ports in the United States;'' and Respondent Carnival Corporation ''is the parent corporation of Princes and Carnival plc as well as other cruise lines which operate as common carriers for hire from ports in the United States.''

Complainant alleges that Respondents, by banning Complainants from traveling on ships operated by Princess and Carnival plc and failing to refund a deposit, violated 46 U.S.C. 41104(10) which provides that ''[a] common carrier, either alone or in conjunction with any other person, directly or indirectly, may not * * * (10) unreasonably refuse to deal or negotiate * * *''

Complainant requests that ''the Commission issue appropriate relief, including, but not limited to, entry of a final order enjoining the refusal to deal policy as to Lisa Cornell and Ware Cornell, entry of final order restoring all economic losses as set forth herein in the amount of $33,1000.00 and a award of fees and costs of action.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by February 10, 2014 and the final decision of the Commission shall be issued by June 9, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–03322 Filed 2–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

Agility Project Logistics, Inc. (OFF), 15600 Morales Road, Houston, TX 77032, Officers: Grant Wattman, President (QI), Larry Weischwill, Senior Vice President, Application Type: QI Change.

Ally Logistics LLC (NVO & OFF), 387 Hatherly Road, Scituate, MA 02066, Officers: Stephen J. Zambo, Member (QI), Stephen A. Zambo, Member, Application Type: New NVO & OFF License.

Axiom Worldwide Logistix Inc. (OFF), 4251 W. John Carpenter Freeway, #100, Irving, TX 75063, Officers: Jeffrey S. Bell, President (QI), Nicki Combs, Secretary, Application Type: New OFF License.

Brisk Logistics Inc. (NVO & OFF), 1677 Elmhurst Road, Elk Grove Village, IL 60007, Officers: Joshua H. Chau, President (QI), Bessie S. Chau, Secretary, Application Type: New NVO & OFF License.

Delmar International (N.Y.) Inc. dba Delmar International dba Delmar International (USA), (NVO & OFF), One Cross Island Plaza, Suite 115, Rosedale, NY 11422, Officers: Robert Tayler, Vice President (QI), Robert Cutler, President.

Direct Line Transportation, LLC (NVO), 9034 E. Easter Place, Suite #203, Centennial, CO 80112, Officers: Eric S. Bachman, Manager (QI), William F. Vogel, Managing Member, Application Type: New NVO License, Application Type: QI Change.

Early Bird Pick Up and Delivery, LLC (OFF), 128 Magnolia Street, Bridgeport, CT 06610, Officer: Junior Hart, Member (QI), Application Type: New OFF License.

Fastgrow Logistics (Americas) Inc (NVO), 17588 Rowland Street, Suite 266, City of Industry, CA 91748, Officers: Peter Shih, Secretary (QI), Guang Dong, President, Application Type: New NVO License.

Jerome Okolo and David Newton dba Emunah Global (NVO & OFF), 1904 Farnam Street, Suite 610, Omaha, NE 68102, Officers: David D. Newton, Partner (QI), Jerome Okolo, Partner, Application Type: New NVO & OFF License.

Jolly Forwarding USA, Inc. dba Jollibox Cargo Express dba Pinoy Express Cargo dba Chips R'US (NVO), 470 Cloverleaf Drive, Suite A&B, Baldwin Park, CA 91706, Officers: Maria Lourdes A. Timbol, President (QI), Urdelia C. Linayao, Secretary, Application Type: New NVO License.

Magnum-Ramstr Cargo LLC (NVO & OFF), 2 Ethel Road, Suite 202C, Edison, NJ 08817, Officers: Debora A. Sacco-Alterisio, Secretary (QI), Dilip Ram, President, Application Type: New NVO & OFF License.

Trans World Freight System NYC Corp. (NVO & OFF), 14530 156 Street, Suite 206, Jamaica, NY 11434, Officers: Xiumin Wu, President (QI), Philip Chee, Vice President, Application Type: New NVO & OFF License.

Unity Cargo Management Services USA Inc. (NVO), 9690 Telstar Avenue, Suite 222A, El Monte, CA 91731, Officers: Maggie Lok, Secretary (QI), Yuhong aka Morny Lin, CEO, Application Type: New NVO License.

Victoria Line LLC (NVO & OFF), 2000 N.W. 84th Avenue, Miami, FL 33122, Officers: Alberto J. Marino, Managing Member (QI), Jose R. DeVivero, Member, Application Type: New NVO & OFF License.

Western Direct Express, LLC (NVO & OFF), 47602 Kato Road, Fremont, CA 94538, Officers: Efren G. Yap, Vice President (QI), Anthony D. Zimmer, President, Application Type: New NVO & OFF License.

By the Commission.

Dated: February 8, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–03320 Filed 2–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Darryn W. Biggerstaff,* Canon City, Colorado; to retain voting shares of Canon Bank Corporation, and thereby indirectly retain voting shares of Canon National Bank, both in Canon City, Colorado.

Board of Governors of the Federal Reserve System, February 8, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–03284 Filed 2–12–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MV–2013–02; Docket No. 2013–0002; Sequence 3]

Public Availability of General Services Administration FY 2012 Service Contract Inventory

AGENCY: General Services Administration (GSA).

ACTION: Notice of Public Availability of FY 2012 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of Fiscal Year (FY) 2010 Consolidated Appropriations Act Public Law 111–117, GSA is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventories.

DATES: February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Mr. Paul F. Boyle in the Office of Acquisition Policy at 202–501–0324 or *Paul.Boyle@gsa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of Fiscal Year (FY) 2010 Consolidated Appropriations Act Public Law 111–117, GSA is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventories. These inventories provide information on service contract actions over $25,000 that were made in FY 2012. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.*

The GSA has posted its inventory and a summary of the inventory on the GSA.Gov homepage at the following link: *http://www.gsa.gov/gsasci.*

Dated: February 7, 2013.

Laura G. Auletta,

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

[FR Doc. 2013–03279 Filed 2–12–13; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–18774–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before April 15, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–18774–60D for reference. Information Collection Request Title: Survey of Physician Time Use Patterns under the Medicare Fee Schedule.

Abstract: This information collection is a survey of physician providers in five specialties (internal medicine, radiology, cardiology, ophthalmology, and orthopedics) to gather information on the clinical time spent in providing selected services as well as related information on the physician's practice.

Need and Proposed Use of the Information: The Office of the Assistant Secretary for Planning and Evaluation is currently conducting a number of studies aimed at producing evidence that will help to improve the accuracy of the Medicare Physician Fee Schedule. Under the Medicare Physician Fee Schedule, payments are based in part on the relative amount of physician work associated with each service. For a number of reasons, payment differentials for Evaluation and Management services relative to procedures, rather than narrowing, have continued to widen over time. While the fee schedule's relative values are updated to reflect changes in medical practice, technology and physician productivity, some have questioned whether the current process adequately reflects these changes. The intended data collection effort would be used to gather information on the time data that is used as an input in the fee schedule. Analyses show that even though work is defined as both time and intensity, final work values are highly correlated with the time measure, with time explaining between 80 and 90 percent of the inter-service variance in work. However, several studies suggest potential flaws in estimates of time associated with pre-, post- and intra-service work, demonstrating that the time estimates used for many services exceed actual times when objectively measured through, for example, operating room logs. The survey data will be used to inform several gaps in knowledge critical to improving the accuracy of the fee schedule, including (i) the strength of the correlation between physician-reported clinical time and fee-schedule time values for surveyed services; (ii) how consistent the relationships are across services and across specialties; (iii) whether the relationships vary across physicians in different types of practice settings, and (iv) whether this approach to gathering time data is feasible and could be scaled up for a larger effort. Likely Respondents: Practicing physicians in 5 specialties.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train

personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Ineligible	45	1	.05	2.25
Eligible	600	1	.25	150
Total	645	1	.24	152.25

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2013–03270 Filed 2–12–13; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Patient-Reported Health Information Technology and Workflow.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 15, 2013.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Patient-Reported Health Information Technology and Workflow

Health IT can improve quality of care by arraying relevant information, displaying clinical guidelines, highlighting test values of concern, calculating medication doses, and supporting clinical decisionmaking in many ways (Chaudhry *et al.,* 2006). Successful health IT implementation requires careful attention to the workflow of clinicians and others involved in care delivery. However, few studies have examined how health IT can change workflow in ambulatory physician practices. Further, in most studies that address health IT in ambulatory settings, workflow is not the main focus of the research (Unertl, Weinger, Johnson et al., 2009, Carayon, Karsh, Cartmill *et al.,* 2010a). The health IT literature has not focused on sociotechnical factors, such as patient or provider characteristics, physical environment and layout; technical training and support; functionality and usability of health IT; worker roles, staff workload, stress, and job satisfaction; and communication flows. Important work that does address such factors comes mainly from inpatient settings, or from other countries where the health care system is quite different than in the U.S. (Tjora and Scambler, 2009; Ammenwerth, Iller, and Mahler, 2006; Niazkhani, Pirnejad, de Bont *et al.,* 2008; Niazkhani, Pirnejad, Berg *et al.,* 2009). Although many of these studies have concluded that changes in workflow occur when implementing different health IT applications, few studies have actually examined how workflow changes.

In recent years there has been an increase in the use of health IT to capture patient reporting of medical histories, symptoms, results of self-testing (e.g., blood glucose levels, blood pressure), weight questions and concerns, over-the-counter medication use, and other information that patients need to share with their care providers. Health IT can elicit such information from patients, and help incorporate it into the flow of information within a physician's practice so that the information is detailed, actionable, timely, and can be used to meet patients' treatment goals. Gathering and integrating information from patients using health IT can include patient surveys and other pre-formatted information collection mechanisms (e-forms), secure messaging (email) between patients and their providers (Byrne, Elliott, and Firek, 2009; Bergmo, Kummervold, Gammon et al., 2005); and patient portals (sometimes referred to as [electronic] personal health records or PHRs, patient portals allow patients to view portions of their medical records [e.g., view laboratory test results] and support other health-related tasks such as making appointments or requesting medication refills). The use of patient-reported information is not yet widely integrated into health IT.

This project will fill the gaps in the current literature by exploring the influence of sociotechnical factors—for clinicians and their office staff, and for patients—in capturing and using patient-reported information in ambulatory health IT systems and associated workflows. The goal of the project is to answer the following research questions:

- How does the use of health IT to capture and use patient-reported information support or hinder the workflow from the viewpoints of clinicians, office staff, and patients?
- How does the sociotechnical context influence workflow related to

the capture and use of patient-reported information?

• How do practices redesign their workflow to incorporate the capture and use of patient-reported information?

The study will consist of rigorous mixed-methods case studies of six ambulatory care physician practices including three small practices (1–3 physicians and the other clinicians and office staff in their practices) and three medium-sized practices (4–10 physicians, and the other clinicians and office staff in their practices). These case studies will be conducted during multiday (3 to 4 days) site visits to collect information for this exploratory research. The multiple case study research approach of Eisenhardt and colleagues (Brown & Eisenhardt, 1997; Eisenhardt, 1989) will guide data collection and data analysis, to elucidate health IT workflows and important sociotechnical factors (for patients, clinicians, and office staff) in the capture and use of patient-reported information.

A focus of the case studies will be to identify current workflows related to patient-reported information, and determine the work system factors that influence workflows (barriers and facilitators). In particular, data collected from the six practices will help identify bottlenecks and sources of delay, unnecessary steps or duplication, rework to correct errors or inconsistencies, role ambiguity, missing information, and lack of data quality controls or reconciliation of inconsistencies. The focus is not on the content of information reported by patients, or how it alters clinicians' diagnostic or treatment decisions. Rather, the focus is on the workflows required to capture, process, and make use of information that patients report to their care providers.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., and subcontractors University of Wisconsin-Madison and University of Alabama-Birmingham, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to health care technologies and the quality, effectiveness, efficiency, appropriateness and value of health care services including quality measurement and improvement. 42 U.S.C. 299a(a)(1), (2) and (5).

Method of Collection

To achieve the goal of this project the following activities will be conducted at each of six participating ambulatory physician practices (referred to herein as 'study sites'):

(1) Preliminary Conference Call: The Practice Manager (the individual in each practice who manages day-to-day operations) and the Physician Leader (the physician in each practice who is most knowledgeable about health IT and health IT implementation) will be asked to participate in a preliminary conference call to learn about the study site and what will be expected of their practice as a study site. This call will last approximately one hour and will be completed by up to 2 participants per site for a total of up to 12 participants across sites.

(2) Pre-Visit Questionnaire: The Practice Manager will be asked to complete a brief questionnaire prior to the site visit, describing the practice size, health IT installed, patient population served, and other general contextual information about the practice and use of health IT. The Pre-Visit Questionnaire will take approximately one hour to complete and will be completed by up to one respondent per study site.

(3) Practice Tour: Each of the six site visits will begin with a one-hour tour of the practice and discussion with the Practice Manager to observe the physical layout and computer work stations, clarify the purpose of the study and the site visit, and clarify information from the Pre-Visit Questionnaire.

(4) Interviews with Practice Manager and Physician Leader: Following the tour at each study site, the Practice Manager and Physician Leader will be asked to participate in a one hour interview. The interview with the Practice Manager will focus on the sociotechnical context of the practice, with an emphasis on the social context of the practice. The interview with the Physician Leader will also focus on the sociotechnical context of the practice, and, in particular, the technical aspects of clinicians using the health IT system. The focus will be on the workflow across the practice, not the workflow of these two individuals. This information will be used to create the basic outline or structure of a Workflow Process Map(s), a diagram that shows the temporal sequencing of tasks in relation to other work system elements (person, organization, environment, and tools and technologies). It will also be used to begin to identify potential variation or flexibility in individuals' workflows, and provide context regarding multiple IT systems that may be in use in the practice. The information obtained from these interviews will be augmented by observation of workflows in the practice and interviews with others in the practice, as described in #5 and #6.

(5) Observations of Clinicians and Office Staff: Researchers will observe between 7 to 20 clinicians (including physicians, nurse practitioners, physician assistants, nurses, medical assistants, and ancillary staff) and between 3 to 7 office staff (including the front desk receptionist, IT staff, clerks, and other non-clinical staff) per study site, depending on site size for a total of up to 81 clinicians and up to 30 office staff observations across the study sites. Observations will take place as clinicians and office staff work to elicit, integrate and work with patient-reported information. Each clinician will be observed for up to two hours and each office staff person will be observed for up to 30 minutes. These observations periods are different because clinicians' work is more complex and varies more from one patient to the next, while office staff work varies less. Observations will focus on processes, bottlenecks, facilitators, workarounds, and points in the workflow when paper information supplements electronic information. Observations of both clinicians and office staff will be recorded on the Observation Form. The observations will be used to create a detailed Workflow Process Map(s). This data collection will not burden the clinic staff and is not included in the burden estimates in Exhibit 1.

(6) Interviews with Clinicians and Office Staff: Following observations of the workflow, each clinician and office staff person who was observed will be interviewed for up to one hour, for a total of up to 81 clinicians and up to 30 office staff interviews. If there are more clinicians or office staff than can be interviewed during the site visit, those with the most extensive experience with patient-reported information will be selected for interviews. These interviews will include discussion about the sociotechnical context, the workflow observed (see above), facilitators and barriers to capturing and using patient-reported information, and whether there are uncommon workflow patterns that arise occasionally but were not observed. Unlike the interviews with the Physician Leader and Practice Manager, these interviews will focus on the workflow of each individual, not the workflow across the entire practice. The same interview guide will be used for both clinician and office staff interviews.

(7) Survey of Clinicians and Office Staff: All clinicians and office staff in the six study sites will be invited to respond to a survey. Although there may not be sufficient time on site to

observe and interview every clinician and office staff person in the medium-sized practices, all of them will be asked to complete the survey questionnaire. Therefore, the number of survey respondents is greater than the number of observed and interviewed individuals. Up to 10 surveys will be completed at each small-sized study site and up to 35 surveys will be completed at each medium-sized study site, for a total of up to 135 respondents across the six sites. The surveys will be used to collect data regarding attitudes about and perceptions of the health IT workflows staff engage in related to patient-reported information and the impact of health IT on workload, stress, and job satisfaction, because workflow can impact workload and job satisfaction which have been shown to impact quality of care. The survey will also be used to collect data on barriers and facilitators associated with capturing and using patient-reported information.

(8) Patient Interviews: Patients will be interviewed to understand the workflow of entering or reporting information from the patient's perspective; the extent and adequacy of training or instruction patients received in using the health IT; attitudes about the time it takes to report information; and whether there are challenges, barriers, facilitators, or workarounds commonly used by patients as they report information requested by their care providers. Five patients will be interviewed at each small practice and up to seven at each medium-sized practice, for a total of up to 36 across the six study sites. More patients will be interviewed in the medium-sized practices because there are more clinicians in these practices, and each may have different patterns of interacting with their patients. Interviewing more patients will enhance the ability to capture information about variation in the clinician-patient information sharing and interaction. These interviews will help researchers understand the range of patient experiences.

(9) Post-Visit Follow-up to Review the Workflow Process Map(s): Following each site visit, researchers will complete the Workflow Process Map(s) for the study site and send it to the Practice Manager and Physician Leader, requesting confirmation that the understanding of their workflows is correct.

The lessons learned from this research may be used in a variety of ways:

(1) To identify additional workflow components that ambulatory practices should consider when implementing health IT to capture and use patient-reported information;

(2) To identify issues relevant to best practice guidelines for health IT implementation;

(3) To identify issues for consideration in the design and evaluation of other patient-centered health IT tools.

The study findings will be widely disseminated to health IT researchers and implementers via AHRQ's National Resource Center for Health IT Web site. The study will enhance the existing knowledge about sociotechnical factors that impact health IT workflow, and how small and medium-sized ambulatory practices employ health IT to capture and use patient-reported information as they redesign their workflow to deliver patient-centered care.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for the respondents' time to participate in this research. The Preliminary Conference Call with each site will involve two people, the Practice Manager and the Physician Leader, and will require up to one hour per site. A total of 12 people across the six study sites will be involved. The Pre-Visit Questionnaire and the Practice Tour will be completed by the Practice Manager at each site and will require up to one hour each. The Practice Manager and the Physician Leader at each site (12 individuals in total across the 6 sites) will be separately interviewed to gather in depth information about the sociotechnical context of the practice. The interviews will each take up to one hour to complete. Interviews with Clinicians and Office Staff will be completed with a maximum of 111 clinicians and office staff across the six study sites, and each interview will last up to one hour. A maximum of 135 clinicians and office staff combined (up to 10 for each of three small-sized sites and 35 for each of 3 medium-sized sites) will be asked to complete the clinician and office staff survey, which will take approximately 15 minutes for each respondent to complete. Up to 36 patients will be interviewed (5 in each of the small sites and up to 7 in each of the medium-sized sites). Each interview will take no more than 30 minutes to complete. A total of 12 persons (the Practice Manager and the Physician Leader at each site) will be involved in the Post-Visit Follow-up to Review the Workflow Process Map(s), which will take one hour. The total annual burden hours, is estimated to be 211 hours.

Exhibit 2 shows the estimated annual cost burden associated with the study sites' time to participate in the research. The total annual cost burden is estimated to be $11,031.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Preliminary Conference Call	12	1	1	12
Pre-Visit Questionnaire	6	1	1	6
Practice Tour	6	1	1	6
Interviews with Practice Manager and Physician Leader	12	1	1	12
Interviews with Clinicians and Office Staff	111	1	1	111
Survey of Clinicians and Office Staff	135	1	15/60	34
Patient Interviews	36	1	30/60	18
Post Visit Follow-up to Review the Workflow Process Map(s)	12	1	1	12
Total	330	N/A	N/A	211

EXHIBIT 2—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Preliminary Conference Call	12	12	[a]$67.15	$806
Pre-Visit Questionnaire	6	6	[b]46.17	277
Practice Tour	6	6	[b]46.17	277
Interviews with Practice Manager and Physician Leader	12	12	[a]67.15	806
Interviews with Clinicians and Office Staff	111	111	[c]55.00	6,105
Survey of Clinicians and Office Staff	135	34	[d]45.98	1,563
Patient Interviews	36	18	[e]21.74	391
Review of the Workflow Process Map(s)	12	12	[a]67.15	806
Total	330	196	N/A	11,031

* Based upon the mean of the average hourly wages, National Compensation Survey: Occupational wages in the United States May 2011, ''U.S. Department of Labor, Bureau of Labor Statistics.''

[a] The average wage for Practice Managers ($46.17 per hour) and Physician Leaders ($88.12 per hour) [$88.12 reflects the average for Family and General Practitioners ($85.26 per hour) and Internists, General ($90.97 per hour)].

[b] The average U.S. wage for Practice Managers is $46.17 per hour.

[c] The weighted average wage for physicians ($88.12 per hour) [$88.12 reflects the average for Family and General Practitioners ($85.26 per hour) and Internists, General ($90.97 per hour)], nurse practitioners and physician assistants ($41.63 per hour) [$41.63 reflects the average for Physician Assistants ($43.01 per hour) and Health Diagnosing and Treating Practitioners, All ($40.24 per hour)], nurses ($33.23 per hour), and Office Staff ($17.94) [reflects the average for Receptionists and Information Clerks ($12.85 per hour), Office and Administration Support Workers, All Other ($16.07 per hour), and Computer Support Specialists ($24.91 per hour)].

[d] The weighted average wage for physicians ($88.12), nurse practitioners and physician assistants ($41.63), nurses ($33.23) and office staff ($17.94).

[e] The average U.S. hourly wage ($21.74).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 6, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–03217 Filed 2–12–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal TANF Financial Report (ACF–196T).

OMB No.: 0970–0345.

Description: Tribes use Form ACF–196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193. Tribal entities with approved Tribal plans for implementation of the TANF program are required by Section 412(h) of the Social Security Act to report financial data. Form ACF–196T provides for the collection of data regarding Federal expenditures. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected. 45 CFR part 286 subpart E requires the strictest controls on funding requirements, which necessities review of documentation in support of Tribal expenditures for reimbursement. Comments received from previous efforts to implement a similar Tribal TANF report Form ACF–196T were used to guide ACF in the development of the product presented with this submittal.

The American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111–5 has authorized emergency TANF funds to be awarded to States, Tribes, and Territories who meet certain eligibility requirements written in the legislation. TANF Policy Announcement TANF–ACF–PA–2009–01 provides additional guidance on eligibility requirements. Recipients of ARRA funds are to report spending and performance data to Federal agencies quarterly for posting on the public Web site, ''Recovery.gov''. Federal agencies are required to collect ARRA expenditures data and the data must be clearly distinguishable from the regular TANF (non-ARRA) funds. Therefore, in order to meet this data collection requirement, the ACF–196T has been modified with the addition two line items and a column to report ARRA expenditures. The collection and posting of this data is to allow the public to see where their tax dollars are spent.

Respondents: All Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196T	72	4	1.5	432

Estimated Total Annual Burden Hours: 432.

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. 2013–03253 Filed 2–12–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0893]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Center for Devices and Radiological Health Appeals Processes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 15, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and Guidance for Industry and Food and Drug Administration Staff; Center for Devices and Radiological Health Appeals Processes. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry and Food and Drug Administration Staff; Center for Devices and Radiological Health Appeals Processes—(OMB Control Number 0910–NEW)

The guidance for industry and FDA staff entitled ''Center for Devices and Radiological Health (CDRH) Appeals Processes'' revises, updates, and combines two previous guidance documents: ''Medical Device Appeals and Complaints: Guidance for Dispute Resolution,'' dated February 1998, and ''Resolving Scientific Disputes Concerning the Regulation of Medical Devices, A Guide to Use of the Medical Devices Dispute Resolution Panel; Final Guidance for Industry and FDA,'' dated July 2001.

The document is intended to provide clarity to internal and external audiences regarding CDRH's appeal processes. Individuals outside of FDA who disagree with a decision or action taken by CDRH and wish to have it reviewed or reconsidered have several processes for resolution from which to choose, including requests for supervisory review of an action, petitions, and hearings. In most cases, it is up to the party seeking resolution of an adverse action or resolution of a difference of opinion to determine the appropriate process for a given circumstance or issue. The guidance describes these mechanisms and includes the following topics: (1) Appealable actions (i.e., warning letters, post-approval study requirements, premarket decisions, deficiency letters, or requests for additional information); (2) paths and options available at different stages of appeals; (3) use of expedited or ''paper'' appeals versus appeal meetings or teleconferences; (4) recommended format for appeals; (5) appeal authorities; (6) appeal conflicts; and (7) issues that are appropriate for dispute resolution.

This guidance is intended to describe the processes available to outside stakeholders to request additional review of decisions and actions by CDRH employees. There are several processes for resolution, including a request for supervisory review of an action, petitions, and hearings. The proposed information collection seeks approval for the reporting burden associated with requests for additional review of decisions and actions by CDRH employees under this guidance. The guidance also refers to currently approved information collections found in FDA regulations.

The collections of information in 21 CFR 10.30, 10.33, and 10.35 have been approved under OMB control number 0910–0183; the collections of information in 21 CFR part 12 have been approved under OMB control number 0910–0184; the collections of information for 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information under 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information under 21 CFR

part 814 have been approved under 0910–0231; and the collections of information under 21 CFR part 900 are approved under OMB control number 0910–0309.

In the **Federal Register** of December 28, 2011 (76 FR 81511), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates it will receive 50 requests annually from outside stakeholders requesting additional review of decisions and actions by CDRH employees. The Agency reached this estimate based on data collected about requests received over the last 2 years. FDA estimates it will take outside stakeholders approximately 8 hours to prepare a request based on the Agency's experience with past requests.

Before the proposed information collection provisions contained in this guidance become effective, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance title	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDRH: Appeals Processes Guidance Document	50	1	50	8	400
Total	50	1	50	8	400

[1] There are no capital costs or operating and maintenance costs associate with this collection of information.

Dated: *February 6, 2013.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03315 Filed 2–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Annual Computational Science Symposium; Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA), in cosponsorship with the Pharmaceutical Users Software Exchange (PhUSE), is announcing a public conference entitled ''The FDA/PhUSE Annual Computational Science Symposium.'' The purpose of the conference is to help the broader community align and share experiences to advance computational science. At the conference, which will bring together FDA, industry, and academia, FDA will update participants on current initiatives, and collaborative project groups will address specific challenges in accessing and reviewing data to support product development. These project groups will focus on solutions and practical ways to implement them.

DATES: The public conference will be held on March 18 and 19, 2013, from 9 a.m. to 5:30 p.m.

ADDRESSES: The public conference will be held at the Silver Spring Civic Building at Veterans Plaza, One Veterans Pl., Silver Spring, MD 20910, 1–240–777–5300.

FOR FURTHER INFORMATION CONTACT: Chris Decker, PhUSE FDA Liaison Director, Pharmaceutical Users Software Exchange (PhUSE), 64 High St., Broadstairs CT10 1JT, United Kingdom, 609–514–5105, email: *css@phuse.eu.*.

SUPPLEMENTARY INFORMATION: A description of the project groups and planned activities can be found at *http://www.phuse.eu/css.*

I. Registration and Accommodations

A. Registration

To register, please submit the registration form online at *https://www.phuse.eu/PhUSE–CSS–2013-Registration.aspx.* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**). Registration fees cover the cost of facilities, materials, and food functions. Seats are limited, and conference space will be filled in the order in which registrations are received. Onsite registration will be available to the extent that space is available on the day of the conference.

The costs of registration for different categories of attendee are as follows:

Category	Cost
Industry representatives registering by February 15, 2013	$700
Industry representatives registering after February 15, 2013	$900
Those with government affiliation	$300
Representatives of nonprofit organizations	$300
Those attending for a single day	$650

Government and nonprofit attendees and exhibitors will need an invitation code to register at the discounted rate. An invitation code can be obtained by sending an email to: *office@phuse.eu.* All registrants will pay a fee with the exception of a limited number of speakers/organizers who will have a complimentary registration.

B. Accommodations

Attendees are responsible for their own accommodations. Attendees making reservations at the DoubleTree by Hilton Silver Spring Hotel are eligible for a reduced conference rate of $199, not including applicable taxes. Those making reservations online should use the following link to receive the special rate: *http://doubletree.hilton.com/en/dt/groups/personalized/D/DCASSDT–PUE–20130316/index.jhtml?WT.mc_id=POG.* If you need special accommodations because of disability, please contact Chris Decker (see **FOR FURTHER INFORMATION CONTACT**) at least 14 days before the meeting.

II. Information for Presenters of Posters and Exhibits

Those wishing to present posters at the conference should submit an abstract online at *http://www.phuse.eu/Call_for_NewProjectsCSS.aspx.* Suggested poster abstract topics include:

- Data submission standards development, implementation, and best practices;

• User experience and evaluation of current processes and tools and their effects on organizational performance;

• Needs and specifications for proposed new tools and processes;

• Business processes driving the development of information systems; and

• The effect of processes and tools on problem solving quality, efficiency, and cost.

All abstracts must be received by February 15, 2013, and authors whose posters have been accepted will be notified by February 28, 2013.

The conference will make available an exhibition hall. The exhibitor price for this conference is $3,500. Neither PhUSE nor FDA endorse any commercial software or vendor.

Dated: February 7, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03324 Filed 2–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Global Quality Systems—An Integrated Approach To Improving Medical Product Safety; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District Office, in cosponsorship with the Association of Food and Drug Officials (AFDO), is announcing a public workshop entitled ''Global Quality Systems—An Integrated Approach to Improving Medical Product Safety.'' This 2-day public workshop is intended to provide information about FDA drug and device regulation to the regulated industry.

DATES: The public workshop will be held on June 10 and 11, 2013, from 8 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the Louisville Marriott Downtown, 280 West Jefferson St., Louisville, KY, 502–627–5045 or toll-free 800–533–0127; *http://www.marriottlouisville.com/.*

Attendees are responsible for their own accommodations. To make reservations at the Louisville Marriott Downtown, at the reduced conference rate, contact the Louisville Marriott Downtown before May 2, 2013, and cite meeting code ''AFDO Conference.''

FOR FURTHER INFORMATION CONTACT: Krystal Reed, Association of Food and Drug Officials, 2550 Kingston Rd., suite 311, York, PA 17402, 717–757–2888, FAX: 717–650–3650, *email: kreed@afdo.org.*

SUPPLEMENTARY INFORMATION:

Registration: You are encouraged to register by May 14, 2013. The AFDO registration fees cover the cost of facilities, materials, and breaks. Seats are limited; therefore, please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 7:30 a.m. The cost of registration is as follows:

COST OF REGISTRATION

Member	$450.00
Non-Member	$550.00
To be added to registration fee for registration postmarked after May 14, 2013	$100.00

If you need special accommodations due to a disability, please contact Krystal Reed (see **FOR FURTHER INFORMATION CONTACT**) at least 21 days in advance of the workshop.

Registration instructions: To register, please complete and submit an AFDO Conference Registration Form, along with a check or money order payable to ''AFDO.'' Please mail your completed registration form and payment to: AFDO, 2550 Kingston Rd., suite 311, York, PA 17402. To register online, please visit *http://www.afdo.org/conference.* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The registrar will also accept payment through Visa and MasterCard credit cards. For more information on the public workshop, or for questions about registration, please contact AFDO at 717–757–2888, FAX: 717–650–3650, or email: *afdo@afdo.org*

The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide FDA-regulated drug and device entities with information on a number of topics concerning FDA requirements related to the production and marketing of drugs and/or devices. Topics for discussion include the following:

• Future of Combination Product Regulation.

• Unique Device Identifier Progress.

• Health Canada Update.

• The Safety of our Drugs and Devices—the Complex Reality.

• Nanotechnology.

• Drug and Medical Device Trends.

• Case for Quality (Center for Devices and Radiological Health) Presented by Steve Silverman.

• Working Luncheon Interactive Session—Lessons Learned From the Mistakes of Others.

• Complaint Handling—It's Not Just About Compliance—It's an Effective Business Driver.

• FDA's Cosmetic Regulatory Agenda.

• Challenges With Implementation of U.S.P. 35 on a Global Basis.

• Pilot Program for Abbreviated Drug Inspections.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The workshop helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by Government Agencies to small businesses.

Dated: February 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03323 Filed 2–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0724]

Documents To Support Submission of an Electronic Common Technical Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the following revised final versions of documents that support making regulatory submissions in

electronic format using the electronic Common Technical Document (eCTD) specifications: ''The eCTD Backbone Files Specification for Module 1, version 2.1'' (which includes the U.S. regional document type definition, version 3.1), and ''Comprehensive Table of Contents Headings and Hierarchy, version 2.1.'' Technical files that support these documents are also available on the Agency Web site. A complete summary of the revisions made is included in the updated documents. FDA estimates it will be able to receive submissions utilizing Module 1 Specifications 2.1 by September 2013 and will give 30 days advanced notice to industry.

ADDRESSES: Submit written requests for single copies of the documents 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 Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

FOR FURTHER INFORMATION CONTACT:

Constance Robinson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1105, Silver Spring, MD 20993, 301–796–1065, *constance.robinson@fda.hhs.gov*; or

Joseph Montgomery, Center for Biologics Evaluation and Research, Food and Drug Administration, 11400 Rockville Pike, HFM–165, rm. 4155, Rockville, MD 20857, 301–827–1332, *joseph.montgomery@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The eCTD is an International Conference on Harmonisation (ICH) standard based on specifications developed by ICH and its member parties. FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) have been receiving submissions in the eCTD format since 2003; the eCTD has been the standard for electronic submissions to CDER and CBER since January 1, 2008. The majority of new electronic submissions are now received in eCTD format. Since adoption of the eCTD standard, it has become necessary to update the administrative portion of the eCTD (Module 1) to reflect regulatory changes, provide clarification of business rules for submission processing and review, refine the characterization of promotional marketing and advertising material, and facilitate automated processing of submissions. FDA announced availability of final versions of technical documentation in the **Federal Register** of August 6, 2012 (77 FR 46763). FDA has revised the final documentation and is making available revised versions of the following documents:

- ''The eCTD Backbone Files Specification for Module 1, version 2.1,'' which provides specifications for creating the eCTD backbone file for Module 1 for submission to CDER and CBER. It should be used in conjunction with the guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Applications and Related Submissions,'' which will be revised as part of the implementation of the updated eCTD backbone files specification.
- ''Comprehensive Table of Contents Headings and Hierarchy, version 2.1,'' which reflects updated headings that are specified in the document entitled ''The eCTD Backbone Files Specification for Module 1, version 2.1.''

Supporting technical files are also being made available on the Agency Web site.

A complete summary of the revisions made are included in the updated documents. The revisions include the following:

- The 1.16 heading regarding risk management was modified and subheadings were added.
- The application-type attribute file was modified to include PMA and 510(k).
- Attribute files were modified to allow the version, date, and number to be machine readable.

FDA is not prepared at present to accept submissions utilizing this new version, because eCTD software vendors need time to update their software to accommodate this information and because its use will require software upgrades within the Agency. FDA estimates it will be able to receive submissions utilizing Module 1 Specifications 2.1 by September 2013 and will give 30 days advanced notice to industry.

II. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm, http://www.regulations.gov*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: February 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03319 Filed 2–12–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program, Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of Ryan White HIV/AIDS Program (Part C) Early Intervention Services One-Time Noncompetitive Award to Ensure Continued HIV Primary Medical Care.

SUMMARY: To prevent a lapse in comprehensive primary care services for persons living with HIV/AIDS, HRSA will provide one-time noncompetitive Part C funds to the Hoboken Community Healthcare, Inc., Hoboken, New Jersey.

SUPPLEMENTARY INFORMATION: The amount of the award to ensure ongoing HIV medical services is $327,166.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. § 300ff–51.

CFDA Number: 93.918.

Project period: The period of support for this award is from January 1, 2013, through June 30, 2013.

Justification for the Exception to Competition: Hoboken Municipal Hospital Authority (HMHA), Hoboken, NJ; H76HA07886 announced the December 31, 2012, relinquishment of their Part C grant to Hoboken Community Healthcare, Inc., a nonprofit 501(c)(3) organization that purchased the hospital and associated clinics. Hoboken Community Healthcare, Inc. has been identified as an interim provider of the Part C grant. The amount of $327,166 will be awarded to Hoboken Community Healthcare, Inc., which represents a proportional share of the last award to HMHA. This funding will support HIV medical care until the start of a new funding cycle under HRSA–13–168 with a July 1, 2013, start date.

FOR FURTHER INFORMATION CONTACT: John Fanning; by email at *jfanning@hrsa.gov* or by phone, 301–443–0493.

Dated: February 6, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–03295 Filed 2–12–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program, Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of Ryan White HIV/AIDS Program Part C Early Intervention Services One-Time Noncompetitive Award to Ensure Continued HIV Primary Medical Care.

SUMMARY: To prevent a lapse in comprehensive primary care services for persons living with HIV/AIDS, HRSA will provide one-time noncompetitive Ryan White HIV/AIDS Program (Part C) funds to the University of Pittsburgh Medical Center, Presbyterian Shadyside, Pittsburgh, Pennsylvania.

SUPPLEMENTARY INFORMATION: The amount of the award to ensure ongoing HIV medical services is $543,037.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. § 300ff–51

CFDA Number: 93.918.

Project period: The period of support for this award is January 1, 2013, through June 30, 2013.

Justification for the Exception to Competition: The University of Pittsburgh School of Medicine, Pittsburgh, PA; H76HA00079 announced the December 31, 2012, relinquishment of their Part C grant in order to transfer it to another entity within their organization; the University of Pittsburgh Medical Center, Presbyterian Shadyside, a nonprofit 501(c)(3) organization. The transfer will more closely align the administrative responsibilities with the clinical entity and simplify accounting and reporting for the Part C grant. An award of $543,037 represents a proportional share of the last award to the University of Pittsburgh School of Medicine. The funding will support services to Presbyterian Shadyside until the service area is competed under HRSA–13–168 with a July 1, 2013, start date.

FOR FURTHER INFORMATION CONTACT: John Fanning; by email at *jfanning@hrsa.gov* or by phone at 301–443–0493.

Dated: February 6, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–03291 Filed 2–12–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program, Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of Ryan White Part C Early Intervention Services One-Time Noncompetitive Award to Ensure Continued HIV Primary Medical Care.

SUMMARY: To prevent a lapse in comprehensive primary care services for persons living with HIV/AIDS, HRSA will provide one-time noncompetitive Part C funds to the Aaron E. Henry Community Health Center (AEHCHC), Clarksville, Mississippi.

SUPPLEMENTARY INFORMATION: The amount of the award to ensure ongoing HIV medical services is $178,579.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51

CFDA Number: 93.918

Project period: The period of support for this award varies according to the circumstances and is explained in further detail below.

Justification for the Exception to Competition: The Tutwiler Clinic, Tutwiler, MS; H76HA21225 announced the December 31, 2012, relinquishment of their Part C grant due to the loss of administrative and clinical resources. To prevent a lapse in HIV medical services, the grant for $178,579 will be awarded to AEHCHC, Clarksdale, MS, to provide HIV medical care. The $178,579 represents a proportional share of the last award to Tutwiler Clinic. AEHCHC has been identified as an interim provider for the Part C grant and is currently a HRSA-funded community health center which offers HIV medical care. The 6 months of funding will ensure continued service until the service area is competed under HRSA–13–168 with a July 1, 2013, start date.

FOR FURTHER INFORMATION CONTACT: John Fanning; by email at *jfanning@hrsa.gov* or by phone at 301–443–0493.

Dated: February 6, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–03292 Filed 2–12–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program, Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of One-Time Noncompetitive Award of Part C Funds for the District Four Health Services (DFHS), Lagrange, Georgia.

SUMMARY: To prevent a lapse in comprehensive primary care services for persons living with HIV/AIDS, HRSA will be providing a one-time noncompetitive Part C funds award to DFHS, Lagrange, Georgia.

SUPPLEMENTARY INFORMATION: The amount of the award is $104,218 to ensure ongoing clinical services to this rural population.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

CFDA Number: 93.918.

Project period: The period of support for this award is from April 1, 2013, to June 30, 2013.

Justification for the Exception to Competition: Since 2000, DFHS has provided critical Ryan White HIV/AIDS Program (Part C) Early Intervention Services for over 427 persons living with HIV/AIDS in the twelve county public health service areas. DFHS will continue to provide critical HIV medical care and treatment services during the three-month extension from April 1, 2013, until June 30, 2013, until the start of the July 1 funding cycle. This service area will be included in the upcoming competition for the Part C HIV Early Intervention Services Grant under the funding opportunity announcement HRSA–13–168.

FOR FURTHER INFORMATION CONTACT: John Fanning; by email at *jfanning@hrsa.gov* or by phone at 301–443–0493.

Dated: February 6, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–03293 Filed 2–12–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Clinical Studies of Complementary and Alternative Medicine.

Date: March 14, 2013.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Hungyi Shau, Ph.D., Scientific Review Officer, National Center For Complementary, and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Career Development and Training.

Date: March 22, 2013.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Kozel, Ph.D., Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: February 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03242 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: March 1, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–2717, *leszcyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03235 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Reproductive Scientist Development Program.

Date: March 6, 2013.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David H. Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, 301–435–6973, *David.Weinberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03233 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: February 19, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03237 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict applications—Neuroscience.

Date: March 21, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ranga Srinivas, PhD, Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: February 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03239 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Center for Engineered Cartilage (2013/05).

Date: March 6–8, 2013.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Glidden House, 1901 Ford Drive, Cleveland, OH 44106.

Contact Person: John K. Hayes, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Room 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov*.

Dated: February 7, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03238 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Topic 72: New Methods to Detect and Assess Myocardial Fibrosis.

Date: March 6, 2013.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03240 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders, Language, Communication and Related Neurosciences.

Date: March 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Dupont Circle, 1143 New Hampshire Avenue NW, Washington, DC 20037.

Contact Person: Vilen A Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA: EY 13–001 Basic Behavioral Research on Multisensory Processing

Date: March 7–8, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW, Washington, DC 20037.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: March 7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–1789, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Behavioral and Biobehavioral Processes.

Date: March 7–8, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Multisensory Processing.

Date: March 7, 2013.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW, Washington, DC 20037.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 12–093: Biomedical and Behavioral Research Innovations to Ensure Equity (BRITE).

Date: March 7, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03243 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 5, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03234 Filed 2–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1294]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

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 specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 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.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Baldwin	City of Gulf Shores (12–04–4632P).	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.	*http://www.bakeraecom.com/index.php/alabama/baldwin/.*	March 11, 2013	015005
Jefferson	City of Birmingham (12–04–6207P).	The Honorable William A. Bell, Mayor, City of Birmingham, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	City Hall, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	*http://www.bakeraecom.com/index.php/alabama/jefferson-3/.*	April 5, 2013	010116
Shelby	City of Montevallo (12–04–7810P).	The Honorable Ben McCrory, Mayor, City of Montevallo, 545 Main Street, Montevallo, AL 35115.	City Hall, 545 Main Street, Montevallo, AL 35115.	*http://www.bakeraecom.com/index.php/alabama/shelby-2/.*	April 4, 2013	010349
Shelby	City of Pelham (12–04–7869P).	The Honorable Don Murphy, Mayor, City of Pelham, 3162 Pelham Parkway, Pelham, AL 35124.	City Hall, 3162 Pelham Parkway, Pelham, AL 35124.	*http://www.bakeraecom.com/index.php/alabama/shelby-2.*	April 11, 2013	010193
Shelby	Town of Indian Springs Village (12–04–7869P).	The Honorable Steve Zerkis, Mayor, Town of Indian Springs Village, 5300 Mountain Park Drive, Indian Springs, AL 35124.	Town Hall, 5300 Mountain Park Drive, Indian Springs, AL 35124.	*http://www.bakeraecom.com/index.php/alabama/shelby-2.*	April 11, 2013	010430
Shelby	Unincorporated areas of Shelby County (12–04–7869P).	The Honorable Lindsey Allen, Chairman, Shelby County Board of Supervisors, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	*http://www.bakeraecom.com/index.php/alabama/shelby-2.*	April 11, 2013	010191
Tuscaloosa	City of Tuscaloosa (12–04–3302P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	*http://www.bakeraecom.com/index.php/alabama/tuscaloosa/.*	April 22, 2013	010203
Tuscaloosa	City of Tuscaloosa (12–04–3303P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	*http://www.bakeraecom.com/index.php/alabama/tuscaloosa/.*	April 22, 2013	010203
Arizona:						
Maricopa	City of Phoenix (13–09–0280P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	*http://www.r9map.org/Docs/13-09-0280P-040051-102DA.pdf.*	April 8, 2013	040051
California:						
Santa Clara	City of Cupertino (12–09–2521P).	The Honorable Mark Santoro, Mayor, City of Cupertino, 10300 Torre Avenue, Cupertino, CA 95014.	Planning Department, 10300 Torre Avenue, Cupertino, CA 95014.	*http://www.r9map.org/Docs/12-09-2521P-060339-102IAC.pdf.*	April 4, 2013	060339
Santa Clara	City of Los Altos (12–09–2859P).	The Honorable Val Carpenter, Mayor, City of Los Altos, 1 North San Antonio Road, Los Altos, CA 94022.	Public Works Department, 1 North San Antonio Road, Los Altos, CA 94022.	*http://www.r9map.org/Docs/12-09-2859P-060341-102IAC.pdf.*	April 18, 2013	060341
Santa Clara	City of San Jose (12–09–2521P).	The Honorable Chuck Reed, Mayor, City of San Jose, 200 East Santa Clara Street, San Jose, CA 95113.	Department of Public Works, 200 East Santa Clara Street Tower, 3rd Floor, San Jose, CA 95113.	*http://www.r9map.org/Docs/12-09-2521P-060349-102IAC.pdf.*	April 4, 2013	060349
Santa Clara	City of Saratoga (12–09–2521P).	The Honorable Chuck Page, Mayor, City of Saratoga, 13777 Fruitvale Avenue, Saratoga, CA 95070.	Planning Department, 13777 Fruitvale Avenue, Saratoga, CA 95070.	*http://www.r9map.org/Docs/12-09-2521P-060351-102IAC.pdf.*	April 4, 2013	060351
Santa Clara	Town of Los Altos Hills (12–09–2859P).	The Honorable Rich Larsen, Mayor, Town of Los Altos Hills, 26379 Fremont Road, Los Altos Hills, CA 94022.	Public Works Department, 26379 Fremont Road, Los Altos Hills, CA 94022.	*http://www.r9map.org/Docs/12-09-2859P-060342-102IAC.pdf.*	April 18, 2013	060342

Santa Clara	Unincorporated areas of Santa Clara County (12–09–2521P).	The Honorable George Shirakawa, President, Santa Clara County Board of Supervisors, 70 West Hedding Street, 10th Floor, San Jose, CA 95110.	Santa Clara County Office of Planning, 70 West Hedding Street, San Jose, CA 95110.	*http://www.r9map.org/Docs/12-09-2521P-060337-102IAC.pdf.*	April 4, 2013	060337
Colorado:						
Adams	City of Thornton (12–08–0595P).	The Honorable Heidi Williams, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	9500 Civic Center Drive, Thornton, CO 80229.	*http://www.bakeraecom.com/index.php/colorado/adams/.*	April 12, 2013	080007
Adams	Unincorporated areas of Adams County (12–08–0595P).	The Honorable W.R. ''Skip'' Fischer, Chairman, Adams County Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	Adams County Public Works Department, 4430 South Adams County Parkway, 1st Floor, Suite W2123, Brighton, CO 80601.	*http://www.bakeraecom.com/index.php/colorado/adams/.*	April 12, 2013	080001
Arapahoe	City of Centennial (12–08–0553P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Centennial, CO 80112.	*http://www.bakeraecom.com/index.php/colorado/arapahoe/.*	April 12, 2013	080315
Weld	Town of Erie (11–08–1090P).	The Honorable Joe Wilson, Mayor, Town of Erie, P.O. Box 750, Erie, CO 80516.	Town Hall, 645 Holbrook Street, Erie, CO 80516.	*http://www.bakeraecom.com/index.php/colorado/weld/.*	March 25, 2013	080181
Weld	Unincorporated areas of Weld County (11–08–1090P).	The Honorable Sean Conway, Chairman, Weld County Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Public Works Department, 1111 H Street, Greeley, CO 80632.	*http://www.bakeraecom.com/index.php/colorado/weld/.*	March 25, 2013	080266
Florida:						
Leon	Unincorporated areas of Leon County (12–04–6893P).	The Honorable Nicholas J. Maddox, 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.	*http://www.bakeraecom.com/index.php/florida/leon/.*	April 19, 2013	120143
Miami-Dade	City of Sunny Isles Beach (12–04–6538P).	The Honorable Norman S. Edelcup, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	City Hall, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	*http://www.bakeraecom.com/index.php/florida/miami-dade/.*	April 8, 2013	120688
Monroe	Unincorporated areas of Monroe County (12–04–7637P).	The Honorable David Rice, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	*http://www.bakeraecom.com/index.php/florida/monroe-3/.*	March 25, 2013	125129
Orange	City of Orlando (12–04–4611P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32808.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32801.	*http://www.bakeraecom.com/index.php/florida/orange-2/.*	April 19, 2013	120186
Orange	Unincorporated areas of Orange County (12–04–4611P).	The Honorable Teresa, Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	*http://www.bakeraecom.com/index.php/florida/orange-2/.*	April 19, 2013	120179
Walton	Unincorporated areas of Walton County (12–04–6405P).	The Honorable Scott Brannon, Chairman, Walton County Commissioners, 415 Highway 20, Freeport, FL 32439.	Walton County Courthouse Annex, 47 North 6th Street, DeFuniak Springs, FL 32435.	*http://www.bakeraecom.com/index.php/florida/walton/.*	April 5, 2013	120317
North Carolina:						
Mecklenburg	Town of Cornelius (12–04–5511P).	The Honorable Jeff Tarte, Mayor, Town of Cornelius, 21445 Catawba Avenue, Cornelius, NC 28031.	Public Works Department, 21445 Catawba Avenue, Cornelius, NC 28031.	*http://www.bakeraecom.com/index.php/northcarolina/mecklenburg-pmr-2/.*	March 15, 2013	370498
Mecklenburg	Unincorporated areas of Mecklenburg County (12–04–5511P).	Mr. Harry L. Jones, Sr., Mecklenburg County Manager, 600 East 4th Street, Charlotte, NC 28202.	Charlotte-Mecklenburg Stormwater Services Division, 700 North Tryon Street, Charlotte, NC 28202.	*http://www.bakeraecom.com/index.php/northcarolina/mecklenburg-pmr-2/.*	March 15, 2013	370158
Tennessee:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Shelby	City of Germantown (12–04–5413P).	The Honorable Sharon Goldsworthy, Mayor, City of Germantown, 1930 South Germantown Road, Germantown, TN 38138.	Economic and Community Development Department, 1920 South Germantown Road, Germantown, TN 38138.	*http://www.bakeraecom.com/index.php/tennessee/shelby/.*	April 12, 2013	470353
Wyoming:						
Laramie	Unincorporated areas of Laramie County (12–08–0028P).	The Honorable Gay Woodhouse, Chair, Laramie County Board of Commissioners, P.O. Box 1888, Cheyenne, WY 82001.	Laramie County Planning Department, Historic County Courthouse, 310 West 19th Street, Suite 400, Cheyenne, WY 82001.	*http://www.bakeraecom.com/index.php/wyoming/laramie/.*	April 8, 2013	560029

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–03256 Filed 2–12–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

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:					
Mobile (FEMA Docket No.: B–1262).	City of Saraland (11–04–6989P).	The Honorable Howard Rubenstein, Mayor, City of Saraland, 716 Saraland Boulevard South, Saraland, AL 36571.	City Hall, 716 Saraland Boulevard South, Saraland, AL 36571.	August 9, 2012	010171
Mobile (FEMA Docket No.: B–1262).	Unincorporated areas of Mobile County (11–04–6989P).	The Honorable Connie Hudson, President, Mobile County Board of Commissioners, P.O. Box 1443, Mobile, AL 36633.	Mobile County Government Plaza, Engineering Department, 205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644.	August 9, 2012	015008
Arkansas:					
Benton (FEMA Docket No.: B–1249).	City of Bentonville (11–06–3059P).	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	117 West Central Avenue, Bentonville, AR 72712.	April 27, 2012	050012
Benton (FEMA Docket No.: B–1249).	Unincorporated areas of Benton County (11–06–3059P).	The Honorable Robert Clinard, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	215 East Central Avenue, Bentonville, AR 72712.	April 27, 2012	050419
Pulaski (FEMA Docket No.: B–1252).	City of Little Rock (11–06–4271P).	The Honorable Mark Stodola, Mayor, City of Little Rock, 500 West Markham Street, Room 203, Little Rock, AR 72201.	Department of Public Works, 701 West Markham Street, Little Rock, AR 72201.	June 6, 2012	050181
Pulaski (FEMA Docket No.: B–1252).	Unincorporated areas of Pulaski County (11–06–4271P).	The Honorable Floyd G. Villines, Pulaski County Judge, 201 South Broadway Street, Suite 400, Little Rock, AR 72201.	501 West Markham Street, Suite A, Little Rock, AR 72201.	June 6, 2012	050179
Florida:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Jackson (FEMA Docket No.: B–1257).	Town of Bascom (12–04–2176P).	The Honorable Ann Bryan, Mayor, Town of Bascom, 4967 Basswood Road, Bascom, FL 32423.	Town Hall, 4969 Basswood Road, Bascom, FL 32423.	August 16, 2012	120069
Jackson (FEMA Docket No.: B–1257).	Unincorporated areas of Jackson County (12–04–2176P).	The Honorable Chuck Lockey, Chairman, Jackson County Board of Commissioners, 2864 Madison Street, Marianna, FL 32448.	Chamber of Commerce, 4318 Lafayette Street Marianna, FL 32446.	August 16, 2012	120125
Maryland:					
Washington (FEMA Docket No.: B–1271).	Unincorporated areas of Washington County (12–03–1044P).	The Honorable Terry L. Baker, President, Washington County Board of Commissioners, 100 West Washington Street, Room 226, Hagerstown, MD 21740.	Washington County Administration Building, 100 West Washington Street, Hagerstown, MD 21740.	November 13, 2012	240070
New Mexico:					
Sandoval (FEMA Docket No.: B–1249).	Unincorporated areas of Sandoval County (11–06–0073P).	The Honorable Darryl Madalena, Chairman, Sandoval County Commission, P.O. Box 40, Bernalillo, NM 87004.	711 Camino Del Pueblo, Bernalillo, NM 87004.	May 4, 2012	350055
Sandoval (FEMA Docket No.: B–1257).	Unincorporated areas of Sandoval County (11–06–1258P).	The Honorable Darryl Madalena, Chairman, Sandoval County Commission, P.O. Box 40, Bernalillo, NM 87004.	711 Camino Del Pueblo, Bernalillo, NM 87004.	July 6, 2012	350055
Oklahoma:					
Cleveland (FEMA Docket No.: B–1257).	City of Norman (11–06–4261P).	The Honorable Cindy S. Rosenthal, Mayor, City of Norman, P.O. Box 370, Norman, OK 73070.	201 West Gray Street, Building A, Norman, OK 73069.	August 1, 2012	400046
Comanche (FEMA Docket No.: B–1262).	City of Lawton (11–06–3319P).	The Honorable Fred L. Fitch, Mayor, City of Lawton, 212 Southwest 9th Street, Lawton, OK 73501.	103 Southwest 4th Street, Lawton, OK 73501.	August 10, 2012	400049
Mayes (FEMA Docket No.: B–1257).	City of Pryor Creek (12–06–0785P).	The Honorable Jimmy Tramel, Mayor, City of Pryor Creek, 6 North Adair Street, Pryor, OK 74361.	6 North Adair Street, Pryor, OK 74361.	June 22, 2012	400117
Mayes (FEMA Docket No.: B–1257).	Unincorporated areas of Mayes County (12–06–0785P).	The Honorable Alva Martin, Commissioner, Mayes County, 1 Court Place, Suite 140, Pryor, OK 74361.	1 Court Place, Suite 140, Pryor, OK 74361.	June 22, 2012	400458
Oklahoma (FEMA Docket No.: B–1249).	City of Oklahoma City (10–06–2593P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	May 17, 2012	405378
Oklahoma (FEMA Docket No.: B–1249).	City of Oklahoma City (11–06–3061P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	May 9, 2012	405378
Oklahoma (FEMA Docket No.: B–1262).	City of The Village (12–06–0066P).	The Honorable C. Scott Symes, Mayor, City of The Village, 2304 Manchester Drive, The Village, OK 73120.	City Hall, 2304 Manchester Drive, The Village, OK 73120.	August 13, 2012	400420
Tulsa (FEMA Docket No.: B–1257).	City of Tulsa (11–06–1755P).	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	Stormwater Design Office, 2317 South Jackson Avenue, Suite 302, Tulsa, OK 74107.	July 5, 2012	405381
Tulsa (FEMA Docket No.: B–1249).	City of Tulsa (11–06–2274P).	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	Stormwater Design Office, Engineering Services Department, 2317 South Jackson, Suite 302, Tulsa, OK 74103.	May 18, 2012	405381
Pennsylvania:					
Allegheny (FEMA Docket No.: B–1262).	Township of O'Hara (11–03–1924P).	The Honorable Robert John Smith, Council President, Township of O'Hara, 325 Fox Chapel Road, Pittsburgh, PA 15238.	Township Office, 325 Fox Chapel Road, Pittsburgh, PA 15238.	August 10, 2012	421088
Bucks (FEMA Docket No.: B–1249).	Township of Lower Southampton (11–03–2022P).	The Honorable Ted Taylor, Manager, Township of Lower Southampton, 1500 Desire Avenue, Feasterville, PA 19053.	Township of Lower Southampton Zoning Department, 1500 Desire Avenue, Feasterville, PA 19053.	May 4, 2012	420192
Delaware (FEMA Docket No.: B–1257).	Township of Radnor (11–03–1189P).	The Honorable William A. Spingler, President of the Board of Commissioners, Township of Radnor, 301 Iven Avenue, Wayne, PA 19087.	Radnor Township Building, 301 Iven Avenue, Wayne, PA 19087.	August 2, 2012	420428
Puerto Rico: Puerto Rico (FEMA Docket No.: B–1268)	Commonwealth of Puerto Rico (11–02–2538P).	Mr. Ruben Flores-Marzan, Chairman, Puerto Rico Planning Board, Roberto Sanchez Vilella Governmental Center, North Building, 16th Floor, De Diego Avenue, International Baldorioty de Castro Avenue, San Juan, PR 00940.	Roberto Sanchez Vilella Governmental Center, North Building, 9th Floor, De Diego Avenue, International Baldorioty de Castro Avenue, San Juan, PR 00940.	September 4, 2012	720000
Texas:					
Bandera (FEMA Docket No.: B–1257).	Unincorporated areas of Bandera County (12–06–0946P).	The Honorable Richard Evans, Bandera County Judge, 500 Main Street, Bandera, TX 78003.	Bandera County Rural Addressing Office, 502 11th Street, Bandera, TX 78003.	June 28, 2012	480020

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Bell (FEMA Docket No.: B–1252).	City of Harker Heights (11–06–1826P).	The Honorable Mike Aycock, Mayor, City of Harker Heights, 1300 East FM 2410, Harker Heights, TX 76548.	305 Miller's Crossing, Harker Heights, TX 76548.	May 30, 2012	480029
Bell (FEMA Docket No.: B–1257).	City of Killeen (11–06–4177P).	The Honorable Timothy L. Hancock, Mayor, City of Killeen, P.O. Box 1329, Killeen, TX 76541.	City Hall, 101 North College Street, Killeen, TX 76540.	August 1, 2012	480031
Bell (FEMA Docket No.: B–1262).	City of Temple (11–06–4085P).	The Honorable William A. Jones III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.	City Hall, 2 North Main Street, Temple, TX 76501.	August 13, 2012	480034
Bell (FEMA Docket No.: B–1257).	Unincorporated areas of Bell County (11–06–4177P).	The Honorable Jon H. Burrows, Bell County Judge, 101 East Central Avenue, Belton, TX 76513.	Bell County Courthouse, 101 East Central Avenue, Belton, TX 76513.	August 1, 2012	480706
Bexar (FEMA Docket No. B–1257).	City of Converse (11–06–0362P).	The Honorable Al Suarez, Mayor, City of Converse, 403 South Seguin Street, Converse, TX 78109.	City Hall, 403 South Seguin Street, Converse, TX 78109.	June 29, 2012	480038
Bexar (FEMA Docket No.: B–1257).	City of Leon Valley (11–06–2731P).	The Honorable Chris Riley, Mayor, City of Leon Valley, 6400 El Verde Road, Leon Valley, TX 78238.	City Hall, 6400 El Verde Road, Leon Valley, TX 78238.	June 6, 2012	480042
Bexar (FEMA Docket No.: B–1257).	City of San Antonio (12–06–0888P).	The Honorable Julian Castro, Mayor, City of San Antonio, City Hall, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	August 2, 2012	480045
Bexar (FEMA Docket No.: B–1257).	City of Shavano Park (12–06–0888P).	The Honorable A. David Marne, Mayor, City of Shavano Park, 900 Saddletree Court, Shavano Park, TX 78231.	City Hall, 900 Saddletree Court, Shavano Park, TX 78231.	August 2, 2012	480047
Bexar (FEMA Docket No.: B–1257).	Unincorporated areas of Bexar County (11–06–4222P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	July 20, 2012	480035
Bexar (FEMA Docket No.: B–1257).	Unincorporated areas of Bexar County (11–06–4323P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	July 13, 2012	480035
Bexar (FEMA Docket No.: B–1257).	Unincorporated areas of Bexar County (11–06–4494P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	July 20, 2012	480035
Bexar (FEMA Docket No.: B–1257).	Unincorporated areas of Bexar County (11–06–4594P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	August 2, 2012	480035
Bexar (FEMA Docket No.: B–1262).	Unincorporated areas of Bexar County (12–06–1691X).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	August 9, 2012	480035
Collin (FEMA Docket No.: B–1249).	City of McKinney (11–06–1798P).	The Honorable Brian S. Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	222 North Tennessee Street, McKinney, TX 75069.	May 3, 2012	480135
Collin (FEMA Docket No.: B–1252).	City of Richardson (12–06–0547X).	The Honorable Bob Townsend, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75080.	City Hall, 411 West Arapaho Road, Richardson, TX 75080.	June 22, 2012	480184
Collin (FEMA Docket No.: B–1257).	City of Wylie (11–06–1847P).	The Honorable Eric Hogue, Mayor, City of Wylie, 300 Country Club Road, Building 100, Wylie, TX 75098.	300 Country Club Road, Building 100, 2nd Floor, Wylie, TX 75098.	August 2, 2012	480759
Collin and Dallas (FEMA Docket No.: B–1257).	City of Sachse (11–06–2894P).	The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	City Hall, 3815 Sachse Road, Building B, Sachse, TX 75048.	July 6, 2012	480186
Comal (FEMA Docket No.: B–1257).	City of New Braunfels (11–06–3632P).	The Honorable Gale Pospisil, Mayor, City of New Braunfels, 424 South Castell Avenue, New Braunfels, TX 78130.	195 David Jonas Drive, New Braunfels, TX 78132.	May 31, 2012	485493
Dallas (FEMA Docket No.: B–1262).	City of Duncanville (11–06–3271P).	The Honorable David L. Green, Mayor, City of Duncanville, 203 East Wheatland Road, Duncanville, TX 75116.	City Hall, 203 East Wheatland Road, Duncanville, TX 75116.	June 18, 2012	480173
Denton (FEMA Docket No.: B–1252).	Town of Little Elm (12–06–0531P).	The Honorable Charles Platt, Mayor, Town of Little Elm, 100 West Eldorado Parkway, Little Elm, TX 75068.	Town Hall, 100 West Eldorado Parkway, Little Elm, TX 75068.	June 4, 2012	481152

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Fort Bend (FEMA Docket No.: B–1257).	City of Sugar Land (11–06–0225P).	The Honorable James Thompson, Mayor, City of Sugar Land, 2700 Town Center, Boulevard North, Sugar Land, TX 77479.	Public Works Department, 111 Gillingham Lane, Sugar Land, TX 77478.	July 5, 2012	480234
Fort Bend (FEMA Docket No.: B–1257).	Unincorporated areas of Fort Bend County (11–06–0225P).	The Honorable Robert Hebert, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	Engineer's Office, 1124 Blume Road, Rosenburg, TX 77471.	July 5, 2012	480228
Galveston (FEMA Docket No.: B–1262).	City of Galveston (11–06–3812P).	The Honorable Joe Jaworski, Mayor, City of Galveston, 823 Rosenberg Street, Galveston, TX 77553.	City Hall, 823 Rosenberg Street, Galveston, TX 77553.	August 10, 2012	485469
Guadalupe (FEMA Docket No.: B–1249).	City of Cibolo (11–06–2370P).	The Honorable Jennifer Hartman, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108.	200 South Main Street, Cibolo, TX 78108.	May 4, 2012	480267
Guadalupe (FEMA Docket No.: B–1249).	City of Seguin (11–06–2342P).	The Honorable Betty Ann Matthies, Mayor, City of Seguin, 210 East Gonzales Street, Seguin, TX 78155.	City Hall, 205 North River Street, Seguin, TX 78155.	April 25, 2012	485508
Guadalupe (FEMA Docket No.: B–1257).	City of Seguin (12–06–0870X).	The Honorable Betty Ann Matthies, Mayor, City of Seguin, 210 East Gonzales Street, Seguin, TX 78155.	City Hall, 205 North River Street, Seguin, TX 78155.	August 1, 2012	485508
Guadalupe (FEMA Docket No.: B–1249).	Unincorporated areas of Guadalupe County (11–06–2342P).	The Honorable Mike Wiggins, Guadalupe County Judge, 211 West Court Street, Seguin, TX 78155.	Guadalupe County Environmental Health Department, 2605 North Guadalupe Street, Seguin, TX 78155.	April 25, 2012	480266
Guadalupe (FEMA Docket No.: B–1249).	Unincorporated areas of Guadalupe County (11–06–2370P).	The Honorable Mike Wiggins, Guadalupe County Judge, 211 West Court Street, Seguin, TX 78155.	Guadalupe County Environmental Health Department, 2605 North Guadalupe Street, Seguin, TX 78155.	May 4, 2012	480266
Harris (FEMA Docket No.: B–1252).	Unincorporated areas of Harris County (12–06–0410P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	10555 Northwest Freeway, Houston, TX 77092.	June 20, 2012	480287
Hays (FEMA Docket No.: B–1249).	Unincorporated areas of Hays County (11–06–3956P).	The Honorable Bert Cobb, M.D., Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	1251 Civic Center Loop, San Marcos, TX 78666.	May 24, 2012	480321
Hays (FEMA Docket No.: B–1249).	Village of Wimberley (11–06–3956P).	The Honorable Bob Flocke, Mayor, City of Wimberley, 221 Stillwater Road, Wimberley, TX 78676.	13210 Ranch Road 12, Wimberley, TX 78676.	May 24, 2012	481694
Jefferson (FEMA Docket No.: B–1252).	City of Beaumont (12–06–0696X).	The Honorable Becky Ames, Mayor, City of Beaumont, 801 Main Street, Beaumont, TX 77701.	City Hall, 801 Main Street, Beaumont, TX 77701.	June 25, 2012	485457
Johnson (FEMA Docket No.: B–1252).	City of Burleson (11–06–1749P).	The Honorable Ken D. Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	141 West Renfro Street, Burleson, TX 76028.	June 21, 2012	485459
Johnson (FEMA Docket No.: B–1249).	City of Burleson (11–06–2745P).	The Honorable Ken D. Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	141 West Renfro Street, Burleson, TX 76028.	May 24, 2012	485459
Parker (FEMA Docket No.: B–1257).	City of Weatherford (11–06–2911P).	The Honorable Dennis Hooks, Mayor, City of Weatherford, 303 Palo Pinto Street, Weatherford, TX 76086.	Department of Code Enforcement, City Hall, 303 Palo Pinto Street, Weatherford, TX 76086.	June 13, 2012	480522
Tarrant (FEMA Docket No.: B–1252).	City of North Richland Hills (11–06–2556P).	The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	7301 Northeast Loop 820, North Richland Hills, TX 76180.	May 25, 2012	480607
Victoria (FEMA Docket No.: B–1252).	City of Victoria (12–06–0680X).	The Honorable Will Armstrong, Mayor, City of Victoria, 105 West Juan Linn Street, Victoria, TX 77901.	702 North Main Street, Suite 115, Victoria, TX 77902.	June 1, 2012	480638
Wichita (FEMA Docket No.: B–1257).	City of Wichita Falls (11–06–2009P).	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	1300 7th Street, Wichita Falls, TX 76301.	June 28, 2012	480662
Virginia:					
Caroline (FEMA Docket No.: B–1257).	Unincorporated areas of Caroline County (11–03–2159P).	The Honorable Floyd W. Thomas, Chairman, Caroline County Board of Supervisors, 212 North Main Street, Bowling Green, VA 22427.	233 West Broaddus Avenue, Bowling Green, VA 22427.	May 25, 2012	510249
City of Richmond (FEMA Docket No.: B–1262).	City of Richmond (11–03–1762P).	The Honorable Dwight C. Jones, Mayor, City of Richmond, 900 East Broad Street, Suite 201, Richmond, VA 23219.	Department of Public Works, 900 East Broad Street, Room 704, Richmond, VA 23219.	August 8, 2012	510129
Frederick (FEMA Docket No.: B–1252).	Unincorporated areas of Frederick County (11–03–0806P).	The Honorable Richard C. Shickle, Chairman, Frederick County Board of Supervisors, 107 North Kent Street, Winchester, VA 22601.	Planning and Development Office, 107 North Kent Street, Suite 202, Winchester, VA 22601.	June 8, 2012	510063

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Loudoun (FEMA Docket No.: B–1257).	Town of Leesburg (11–03–1482P).	The Honorable Kristen C. Umstattd, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Department of Plan Review, 25 West Market Street, Leesburg, VA 20176.	July 12, 2012	510091
Prince William (FEMA Docket No.: B–1257).	Unincorporated areas of Prince William County (11–03–1518P).	The Honorable Melissa S. Peacor, County Executive, Prince William County James J. McCoart Administration Building, 1 County Complex Court Prince William, VA 22192.	James J. McCoart Administration Building, 1 County Complex Court, Prince William, VA 22192.	July 30, 2012	510119
Stafford (FEMA Docket No.: B–1249).	Unincorporated areas of Stafford County (10–03–2108P).	The Honorable L. Mark Dudenhefer, Chairman, Stafford County Board of Supervisors, 1300 Courthouse Road, Stafford, VA 22554.	Stafford County Administration Center, 1300 Courthouse Road, Stafford, VA 22555.	May 17, 2012	510154

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–03255 Filed 2–12–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002: Internal Agency Docket No. FEMA–B–1295]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

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 specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 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.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Colorado:						
El Paso	Unincorporated Areas of El Paso County (12–08–0579P).	The Honorable Amy Lathan Chair, El Paso County, Board of Commisioners 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 8903.	Development Services Department, 2880 International Circle, Suite 110, Colorado Springs, CO 80910.	*http://www.bakeraecom.com/index.php/colorado/el-paso.*	February 28, 2013	080059
Connecticut:						
New Haven	Town of Beacon Falls (12–01–1573P).	The Honorable Gerald F. Smith, First Selectman, Town of Beacon Falls, 10 Maple Avenue, Beacon Falls, CT 06403.	Beacon Falls Town Hall, 10 Maple Avenue, Beacon Falls, CT 06403.	*http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/pages/LOMR.aspx.*	March 6, 2013	090072
Idaho: Latah	City of Moscow (11–10–1574P).	The Honorable Nancy Chaney, Mayor, City of Moscow, 206 East 3rd Street, Moscow, ID 83843.	Moscow Community Development, 221 East 2nd Street, Moscow, ID 83843.	*http://www.starr-team.com/starr/LOMR/Pages/RegionX.aspx.*	March 27, 2013	160090
Illinois:						
DuPage	Village of Roselle (12–05–8596P).	The Honorable Gayle Smolinski, Mayor, Village of Roselle, 31 South Prospect Street, Roselle, IL 30172.	Roselle Village Hall, 31 South Prospect Street, Roselle, IL 60172.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 15, 2013	170216
Indiana:						
Lake	Town of Munster (12–05–7873P).	The Honorable David Nellans, President, Munster Town Council, 1005 Ridge Road, Munster, IN 46321.	1005 Ridge Road, Munster, IN 46321	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 1, 2013	180139
Lake	City of Hammond (12–05–7873P).	The Honorable Thomas M. McDermott Jr., 5925 Calumet Avenue, Hammond, IN 46320.	Hammond City Hall, 5925 Calumet Avenue, Hammond, IN 46320.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 1, 2013	180134
Kansas:						
Sedwick	City of Wichita (12–07–0465P).	The Honorable Carl Brewer, Mayor, City of Wichita, 455 North Main, Wichita, KS 67202.	455 North Main, 8th Floor, Wichita, KS 67202.	*http://www.starr-team.com/starr/LOMR/Pages/RegionVII.aspx.*	March 12, 2013	200328
Sedwick	City of Maize (12–07–0465P).	The Honorable Clair Donnelly, Mayor, City of Maize, 10100 West Grady Avenue, Maize, KS 67101.	10100 West Grady Avenue, Maize, KS 67101.	*http://www.starr-team.com/starr/LOMR/Pages/RegionVII.aspx.*	March 12, 2013	200520
Sedwick	Unincorporated Areas of Sedwick County (12–07–0465P).	The Honorable Tim R. Norton, Chairman, Sedwick County, Board of Commissioners, 525 North Main, Suite 320, Wichita, KS 67203.	144 South Seneca Street, Wichita, KS 67213.	*http://www.starr-team.com/starr/LOMR/Pages/RegionVII.aspx.*	March 12, 2013	200321
Massachusetts:						
Norfolk	Town of Sharon (12–01–2415P).	The Honorable Richard Alan Powell, Chair, Town of Sharon, Board of Selectman, 90 South Main Street, Sharon, MA 02067.	217R South Main Street, Sharon, MA 02067.	*http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/pages/LOMR.aspx.*	March 11, 2013	250252
Plymouth	Town of Wareham (12–01–2090P).	The Honorable Stephen M. Holmes, Chairman, Town of Wareham Board of Selectman, 54 Marion Road, Wareham, MA 02571.	54 Marion Road, Wareham, MA 02571	*http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/pages/LOMR.aspx.*	March 15, 2013	255223
Minnesota:						
Olmsted	City of Rochester (12–05–4929P).	The Honorable Ardell F. Brede, Mayor, City of Rochester, 201 4th Street Southeast, Room 281, Rochester, MN 55904.	2122 Campus Drive, Southeast, Suite 100, Rochester, MN 55904.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 21, 2013	275246
Missouri:						

Greene	City of Springfield (12–07–2300P).	The Honorable Bob Stephens, Mayor, City of Springfield, 840 Boonville Avenue, Springfield, MO 65801.	840 Boonville Avenue, Springfield, MO 65801.	*http://www.starr-team.com/starr/LOMR/Pages/RegionVII.aspx.*	March 29, 2013	290149
Wisconsin:						
Walworth	Village of Genoa City (12–05–6204P).	The Honorable John Wrzeszcz, President, Village of Genoa City Board, 810 Oak Ridge Lane, Genoa City, WI 53128.	Village Hall, 715 Walworth Street Genoa City, WI 53128.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 15, 2013	550465
Walworth	Unincorporated Areas of Walworth County (12–05–6204P).	The Honorable Nancy Russell, Chairperson, Walworth, County Board of Supervisors, 100 West Walworth Street, Elkhorn, WI 53121.	100 West Walworth Street, Elkhorn, WI 53121.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 15, 2013	550462
Dane	City of Monona (12–05–5696P).	The Honorable Bob Miller Mayor, City of Monona, 5211 Schluter Road, Monona, WI 53716.	5211 Schluter Road, Monona, WI 53716	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 15, 2013	550088
Dane	City of Madison (12–05–5696P).	The Honorable Paul R. Soglin, Mayor, City of Madison, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	Department of Public Works and Transportation, Enginnering Division, 210 Martin Luther King Junior Boulevard, Room 115, Madison, WI 53703.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	March 15, 2013	550083

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–03257 Filed 2–12–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–03]

Notice of Proposed Information Collection: Comment Request Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 15, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Aretha Williams, Director, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects.

OMB Control Number, if applicable: 2502–0590.

Description of the need for the information and proposed use: This is an update to the currently approved collection. It is required to implement The Frank Melville Supportive Housing Investment Act of 2010 (SHIA) regarding delegated processing of certain Section 811 capital advances and program changes to the Delegated Processing program.

The Delegated Processing Agreement establishes the relationship between the Department and a Delegated Processing Agency (DPA) and details the duties and compensation of the DPA. The Certifications form provides the Department with assurances that the review of the application was in accordance with HUD requirements. The Schedule of Projects form provides the DPA with information necessary to determine if they wish to process the project and upon signature commits them to such processing. Staff of the Office of Housing Assistance and Grant Administration, Multifamily Housing Office will use the information to determine if a housing finance agency wishes to participate in the program, and obtain certifications that the review of the application was in accord with HUD requirements.

Agency form numbers, if applicable: 90000, 90001, 90002.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 14. The number of respondents is 8, the number of responses is 8, the frequency of response is on occasion, and the burden hour per response is 6.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 7, 2013.

Laura M. Marin,

Acting General Deputy Assistant, Secretary for Housing-Acting General Deputy, Federal Housing Commissioner.

[FR Doc. 2013–03306 Filed 2–12–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2013–N037; FF09L00200–FX–LE12240900000G2]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on March 31, 2013. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before March 15, 2013.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0012'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0012.

Title: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61–14.64 and 14.94.

Service Form Numbers: 3–177 and 3–177a.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; and government agencies that import or export fish or wildlife specimens for various purposes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (minutes)	Total annual burden hours
3–177 hard copy submission	3,148	28,332	15	7,083
3–177 electronic submission	17,593	154,971	10	25,829
Fee waiver certification	1,000	1,000	1	17
Totals	21,741	184,303		32,929

Abstract: The Endangered Species Act (16 U.S.C. 1531 et seq.) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). With a few exceptions, businesses, individuals, or government agencies importing into or exporting from the United States any fish, wildlife, or wildlife product must complete and submit to the Service an FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife). This form as well as FWS Form 3–177a (Continuation Sheet) and instructions for completion are available for electronic submission at *https://edecs.fws.gov.* These forms are also available in fillable format at *http://www.fws.gov/forms/.*

The information that we collect is unique to each wildlife shipment and enables us to:

- Accurately inspect the contents of the shipment;
- Enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and
- Maintain records of the importation and exportation of these commodities.

Businesses or individuals must file FWS Forms 3–177 and 3–177a with us at the time and port where they request clearance of the import or export of wildlife or wildlife products. Our regulations allow for certain species of wildlife to be imported or exported between the United States and Canada or Mexico at U.S. Customs and Border Protection ports, even though our wildlife inspectors may not be present. In these instances, importers and exporters may file the forms with U.S. Customs and Border Protection. We collect the following information:

(1) Name of the importer or exporter and broker.

(2) Scientific and common name of the fish or wildlife.

(3) Permit numbers (if permits are required).

(4) Description, quantity, and value of the fish or wildlife.

(5) Natural country of origin of the fish or wildlife.

In addition, certain information, such as the airway bill or bill of lading number, the location of the shipment containing the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary.

In October 2012, we requested that OMB approve, on an emergency basis, our request to collect information associated with a user fee exemption program for low-risk importations and exportations. OMB approved our request and assigned OMB Control No. 1018–0152, which expires April 30, 2013.

Businesses that possess a valid Service import/export license may request to participate in this fee exemption program through our electronic filing system (eDecs). Qualified licensees must create an eDecs filer account as an importer or exporter if they do not already have one and file their required documents electronically. To be an approved participating business in the program and receive an exemption from the designated port base inspection fee, the licensed business must certify that it will exclusively import or export nonliving wildlife that is not listed as injurious under 50 CFR part 16 and does not require a permit or certificate under 50 CFR parts 15 (Wild Bird Conservation Act), 17 (Endangered Species Act), 18 (Marine Mammal Protection Act), 20 (Migratory Bird Treaty Act), 21 (Migratory Bird Treaty Act), 22 (Bald and Golden Eagle Protection Act), or 23 (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The requesting business also must certify that it will exclusively import or export the above type of wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is $5,000 or less. Any licensed business that has more than two wildlife shipments that were refused clearance in the 5 years prior to its request is not eligible for the program. In addition, any licensees that have been assessed a civil penalty, issued a Notice of Violation, or convicted of a misdemeanor or felony violation involving wildlife import or export will not be eligible to participate in the program.

We are incorporating the certification statement for the user fee exemption program into our renewal of OMB Control No. 1018–0012. If OMB approves this renewal, we will discontinue OMB Control No. 1018–0152.

Comments: On October 3, 2012, we published in the **Federal Register** (77 FR 60454) a notice of our intent to request that OMB renew approval for OMB Control No. 1018–0012. In that notice, we solicited comments for 60 days, ending on December 3, 2012. No comments were received in response to that notice. On October 26, 2012, we published an interim rule (77 FR 65321) announcing the user fee exemption program. In that rule, we solicited comments for 60 days on the information collection requirements, ending on December 26, 2012. We received two comments. One commenter recommended changes in the criteria for the fee exemption program. The other commenter objected to the fee waiver. The commenters did not address the information collection requirements, and we did not make any changes to the information collection.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: February 6, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–03280 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2013–N020; FF09L00200–FX–LE12200900000]

Proposed Information Collection; Captive Wildlife Safety Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on August 31, 2013. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by April 15, 2013.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email). Please include ''1018–0129'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Captive Wildlife Safety Act (CWSA) amends the Lacey Act by making it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met. There are several exemptions to the prohibitions of the CWSA, including accredited wildlife sanctuaries.

There is no requirement for wildlife sanctuaries to submit applications to qualify for the accredited wildlife sanctuary exemption. Wildlife sanctuaries themselves will determine if they qualify. To qualify, they must meet all of the following criteria:

- Approval by the United States Internal Revenue Service (IRS) as a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986, which is described in sections 501(c)(3) and 170(b)(1)(A)(vi) of that code.
- Do not engage in commercial trade in the prohibited wildlife species, including offspring, parts, and products.
- Do not propagate the prohibited wildlife species.
- Have no direct contact between the public and the prohibited wildlife species.

The basis for this information collection is the recordkeeping requirement that we place on accredited wildlife sanctuaries. We require accredited wildlife sanctuaries to maintain complete and accurate records of any possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species as defined in the CWSA (50 CFR part 14, subpart K). Records must be up to date and include: (1) the names and addresses of persons to or from whom any prohibited wildlife species has been acquired, imported, exported, purchased, sold, or otherwise transferred; and (2) the dates of these transactions. Accredited wildlife sanctuaries must:

- Maintain these records for 5 years.
- Make these records accessible to Service officials for inspection at reasonable hours.
- Copy these records for Service officials, if requested.

II. Data

OMB Control Number: 1018–0129.

Title: Captive Wildlife Safety Act, 50 CFR 14.250–14.255.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Accredited wildlife sanctuaries.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Ongoing.

Estimated Annual Number of Respondents: 750.

Estimated Total Annual Responses: 750.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 750.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: February 6, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–03283 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–BHC–2013–N019; FXMB12330900000–123–FF09M13100]

Proposed Information Collection; Electronic Duck Stamp Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by April 15, 2013.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

On March 16, 1934, President Roosevelt signed the Migratory Bird Hunting Stamp Act (16 U.S.C. 718a et seq.) requiring all migratory waterfowl hunters 16 years of age or older to buy a Federal migratory bird hunting and conservation stamp (Federal Duck Stamp) annually. The stamps are a vital tool for wetland conservation. Ninety-eight cents out of every dollar generated by the sale of Federal Duck Stamps goes directly to purchase or lease wetland habitat for protection in the National Wildlife Refuge System. The Federal Duck Stamp is one of the most successful conservation programs ever initiated and is a highly effective way to conserve America's natural resources. Besides serving as a hunting license and a conservation tool, a current year's Federal Duck Stamp also serves as an entrance pass for national wildlife refuges where admission is charged. Duck Stamps and products that bear stamp images are also popular collector items.

The Electronic Duck Stamp Act of 2005 (Pub. L. 109–266) required the Secretary of the Interior to conduct a 3-year pilot program under which States could issue electronic Federal Duck Stamps. The electronic stamp is valid for 45 days from the date of purchase and can be used immediately while customers wait to receive the actual stamp in the mail. After 45 days, customers must carry the actual Federal Duck Stamp while hunting or to gain free access to national wildlife refuges. Eight States participated in the pilot. At the end of the pilot, we provided a report to Congress outlining the successes of the program. The program improved public participation by increasing the ability of the public to obtain required Federal Duck Stamps.

Under our authorities in 16 U.S.C. 718b(a)(2), we have continued the Electronic Duck Stamp Program in the eight States that participated in the pilot. In September 2013, we will expand the program by inviting all State fish and wildlife agencies to participate. Anyone, regardless of State residence, may purchase an electronic Duck Stamp through any State that participates in the program. Interested States must submit an application (FWS Form 3–2341). We will use the information provided in the application to determine a State's eligibility to participate in the program. Information includes, but is not limited to:

- Information verifying the current systems the State uses to sell hunting, fishing, and other associated licenses and products.
- Applicable State laws, regulations, or policies that authorize the use of electronic systems to issue licenses.
- Example and explanation of the codes the State proposes to use to create and endorse the unique identifier for the individual to whom each stamp is issued.
- Mockup copy of the printed version of the State's proposed electronic stamp, including a description of the format and identifying features of the licensee to be specified on the stamp.
- Description of any fee the State will charge for issuance of an electronic stamp.
- Description of the process the State will use to account for and transfer the amounts collected by the State that are required to be transferred under the program.
- Manner by which the State will transmit electronic stamp customer data.

Each State approved to participate in the program must provide the following information on a weekly basis:

- First name, last name, and complete mailing address of each individual that purchases an electronic stamp from the State.
- Face value amount of each electronic stamp sold by the State.
- Amount of the Federal portion of any fee required by the agreement for each stamp sold.

II. Data

OMB Control Number: 1018–0135.

Title: Electronic Duck Stamp Program.

Service Form Number: 3–2341.

Type of Request: Reinstatement with change of a previously approved collection.

Description of Respondents: State fish and wildlife agencies.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for applications and weekly for fulfillment reports.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Application	10	10	40 hours	400
Fulfillment Report	5	260	1 hour	260
Totals	15	270		660

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: February 6, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–03286 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2013–N032; FXES11120400000–134–FF04EF2000]

Endangered and Threatened Wildlife and Plants; Receipt of an Application for an Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Martin County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and a Habitat Conservation Plan (HCP). SP Behavioral, LLC (the applicant) requests an ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 2.99 acres of foraging, breeding, and sheltering habitat used by the Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay), Eastern indigo snake (*Drymarchon courais cooperii*) (indigo snake), and gopher tortoise (*Gopherus polyphemus*), incidental to land preparation and for the construction of the Sandy Pines Residential Treatment Center Addition in Martin County, Florida. The applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the covered species.

DATES: We must receive your written comments on the ITP application and HCP on or before March 15, 2013.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing the South Florida Ecological Services Office, Attn: Permit number TE95653A–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Landrum, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: 772–469–4304.

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you wish to comment on the ITP application and HCP, you may submit comments by any one of the following methods:

Email: Elizabeth_Landrum@fws.gov. Use Attn: Permit number ''TE95653A–0'' as your message subject line.

Fax: Elizabeth Landrum, 772–562–4288, Attn.: Permit number ''TE95653A–0.''

U.S. mail: Elizabeth Landrum, South Florida Ecological Services Field Office, Attn: Permit number ''TE95653A–0,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off comments or request information during regular business hours at the above office address.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comments that your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Applicant's Proposed Project

We received an application from the applicant for an incidental take permit, along with a proposed habitat conservation plan. The applicant requests a 15-year permit under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). If we approve the permit, the applicant anticipates taking a total of approximately 2.99 acres of scrub-jay, indigo snake, and gopher tortoise breeding, feeding, and sheltering habitat, incidental to land preparation and construction of additional residential and educational facilities, installation of associated infrastructure, construction of courtyards for recreation, expansion of the parking area and storm water management facility, and construction of a stabilized service road, in Martin County, Florida. Construction activities associated with the project will take place within Section 24, Township 40S, Range 42E, Martin County, Florida.

The applicant proposes to mitigate for impacts by one of the three following methods: (1) Establish and manage in perpetuity a 6-acre on-site conservation area; (2) establish and manage in perpetuity a 4.54-acre on-site conservation area and contribute $53,375 to the Florida Scrub-jay Conservation Program Fund; or (3) contribute $219,348 to the Florida Scrub-jay Conservation Program Fund. The Service listed the scrub-jay as threatened in 1987 (June 3, 1987; 52 FR 20715), effective July 6, 1987. The Service listed the indigo snake as threatened in 1978 (January 31, 1978; 43 FR 4028), effective March 3, 1978. The Service identified the gopher tortoise as a candidate species in the eastern portion of its range in 2011 (July 27, 2011; 76 FR 45130) and determined that listing this species as threatened was warranted but precluded by higher priority listing actions.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, issuance of the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1

and 516 DM 6 Appendix 1). We base our preliminary determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the project, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. If it is determined that the requirements of the Act are met, the ITP will be issued.

Authority:

We provide this notice under Section 10 of the Endangered Species Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: February 6, 2013.

Larry Williams,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2013–03287 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal State Class III Gaming Compact.

SUMMARY: This notice publishes the Approval of the Class III Tribal-State Gaming Compact between the Chippewa-Cree Tribe of the Rocky Boy's Indian Reservation and the State of Montana.

DATES: *Effective Date:* February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On December 27, 2012, the Chippewa-Cree Indians of the Rocky Boy's Reservation and the State of Montana submitted a Class III Tribal-State Compact for review and approval. The Compact increases the number of machines, increases the prize value and increases the wager limit. The term of the Compact runs for 10 years from the date of this notice.

Dated: February 4, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–03326 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF0200–L12200000–DU0000]

Notice of Final Supplementary Rules for Public Lands in Colorado: Public Lands Administered by the Bureau of Land Management, Royal Gorge Field Office, Arkansas River Travel Management Area in Chaffee, Custer, and Fremont Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) is establishing supplementary rules to regulate conduct on public lands within the Arkansas River Travel Management Area (ARTMA) in Chaffee, Custer, and Fremont Counties, Colorado. These supplementary rules address decisions found in the Arkansas River Travel Management Plan (ARTMP). Travel management actions and changes to the off-highway vehicle (OHV) designations were detailed and analyzed in an Environmental Assessment (EA). The Royal Gorge Field Office (RGFO) signed a Finding of No Significant Impact (FONSI) on December 18, 2007. The BLM issued two Decision Records following the ARTMP EA: one on April 29, 2008, to amend OHV designations identified in the EA, and a second on May 21, 2008, to implement the travel management actions identified in the EA. The rules were published in the **Federal Register** as a proposal on July 23, 2010 and public comment was solicited. The Decision Records included revising travel regulations for the area including bicycle use, identifying shooting restrictions, and limiting an area to a certain vehicle type. These travel regulations are designed to provide for public health and safety and to protect natural resources within the ARTMA.

DATES: *Effective Date:* These supplementary rules are effective March 15, 2013.

ADDRESSES: You may send inquiries by mail to the BLM Royal Gorge Field Office, 3028 East Main Street, Cañon City, Colorado 81212; or by email to *rgfo_comments@blm.gov* and include ''Final Supplementary Rules'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Keith Berger, Field Manager, BLM Royal Gorge Field Office, at the address listed above, or by phone at 719–269–8500. 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:

I. Background
II. Discussion of Public Comments and Final Supplementary Rules
III. Procedural Matters
IV. Final Supplementary Rules

I. Background

The ARTMA covers approximately 240,555 acres of public land within Chaffee, Custer, and Fremont Counties, Colorado, in the following townships:

New Mexico Principal Meridian

Tps. 49 to 51 N., R. 8 E.
Tps. 48 to 50 N., R. 9 E.
Tps. 47 to 49 N., R. 10 E.
Tps. 47 to 49 N., R. 11 E.
Tps. 47 to 49 N., R. 12 E.

Sixth Principal Meridian

Tps. 18 to 19 S., R. 70 W.
Tps. 18 to 22 S., R. 71 W.
Tps. 17 to 22 S., R. 72 W.

Tps. 17 to 22 S., R. 73 W.

The ARTMA includes the Methodist Mountain Area south of Salida, Colorado (2,314 acres), located in T. 49 N., R. 9 E., secs. 7 to 10, inclusive, secs. 15 to 18, inclusive, and T. 49 N., R. 8 E., secs. 12 and 13. The Turkey Rock Area near Howard, Colorado (361 acres), is located in T. 48 N., R., 10 E., secs. 1 and 2, and the Turkey Rock Trials Area (52 acres) is located in T. 48 N., R. 10 E., secs. 1 and 2, within the Turkey Rock Area. Part of the ARTMA lies within the Arkansas River Special Recreation Management Area.

Travel management actions and changes to the OHV designations for the ARTMA were analyzed in the ARTMP EA and documented in the two 2008 Decision Records including the one that amended the Royal Gorge Resource Management Plan. Proposed Supplementary Rules were developed to enforce the decisions made in these documents. The proposed supplementary rules were published in the **Federal Register** (75 FR 43200) on July 23, 2010, and the public comment period ended September 21, 2010. The final supplementary rules are consistent with decisions found in the ARTMP and the BLM's National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands (2001).

II. Discussion of Public Comments and Final Supplementary Rules

The BLM received three comment letters during the 60-day public comment period. In response to these comments, the BLM has:

- Revised proposed rule number 1 to clarify that all motorized travel is limited to designated roads and trails, and for purposes of parking and camping travel is allowed up to 100 feet from the centerline of a road or trail only if this travel does not cause or is unlikely to cause significant undue damage to or disturbances of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other other uses of the public lands;
- Clarified allowable uses under proposed rule number 4 for the Turkey Rock Trials Area; and
- Added a fifth rule to reflect an ARTMP decision regarding day use in the Turkey Rock Trials Area.

In addition, the BLM has changed the heading ''Exceptions'' to ''Exemptions,'' added the Taylor Grazing Act to the penalties provision, and reworded several of the proposed supplementary rules to reflect the third-person style.

One commenter expressed concern about proposed supplementary rule number 2. However, the commenter did not oppose this rule or any of the other proposed supplementary rules since there is a good working relationship between the BLM Royal Gorge Field Office and the local mountain bike community. Proposed supplementary rule number 2, which restricts mountain bicycle travel to designated routes that are identified as available for this use, was analyzed in the 2008 ARTMP EA. This supplementary rule is essential to enforce the decision found in the ARTMP and Decision Record that was made to protect resources.

A second commenter suggested that a recreational target shooting closure in the Cotopaxi, Colorado, area should be added to the proposed supplementary rules. The area identified by the commenter was not addressed in the ARTMP, and therefore no supplementary rules were proposed or studied for this area. The proposed supplementary rules were not revised in response to this comment because the suggested closure cannot occur without revising the ARTMP.

A third commenter identified several issues of concern. The commenter suggested that proposed supplementary rule number 1 be clarified in order to carry out the intent of the Decision Record. The commenter thought that the intent of the Decision Record was to prohibit all motor vehicle travel more than 100 feet in any direction off a designated route and that as written, this restriction would not carry out the BLM's intent of allowing vehicle travel within the 100-foot corridor for the purpose of parking. As proposed, rule number 1 stated, ''You must not operate a motor vehicle more than 100 feet in any direction off a designated road in the Arkansas River Travel Management Plan (TMP) area.'' In response to this comment, proposed supplementary rule number 1 has been revised as follows: ''All motorized travel is limited to designated roads and trails. For the purposes of parking, including camping, travel is allowed up to 100 feet from the centerline of a designated road or trail only if this travel does not cause or is unlikely to cause significant undue damage to or disturbances of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other other uses of the public lands.''

The commenter also asked that proposed rule number 2 be revised to prohibit the possession of a mountain bike off of designated trails. As proposed, rule number 2 stated, ''You must not ride mountain bicycles other than on roads and trails designated open to mountain bicycles by a Bureau of Land Management (BLM) sign or map in the Arkansas River TMP area.'' The prohibition recommended by the commenter does not follow the language set forth in the ARTMP and Decision Record for limiting travel using bicycles to designated roads and trails; therefore, the BLM has not revised the proposed rule in response to this comment.

The commenter also expressed concern with proposed rule number 4, which provided as follows: ''You may not operate a motorized vehicle within the area known as Turkey Rock Trials Area (52 acres) unless it is a motorcycle specifically designed for observed trials riding, including rear wheel drive and universal trial tires with a width that does not exceed a 4.00 inch cross-section.'' The commenter stated that ''observed trials riding'' should be better defined to clarify the allowable use. The BLM agrees with the comment that ''observed trials riding'' must be carefully defined; however, there is concern that by further defining the type of equipment, any changes in the observed trials industry could make the rule obsolete. As a result, the proposed rule was changed to eliminate equipment details and simplify the phrase as ''motorcycle specifically designed for observed trials riding.'' This change will rule out non-trials type motorcycles and should also capture any changes in the motorcycle trials industry.

Finally, the commenter noted that the ARTMP identified the Turkey Rock Area as day-use only and asked the BLM to establish a supplementary rule to reflect that status. The ARTMP limits trials bike use at the Turkey Rock Trials Area to ''day use'' only. The original proposal unintentionally omitted this detail but it was identified as a management action in the Decision Record so the BLM has added a supplementary rule that provides that motorcycles specifically designed for observed trials riding are prohibited within the Turkey Rock Trials Area after sunset and before sunrise. However, the new supplementary rule does not close the area to all night uses. Camping and hiking will still be permitted at night in the Turkey Rock Trials Area.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The final supplementary rules are not significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They do not have an annual effect of $100 million or more on the economy. They do not adversely affect, in a material way, the economy, productivity, competition,

jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. The final supplementary rules merely establish rules of conduct for public use of a limited area of public lands.

National Environmental Policy Act (NEPA)

A 'Notice of Intent to Prepare the Arkansas River TMP and Amend the Royal Gorge Resource Management Plan' was published in the **Federal Register** on June 9, 2003 (68 FR 34417). In compliance with NEPA, Environmental Assessment CO–200–2006–0086EA fully analyzed the environmental effects of the motorized and non-motorized travel restrictions, and the restrictions on recreational target shooting that are addressed in these final supplementary rules. A 45-day public comment period on the EA began on June 19, 2007. Following analysis of the public comments, the BLM signed a FONSI on December 18, 2007, and issued two Decision Records on the ARTMP: one on April 29, 2008, and the other on May 21, 2008. The Decision Records approved management actions that are addressed in the supplementary rules included in this notice. The final supplementary rules will allow the BLM to enforce decisions developed to protect public health, safety, and the public lands located within the ARTMA. The final supplementary rules do not change or alter any of the NEPA analysis completed in the EA or any of the Decision Records. In compliance with the NEPA, the BLM reviewed in the EA the actions the final supplementary rules will enforce, and concluded that these actions do not constitute major Federal actions under 42 U.S.C. 4332(2)(C), Section 102(2)(C), so the RGFO was able to reach a FONSI. The BLM placed the EA and FONSI on file in the BLM Administrative Record at the RGFO.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules are not considered a 'major rule' as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These final supplementary rules will not impose an unfunded mandate on state, local, or tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor will they have a significant or unique effect on small governments. The final supplementary rules will have no effect on governmental or tribal entities and will impose no requirements on any of these entities. The final supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The final supplementary rules are not government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the final supplementary rules will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the supplementary rules will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM determined that these supplementary rules do not include policies that have tribal implications. The supplementary rules merely establish rules of conduct for public use of a limited area of public land and do not affect land held for the benefit of Indians or Alaska Natives or impede their rights.

Paperwork Reduction Act

The final supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Moreover, any information collection that may result from Federal criminal investigations or prosecutions conducted under these supplementary rules is exempt under the provisions of 44 U.S.C. 3518(c)(1).

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

Under Executive Order 13211, the BLM determined that these final supplementary rules are not a significant energy action, and that they will not have an adverse effect on energy supplies, distribution, or use.

IV. Final Supplementary Rules

Author

The principal author of these supplementary rules is Leah Quesenberry, Associate District Manager, BLM Colorado Front Range District.

For the reasons stated in the preamble, and under the authority of the Federal Land Policy and Management Act, 43 U.S.C. 1733 and 1740, the Taylor Grazing Act, 43 U.S.C. 315a,, and 43 CFR 8365.1–6, the BLM Colorado State Director establishes the following final supplementary rules for public lands within the ARTMA, Colorado, to read as follows:

Final Supplementary Rules for the Arkansas River Travel Management Area, Bureau of Land Management, Royal Gorge Field Office, Colorado

1. All motorized travel is limited to designated roads and trails. For the purposes of parking, including camping, travel is allowed up to 100 feet from the centerline of a designated road or trail only if this travel does not cause or is unlikely to cause significant undue damage to or disturbances of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other uses of the public lands.

2. Bicycle riding is limited to designated roads and trails marked open to such use by a Bureau of Land Management (BLM) sign or map.

3. Recreational target shooting is prohibited on all public lands within the Methodist Mountain Area south of Salida (2,314 acres) and the Turkey Rock area near Howard (361 acres). These areas are identified as closed to recreational target shooting by either a BLM sign or map.

4. Operation of a motorized vehicle within the area known as Turkey Rock Trials Area (52 acres) is limited to motorcycles specifically designed for observed trials riding.

5. Motorcycles specifically designed for observed trials riding are prohibited within the Turkey Rock Trials Area after sunset or before sunrise.

Exemptions

The following persons are exempt from these supplementary rules: any Federal, state, local, and/or military employee acting within the scope of their official duties; members of any organized rescue or fire fighting force performing an official duty; or persons who are expressly authorized or approved by the BLM.

The prohibition of target shooting in Rule 3 has no effect on hunting by licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Parks and Wildlife.

Penalties

Under the Taylor Grazing Act, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district of the ARTMA is punishable by a fine of not more than $500. Under Section 303(a) of the Federal Land Policy and Management Act, 43 U.S.C. 1733(a), and 43 CFR 8360.0–7, any person who knowingly and willfully violates any of these supplementary rules on public lands within the ARTMA may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both.

Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Helen Hankins,

Bureau of Land Management, State Director, Colorado State Office.

[FR Doc. 2013–03299 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L12200000.MV0000/LLCAC05000]

Notice of Final Supplementary Rules for Public Lands Managed by the Ukiah Field Office in Lake, Sonoma, Mendocino, Glenn, Colusa, Napa, Marin, Yolo and Solano Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: In accordance with the Record of Decision (ROD) for the Ukiah Field Office Approved Resource Management Plan (RMP), the Bureau of Land Management (BLM) is establishing final supplementary rules. The Final Environmental Impact Statement (EIS) identified and thoroughly analyzed the effects of land use limitations and restrictions, and specified that supplementary rules would be required for resource protection and visitor safety. Upon publication, these final supplementary rules will supersede the interim final supplementary rules that apply to public lands within the Ukiah Field Office's jurisdiction. The BLM has determined that these final supplementary rules are necessary to enhance visitor safety, protect natural resources, improve recreation opportunities, and protect public health. These rules do not impose or implement any land use limitations and restrictions other than those included within the Ukiah RMP.

DATES: The final supplementary rules are effective February 13, 2013.

ADDRESSES: Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482. The final supplementary rules are available for inspection at the Ukiah Field Office and on the Ukiah Field Office Web page (*http://www.blm.gov/ca/st/en/fo/ukiah.html*).

FOR FURTHER INFORMATION CONTACT: Jonna Hildenbrand, Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, California 95482, 707–468–4024, or email *jhildenb@ca.blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comment and Discussion of Final Supplementary Rules
III. Procedural Matters

I. Background

The BLM is establishing these final supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations. These final supplementary rules apply to public lands managed by the Ukiah Field Office in Lake, Sonoma, Mendocino, Glenn, Colusa, Napa, Marin, Yolo, and Solano Counties of California. Maps of the management areas and boundaries can be obtained by contacting the Ukiah Field Office (see **ADDRESSES**) or by accessing the following Web site *http://www.blm.gov/ca/st/en/fo/ukiah.* The final supplementary rules will be available for inspection at the Ukiah Field Office *http://www.blm.gov/ca/st/en/fo/ukiah.*

II. Public Comment and Discussion of Final Supplementary Rules

The BLM published interim final supplementary rules on June 2, 2011 (76 FR 31979). The rules became effective immediately upon publication with the BLM having set forth good cause for such in the preamble language, which detailed unsafe target shooting practices, resource degradation, and the presence of critical habitat. The BLM invited public comments on the interim rules for 60 days. The comment period closed on August 1, 2011. No comments were received during this period.

The final supplementary rules have been clarified, mapping efforts explained, definitions refined, and typographical and grammatical errors corrected. In Sections 2 and 3, all references to ''interim final supplementary rules of conduct'' and ''interim supplementary rules'' have been deleted and, in appropriate instances, have been replaced with text indicating that these are now final supplementary rules.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of

Management and Budget under Executive Order 12866. These supplementary rules will not have an annual effect of $100 million or more on the economy or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. These final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These rules merely contain rules of conduct for public use of a limited portion of the public lands in California in order to provide protection for human health, safety, and the environment.

National Environmental Policy Act

The BLM prepared a draft and final EIS on the RMP and has determined that the rules would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C). The final supplementary rules, limitations, and associated effects were thoroughly analyzed under NEPA in the draft and final EIS for the Ukiah RMP as well as in various environmental assessments for activity-level plans adopted in the Ukiah RMP. The draft EIS was published in the **Federal Register** and posted on the Ukiah Field Office Web site for a 90-day period from September 16, 2005, through December 15, 2005. The proposed RMP and final EIS were published in the **Federal Register** and posted on the Ukiah Field Office Web site for a 30-day protest period from June 30, 2006, through July 30, 2006. The final EIS and ROD are on file and available to the public at the address specified in **ADDRESSES.** The final EIS and ROD are online at the Web site specified in **ADDRESSES**.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public recreational use of a limited area of public lands. Therefore, the BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). These supplementary rules merely contain rules of conduct for recreational use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments, in the aggregate, or on the private sector, of $100 million or more per year; nor do they have a significant or unique effect on small governments. The supplementary rules have no effect on State, local, or tribal governments and do not impose any requirements on any of these entities. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules are not government action capable of interfering with constitutionally protected property rights. These supplementary rules do not address property rights in any form, and do not cause the impairment of one's property rights. Therefore, the BLM has determined that these supplementary rules would not cause a ''taking'' of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules affect land in only one State, California, and do not conflict with any California State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these supplementary rules will not unduly burden the judicial system and that they meet the requirements of Sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have tribal implications. The supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos, Indian resources, or tribal property rights. To comply with Executive Orders regarding government-to-government relations with Native Americans, formal and informal contacts were made with 26 federally recognized and 2 non-recognized tribal governments with interests in the affected area. The tribes were provided with a copy of the draft RMP. In addition, the BLM contacted each tribe directly requesting comments and assessing the need for a tribal briefing. The tribes expressed no concerns about the RMP or the decisions related to these supplementary rules.

Information Quality Act

The Information Quality Act (Section 515 of Pub. L. 106–554) requires that Federal agencies maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information in developing these supplementary rules.

Executive Order 13211, Effects on the Nation's Energy Supply

These supplementary rules are not a significant energy action, as defined in Executive Order 13211. The rules will not have a significant adverse effect on the supply, distribution, or use of energy and have no connection with energy policy.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Rich Burns, Field Manager, Ukiah Field Office.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1–6, the California State Director, Bureau of Land Management, issues these supplementary rules, effective upon publication for good cause shown at 76 FR 31980 (June 2, 2011) for public lands managed by the Ukiah Field Office to read as follows:

Supplementary Rules for all the Public Lands Within the Jurisdiction of the Ukiah Field Office

Section 1. Definitions

Camping means the use of tents or shelters of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or mooring of a vessel, or parking a vehicle or trailer for the apparent purpose of overnight occupancy.

Cave Resource means any material or substance occurring naturally in caves on Federal lands, such as animal or plant material, paleontological deposits, sediments, minerals, speleogens (bedrock formations), and speleothems (secondary mineral deposits).

Cliff means a very steep, vertical or overhanging face of rock or earth.

Climbing means all gear-assisted and non-gear assisted ascent or descent, especially by using both hands and feet.

Firearm means any device designed to be used as a weapon, from which a projectile by the force of an explosion or other form of combustion is expelled through a barrel.

Fireworks means a device for producing a striking display or noise by the combustion of explosive or flammable compositions including those that are defined as legal for sale within the State of California, also known as ''safe and sane'' fireworks.

Frontcountry is a Recreation Opportunity Spectrum (ROS) designation that means an area that represents a broad mix of uses.

Hang Gliding and Paragliding means the use of all non-motorized, foot-launched aircraft.

Hunting means the pursuit of game by any person in possession of a current legal California hunting license in accordance with State law.

Motorized Vehicle means any vehicle that is self-propelled or propelled under the California Vehicle Code Section 415 and Section 670.

Middlecountry is an ROS designation that means an area generally with naturally appearing landscape except for primitive roads (dirt or graveled surface roads). Trails are maintained and marked with simple trailhead developments, signs and basic sanitation facilities.

Off-Highway Vehicle (OHV) means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, not excluded by 43 CFR 8340.0–7(a).

Open Fire means all fire with an exposed flame such as wood fires, campfires, charcoal barbecues, or camp stoves outside of fire rings, which are located in designated developed recreational sites.

Projectile means any bullet, ball, sabot, slug, buckshot, arrow, or other object that is propelled from a device.

Recreation Opportunity Spectrum (ROS) means a method of inventorying existing physical and social conditions.

Shooting means the discharge of a weapon for non-hunting purposes.

Sink Hole means a natural depression or hole in surface topography caused by the removal of soil or bedrock by water.

Street Legal Vehicle means any vehicle subject to registration under the California Vehicle Code (Section 4000(a)).

Weapon means any firearm, crossbow, bow and arrow, air or gas paintball gun, fireworks or explosive device capable of propelling a projectile by means of an explosion, compressed air, string, or spring.

Section 2. Rules of Conduct

The following rules apply year round to all BLM lands managed by the Ukiah Field office and persons unless explicitly stated otherwise in a particular rule. Specific rules for individual management areas are identified in subparts b, c and d. Additionally, the following persons are exempt from these supplementary rules: Federal, State, or local officers or employees acting within the scope of their official duties; members of any organized rescue or firefighting force in performance of an official duty; and any person whose activities are authorized in writing by the BLM Authorized Officer.

a. The following rules apply to all public lands within the Ukiah Field Office jurisdiction.

1. All lands managed by the Ukiah Field Office, with the exception of wilderness study areas, are designated as limited to designated routes for motorized and off-highway vehicle use (43 CFR 8340.0–5(g)).

2. All routes are closed to motorized vehicles unless designated as open within the Resource Management Plan.

3. The use or possession of fireworks is prohibited.

4. Hunting is allowed except where specifically prohibited.

5. Management areas and ROS zones within the management areas will be delineated on maps provided to the public.

b. The following rules apply to all designated Scattered Tracts Management Areas within the jurisdiction of the Ukiah Field Office.

Scattered tracts are BLM lands that are covered by the Resource Management Plan but are not contiguous to any other management area. These tracts are mostly small parcels of public land surrounded by private property making them inaccessible to the public. Scattered tracts total approximately 47,000 acres and are found in every county containing public lands within the Ukiah Field Office jurisdiction. The use of weapons is prohibited except when hunting.

c. The following rules apply to all designated Areas of Critical Environmental Concern (ACEC) and Research Areas within the jurisdiction of the Ukiah Field Office.

It is prohibited to deface, remove, or destroy plants or their parts, soil, rocks, minerals, or cave resources within the following areas: Lost Valley—40 acres (Cow Mountain Management Area, Mendocino County); Knoxville—5,236 acres (Knoxville Management Area, Lake County); Walker Ridge—3,685 acres (Indian Valley Management Area, Lake and Colusa Counties); Indian Valley Brodiaea—100 acres (Indian Valley Management Area, Lake County); Cache Creek—11,228 acres (Cache Creek Management Area, Lake, Colusa, and Yolo counties); Northern California Chaparral Research Area—11,206 acres (Cache Creek Management Area, Lake County); Cedar Roughs Research Natural Area—6,350 acres (Scattered Tracts Management Area, Napa County); Stornetta—887 acres (Stornetta Management Area, Mendocino County); Black Forest—247 acres (Scattered Tracts Management Area, Lake County); and The Cedars of Sonoma County—1,500 acres (Scattered Tracts Management Area, Sonoma County).

d. The following rules apply to Cache Creek, Cow Mountain, Knoxville, Geysers, Indian Valley, and Stornetta Management Areas and The Black Forest and The Cedars of Sonoma County within the jurisdiction of the Ukiah Field Office.

Cache Creek Management Area

Cache Creek encompasses approximately 73,000 acres of public

land. It includes the Cache Creek Natural Area, Cache Creek ACEC and the Cache Creek Wilderness Area. Cowboy Camp is a developed recreation site there with a day use area, an overnight parking area, and a group camp site. High Bridge is a developed recreation site there with a day use area and overnight parking area.

1. Use of weapons is prohibited except when hunting.
2. Defacing, removing, or destroying plants or their parts, soil, rocks, minerals, or cave resources are prohibited.
3. Motorized and Street Legal Vehicles and horses are allowed in the Cowboy Camp group camp site from the third Saturday in April through the third Saturday in November.
4. Camping is limited to the group camp site within the cowboy camp developed recreation site.
5. High Bridge and Cowboy Camp developed recreation sites are open for day use only from one-half hour before sunrise to one-half hour after sunset except for long-term parking for overnight backcountry visitors.

Cow Mountain Management Area

Cow Mountain is comprised of approximately 51,000 acres of public lands and is divided into North and South Cow Mountain. The use of weapons is limited to designated shooting areas except when hunting.

South Cow Mountain OHV (Portion) of Cow Mountain Management Area

1. Operating a motorized vehicle is prohibited within South Cow Mountain OHV unit during wet weather closures (resulting from accumulated precipitation) or administrative closures.
2. Wet Weather Closure—When total annual (beginning and measured as of October 1st of each year) precipitation exceeds 4 inches, at least one-half inch of precipitation has fallen in 24 hours or 1 inch in 72 hours, and the authorized officer has determined that motorized vehicles will cause considerable adverse effects upon the soil, vegetation, wildlife, and other resources, the authorized officer, pursuant to 43 CFR 8341.2, will implement a temporary closure of all existing roads, existing trails and public lands within the management area to all motorized vehicles for a minimum of 3 days. Once the area has been closed, a field inspection will be completed prior to reopening and daily thereafter to determine suitability of road and trail conditions. When field observations show that motorized vehicle use can occur without causing considerable adverse effects as described in 43 CFR 8341.2, the temporary closure will be terminated. Exceptions to this temporary closure will only be allowed for valid existing rights (private landowners, landowners' representatives, lessees, and/or authorized parties) who need access to their property. Landowners, landowners' representatives, lessees, and/or authorized parties will only be able to access their property via the most direct route and are not allowed to use a motorized vehicle on any other part of the South Cow Mountain OHV Area. This policy is subject to modification due to changing resource conditions which may include immediate closure due to adverse effects (43 CFR 8341.2).

North Cow Mountain (Portion) of Cow Mountain Management Area

1. The Mendo-Rock Road, Water Tank Spur, Willow Creek Road, Rifle Range Road, Radio Tower Road, Rifle Range Maintenance Spur, and Mayacmas Campground Road are open year round and limited to street legal vehicles only.
2. Roads open during general (rifle) deer season and limited to street legal vehicles only are Firebreak #1, McClure Creek Ridge Spur, McClure Creek Spur, Sulphur Creek Spur, and Sulphur Creek Ridge Spur.
3. All other roads are closed year round to street legal, off-highway and motorized vehicles.

Knoxville Management Area

The Knoxville area contains approximately 24,000 acres of public lands.

1. Use of weapons is prohibited except when hunting.
2. Adams Ridge Road is open to street legal vehicles during general (rifle) deer season.

Geysers Management Area

The Geysers Management Area encompasses about 7,100 acres of public lands.

Shooting is allowed in ROS zone Middlecountry.

Indian Valley Management Area

Shooting is allowed in ROS zones Middlecountry and Frontcountry.

Black Forest/The Cedars of Sonoma County Lands

Black Forest includes 247 acres of public lands on Mount Konocti just south of Soda Bay on Clear Lake.

The Cedars of Sonoma County includes 1,500 acres of public lands and is located 2 miles northeast of the Austin Creek State Recreation Area.

1. Motorized and off-highway vehicle use is prohibited.
2. Climbing on the cliffs is prohibited.
3. Use of weapons is prohibited except when hunting.

Stornetta Management Area

The 1,132-acre Stornetta Management Area is located along the Mendocino County coastline just north of the town of Point Arena.

1. Use of weapons is prohibited.
2. Hunting is prohibited.
3. Hang gliding or paragliding is prohibited.
4. Camping is prohibited.
5. The area is open for day use only from one-half hour before sunrise to one-half hour after sunset.
6. Use of motorized vehicles is prohibited.
7. Beach access is permitted only at the designated access trails marked by signs. These locations are mile marker 1.4 and 2.3 from the Highway 1 and Lighthouse Road intersection.
8. Climbing on cliffs and in or around sink holes is prohibited.
9. Dogs must be on a leash no longer than 6 feet or otherwise physically restricted at all times.
10. Open fires are prohibited.
11. Cutting or collecting firewood is prohibited.
12. Feeding or harassing wildlife is prohibited.
13. Physical removal of any resources including, but not limited to, vegetation, animals, driftwood, and shells, is prohibited.

Section 3. Penalties

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

James G. Kenna,

California State Director.

[FR Doc. 2013–03282 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 13–08807; MO# 4500047847; TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. 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: 1. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on October 26, 2012:

A supplemental plat, in 1 sheet, showing amended lottings of section 6, Township 21 South, Range 63 East, Mount Diablo Meridian, Nevada under Group 917 was accepted October 24, 2012. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

A supplemental plat, in 1 sheet, showing amended lottings of section 36, Township 20 South, Range 62 East, Mount Diablo Meridian, Nevada under Group 917 was accepted October 24, 2012. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

A supplemental plat, in 1 sheet, showing amended lottings of section 1, Township 21 South, Range 62 East, Mount Diablo Meridian, Nevada under Group 917 was accepted October 24, 2012. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

A supplemental plat, in 1 sheet, showing amended lottings of section 12, Township 21 South, Range 62 East, Mount Diablo Meridian, Nevada under Group 917 was accepted October 24, 2012. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 3, 2012:

The supplemental plat, in 1 sheet, showing the subdivision of former lots 23 and 24, section 1, Township 21 South, Range 62 East, of the Mount Diablo Meridian, Nevada, under Group No. 917, was accepted November 27, 2012. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 4, 2012:

A plat, in 3 sheets, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of certain sections, Township 18 South, Range 51 East, of the Mount Diablo Meridian, Nevada, under Group No. 833, was accepted November 30, 2012. This survey was executed to meet certain administrative needs of the U.S. Fish and Wildlife Service.

A plat, in 3 sheets, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of certain sections, Township 18 South, Range 50 East, of the Mount Diablo Meridian, Nevada, under Group No. 834, was accepted November 30, 2012. This survey was executed to meet certain administrative needs of the U.S. Fish and Wildlife Service.

The surveys listed above are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the Bureau of Land Management, Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: January 28, 2013.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2013–03288 Filed 2–12–13; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Final)]

Utility Scale Wind Towers From China and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports of utility scale wind towers from China and Vietnam, provided for in subheading 7308.20.00 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized by the Government of China and sold in the United States at less than fair value (''LTFV'').[2] [3]

Background

The Commission instituted these investigations effective December 29, 2011, following receipt of a petition filed with the Commission and Commerce by Broadwind Towers, Inc., Manitowoc, WI; DMI Industries, Fargo, ND; Katana Summit LLC, Columbus, NE; and Trinity Structural Towers, Inc., Dallas, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of utility scale wind towers from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that such imports from China and Vietnam were dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 22, 2012 (77 FR 50715). The hearing was held in Washington, DC, on December 13, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission transmitted its determinations in these investigations to the Secretary of

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Irving A. Williamson and Commissioner Shara L. Aranoff determine that an industry in the United States is materially injured by reason of imports of utility scale wind towers from China and Vietnam. Commissioner Dean A. Pinkert determines that an industry in the United States is threatened with material injury by reason of imports from China and Vietnam of utility scale wind towers. He further determines that he would not have found material injury but for the suspension of liquidation.

[3] Commissioners Daniel R. Pearson, David S. Johanson, and Meredith M. Broadbent determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports from China and Vietnam of utility scale wind towers.

Commerce on February 8, 2013. The views of the Commission are contained in USITC Publication 4372 (February 2013), entitled *Utility Scale Wind Towers from China and Vietnam: Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Final).*

Issued: February 8, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–03317 Filed 2–12–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On February 7, 2013, the Department of Justice filed a complaint and lodged a proposed Consent Decree with the United States District Court for the Northern District of Florida, Gainesville Division in the lawsuit entitled *United States of America* v. *Beazer East, Inc.* Civil Action No. 1:13cv29–SPM–GRJ.

Pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606, 9607(a), the United States' complaint sought to recover costs it has incurred and will incur in response to the release and threatened release of hazardous substances at or from the Cabot/Koppers Superfund Site, located in the City of Gainesville, Alachua County, Florida (the Site). The United States also sought an Order enjoining the Defendant to perform the remedial action at the Site selected by EPA in the Amended Record of Decision dated February 2011 (Amended ROD) and included as Appendix A to the Decree.

The United States has agreed to resolve the claims alleged in the complaint through the proposed Consent Decree in which Beazer will perform the Amended ROD at the Site. In the Decree, Beazer has also agreed to pay all of EPA's future costs including oversight costs. The United States covenants not to sue under CERCLA Sections 106 and 107 relating to the Site subject to statutory reopeners.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Beazer East, Inc.* Civil Action No. 1:13cv29–SPM–GRJ; D.J. Ref. No. 90–11–2–622/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

	Send them to:
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $253.75 (25 cents per page reproduction costs for 1,015 pages for the entire Decree plus appendices) payable to the United States Treasury. For a paper copy without the Decree appendices, the cost is $28.75 (25 cents per page reproduction costs for 115 pages).

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–03313 Filed 2–12–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Securities Lending by Employee Benefit Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Securities Lending by Employee Benefit Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before March 15, 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–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Securities Lending by Employee Benefit Plans Prohibited Transaction Exemption (PTE 2006–16) permits an employee benefit plan to lend securities to certain broker-dealers and banks and to make compensation arrangements for lending services provided by a plan fiduciary in connection with such securities loans. The PTE includes third-party disclosures, specifically financial statements and lending and compensation agreements.

Such third-party disclosures are information collections subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information 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 1210–0065. 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 November 27, 2012 (77 FR 70828).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0065. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Securities Lending by Employee Benefit Plans.

OMB Control Number: 1210–0065.

Affected Public: Private Sector—businesses or other for profits and not-for-profit institutions.

Total Estimated Number of Respondents: 85.

Total Estimated Number of Responses: 850.

Total Estimated Annual Burden Hours: 163.

Total Estimated Annual Other Costs Burden: $4,943.

Dated: February 7, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–03318 Filed 2–12–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0002]

Walking and Working Surfaces Standard for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR part 1910, subpart D).

DATES: Comments must be submitted (postmarked, sent, or received) by April 15, 2013.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0002, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2013–0002) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the extent possible unnecessary duplication of efforts in obtaining information (29 U.S.C 657).

The collections of information contained in the Walking and Working Surfaces Standard for General Industry are necessary to protect workers from the collapse of overloaded floors, outrigger scaffolds, and failure of defective portable metal ladders. The following describes the information collection requirements in subpart D:

Paragraph 1910.22(d)(1) requires that in every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.

Under paragraph 1910.26(c)(2)(vii), portable metal ladders having defects are to be marked and taken out of service until repaired by either the maintenance department or the manufacturer.

Paragraph 1910.28(e)(3) specifies that unless outrigger scaffolds are designed by a licensed professional engineer, they shall be constructed and erected in accordance with table D–16 of this section. A copy of the detailed drawings and specifications showing the sizes and spacing of members shall be kept on the job.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR Part 1910, subpart D). OSHA is proposing to retain the burden hours in the currently approved information collection request. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Walking and Working Surfaces for General Industry (29 CFR 1910, subpart D).

OMB Control Number: 1218–0199.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 75,408.

Frequency of Response: On occasion.

Average Time Per Response: Ranges from three minutes (.05 hour) to mark ladders with a tag or other means to 20 minutes (0.33 hours) to acquire a replacement sign and to post it.

Estimated Total Burden Hours: 6,125 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2013–0002). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 7, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–03229 Filed 2–12–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–012]

NASA Advisory Council; Commercial Space Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Commercial Space Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Friday, March 1, 2013, 8:00 a.m.–11:30 a.m., Local Time.

ADDRESSES: Embassy Suites—Denver Tech Center, Belleview Room, 10250 E Costilla Avenue, Centennial, CO 80112

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Rathjen, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0552, fax (202) 358–2885, or *thomas.rathjen-1@nasa.gov* or Mr. David M. Lengyel, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0391,

fax (202) 358–2682, or *dlengyel@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number (866) 818–9721 or toll number (210) 339–6199, pass code 030113, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*, the meeting number is 997 916 761, and the password is *CommSpace@0301.*

The agenda for the meeting includes the following topics:

—International Space Station Utilization Status and Plans

—Description of NASA's Agency Level Commercialization Study Plans

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. U.S. citizens, Permanent Resident (green card holders), and foreign nationals can attend this meeting without prior registration. Public attendees will be required to sign-in; parking at the Embassy Suites Denver Tech Center is free.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–03209 Filed 2–12–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 15, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Forest Service (N1–95–10–6, 66 items, 24 temporary items). Records related to various programs throughout the agency, including land management, pesticide use, livestock grazing, free-roaming wild horses and burros, timber appraisals and sales, water uses, soil interpretation, animal damage, mineral leases, and rural development. Proposed for permanent retention are records related to organization standards, legislative affairs, resource and land planning, heritage program management, timber management, silvicultural practices, watershed protection, wildlife and fish habitat, resource conservation, and the Smokey the Bear program.

2. Department of Agriculture, Forest Service (N1–95–10–10, 226 items, 226 temporary items). Records related to agency programs such as groundwater resource management; fire management; wildfire prevention, preparedness, and suppression; agency landownership and exchanges; and title claims. Also included are records related to grants, land surveys, and engineering, geospatial, and road construction projects.

3. Department of the Army, Agency-wide (N1–AU–11–1, 1 item, 1 temporary item). Master files of an electronic system used to track officer and soldier assignments to the Korean Theater of Operations.

4. Department of the Army, Agency-wide (N1–AU–11–9, 1 item, 1 temporary item). Master files of an electronic system used to track Army aviation products throughout their life cycle.

5. Department of the Army, Agency-wide (N1–AU–10–106, 1 item, 1 temporary item). Master files of an electronic system used to track the location and duty status of deployed personnel.

6. Department of Commerce, Bureau of the Census (DAA–0029–2013–0001, 6 items, 3 temporary items). Records relating to the administration of housing surveys in the field. Proposed for permanent retention are public use data files documenting the results of the periodic surveys.

7. Department of State, Bureau of Diplomatic Security (DAA–0059–2011–0006, 11 items, 9 temporary items). Records relating to management of property, reimbursement agreements, resource allocation working papers, responses to congressional and agency records requests, and working and administrative records of a policy board and an advisory board. Proposed for permanent retention are substantive records of a policy board and an advisory board.

8. Department of Treasury, Internal Revenue Service (DAA–0058–2012–0009, 1 item, 1 temporary item). Lists of pseudonyms used to protect the identity of agency employees.

9. Department of Treasury, Internal Revenue Service (DAA–0058–2013–0001, 1 item, 1 temporary item). User agreements documenting the use of personal electronic equipment for agency business.

10. Department of Treasury, Internal Revenue Service (DAA–0058–2013–0002, 1 item, 1 temporary item). Master files of an electronic system used to evaluate product quality and employee performance.

11. Administrative Office of the United States Courts, Judicial Panel on Multidistrict Litigation (N1–482–11–1, 12 items, 9 temporary items). Case files, sealed records, duplicate judges' orders, and administrative files. Proposed for permanent retention are docket sheets, significant case files, and policies and procedures.

Dated: February 7, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–03294 Filed 2–12–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Public Availability of the National Science Foundation FY 2012 Service Contract Inventory

AGENCY: National Science Foundation.

ACTION: Notice of Public Availability of FY 2012 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Science Foundation is publishing this notice to advise the public of the availability of the FY 2012 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2012. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf* and *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf* . The National Science Foundation has posted its inventory and a summary of the inventory on the National Science Foundation homepage at the following link: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf13048.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Richard Pihl in the BFA/DACS at 703–292–7395 or *rpihl@nsf.gov.*

Dated: February 8, 2013.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–03302 Filed 2–12–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0228]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on October 17, 2012 (77 FR 63893).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material''.

3. *Current OMB approval number:* 3150–0008.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion. Application for package certification may be made at any time. Required reports are collected and evaluated on a continuous basis as events occur.

6. *Who will be required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

7. *An estimate of the number of annual responses:* 912.

8. *The estimated number of annual respondents:* 250.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 59,782 (54,208 hrs. reporting + 1 hr. third-party disclosure + 5,573 hrs. recordkeeping).

10. *Abstract:* NRC regulations in 10 CFR part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC

of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

The public may examine and have copied, for a fee, publicly available documents including the final supporting statement at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20874. The OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 15, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 8th day of February, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–03263 Filed 2–12–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–4; OMB Control No. 3235–0225, SEC File No. 270–232.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520) (the ''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 17(f) (15 U.S.C. 80a–17(f)) under the Investment Company Act of 1940 (the ''Act'') [1] permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities (''securities depositories''), subject to rules adopted by the Commission.

Rule 17f–4 (17 CFR 270.17f–4) under the Act specifies the conditions for the use of securities depositories by funds [2] and their custodians.

The Commission staff estimates that 140 respondents (including an estimated 79 active funds that may deal directly with a securities depository, an estimated 42 custodians, and 19 possible securities depositories) [3] are subject to the requirements in rule 17f–4. The rule is elective, but most, if not all, funds use depository custody arrangements.[4]

Rule 17f–4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.[5] This obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation.[6] If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations, which is a collection of information for purposes of the Paperwork Reduction Act. All funds that deal directly with securities depositories in reliance on rule 17f–4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.[7]

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.[8] If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports,[9] which is a collection of information for purposes of the Paperwork Reduction Act. Custodians and depositories usually transmit financial reports to funds twice each year.[10] The Commission staff estimates that 42 custodians spend approximately 787 hours (by support staff) annually in transmitting such reports to funds.[11] In addition, approximately 79 funds (*i.e.,* two percent of all funds) deal directly with a securities depository and may

[1] 15 U.S.C. 80a.

[2] As amended in 2003, rule 17f–4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term ''fund'' is used in this Notice to mean a registered investment company.

[3] The Commission staff estimates that, as permitted by the rule, an estimated 2% of all active funds may deal directly with a securities depository instead of using an intermediary. The number of custodians is estimated based on information from Morningstar Direct℠. The Commission staff estimates the number of possible securities depositories by adding the 12 Federal Reserve Banks and 7 active registered clearing agencies. The Commission staff recognizes that not all of these entities may currently be acting as a securities depository for fund securities.

[4] Based on responses to Item 18 of Form N–SAR (17 CFR 274.101), approximately 98 percent of funds' custodians maintain some or all fund securities in a securities depository pursuant to rule 17f–4.

[5] Rule 17f–4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform Commercial Code when the parties have not agreed to a standard. Rule 17f–4 does not impose any substantive obligations beyond those contained in Article 8. Uniform Commercial Code, Revised Article 8—Investment Securities (1994 Official Text with Comments) (''Revised Article 8'').

[6] Moreover, the rule does not impose any requirement regarding evidence of the obligation.

[7] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

[8] Rule 17f–4(a)(2).

[9] Rule 17f–4(b)(1)(ii).

[10] The estimated 42 custodians would handle requests for reports from an estimated 3,371 fund clients (approximately 80 fund clients per custodian) and the depositories from the remaining 79 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with industry representatives that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this Paperwork Reduction Act estimate, the Commission staff assumes that custodians transmit the reports to all fund clients.

[11] (3,371 fund clients × 2 reports) = 6,742 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 787 hours (7 minutes × 6,742 transmissions).

request periodic reports from their depository. Commission staff estimates that depositories spend approximately 18 hours (by support staff) annually transmitting reports to the 79 funds.[12] The total annual burden estimate for compliance with rule 17f–4's reporting requirement is therefore 805 hours.[13]

If a fund deals directly with a securities depository, rule 17f–4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions).[14] All funds that seek to rely on rule 17f–4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.[15]

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirement is 805 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. This estimate is not derived from a comprehensive or even representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03273 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

[12] (79 fund clients who may deal directly with a securities depository × 2 reports) = 158 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 18 hours (7 minutes × 158 transmissions).

[13] 787 hours for custodians and 18 hours for securities depositories.

[14] Rule 17f–4(b)(2).

[15] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–489, OMB Control No. 3235–0541]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0123.

Extension:
Rule 606 of Regulation NMS.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 606 of Regulation NMS (''Rule 606'') (17 CFR 242.606), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 606 (formerly known as Rule 11Ac1–6) requires broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. Broker-dealers must conduct such evaluations to fulfill the duty of best execution that they owe their customers.

The collection of information obligations of Rule 606 apply to broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that out of the currently 5178 broker-dealers that are subject to the collection of information obligations of Rule 606, clearing brokers bear a substantial portion of the burden of complying with the reporting and recordkeeping requirements of Rule 606 on behalf of small to mid-sized introducing firms. There currently are approximately 527 clearing brokers. In addition, there are approximately 2426 introducing brokers that receive funds or securities from their customers. Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of Rule 606.

The Commission staff estimates that each firm significantly involved in order routing practices incurs an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 606, or a burden of 160 hours per year. With an estimated 2953 [1] broker-dealers significantly involved in order routing practices, the total industry-wide burden per year to comply with the quarterly reporting requirement in Rule 606 is estimated to be 472,480 hours (160 × 2953).

Rule 606 also requires broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally bear the burden of responding to these requests. The Commission staff estimates that an average clearing broker incurs an annual burden of 400 hours (2000 responses × 0.2 hours/response) to prepare, disseminate, and retain responses to customers required by Rule 606. With an estimated 527 clearing brokers subject to Rule 606, the total industry-wide burden per year to comply with the customer response requirement in Rule 606 is estimated to be 210,800 hours (527 × 400).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information

[1] 527 clearing brokers + 2426 introducing brokers = 2953.

unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Comments should be directed to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03271 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15b1–1/Form BD; SEC File No. 270–19, OMB Control No. 3235–0012.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 15b1–1 (17 CFR 240.15b1–1) and Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form BD is the application form used by firms to apply to the Commission for registration as a broker-dealer, as required by Rule 15b1–1. Form BD also is used by firms other than banks and registered broker-dealers to apply to the Commission for registration as a municipal securities dealer or a government securities broker-dealer. In addition, Form BD is used to change information contained in a previous Form BD filing that becomes inaccurate.

The total industry-wide annual time burden imposed by Form BD is approximately 5,941 hours, based on approximately 15,890 responses (288 initial filings + 15,602 amendments). Each application filed on Form BD requires approximately 2.75 hours to complete and each amended Form BD requires approximately 20 minutes to complete. (288 × 2.75 hours = 792 hours; 15,602 × 0.33 hours = 5,149 hours; 792 hours + 5,149 hours = 5,941 hours.) The staff believes that a broker-dealer would have a Compliance Manager complete and file both applications and amendments on Form BD at a cost of $279/hour. Consequently, the staff estimates that the total internal cost of compliance associated with the annual time burden is approximately $1,657,539 per year ($279 × 5941). There is no external cost burden associated with Rule 15b1–1 and Form BD.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03272 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68864; File No. S7–27–11]

Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment

February 7, 2013.

I. Introduction

On July 1, 2011, the Securities and Exchange Commission (''Commission'') issued an order granting temporary exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'') in connection with the revision of the Exchange Act definition of ''security'' to encompass security-based swaps (''Exchange Act Exemptive Order'').[1] Certain temporary exemptions contained in the Exchange Act Exemptive Order are set to expire upon the compliance date for final rules further defining the terms ''security-based swap'' and ''eligible contract participant,'' which is scheduled to occur on February 11, 2013 (''Expiring Temporary Exemptions'').[2] The

[1] *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps,* Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011).

[2] *Id. See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012) (Joint Final Rule with the CFTC) (''*Product Definitions Adopting Release*''), which postpones the Expiring Temporary Exemptions expiration date to February 11, 2013. The Financial Industry Regulatory Authority (''FINRA'') filed a proposed rule change, which was effective upon receipt by the Commission, extending the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which temporary limits the application of certain FINRA rules with respect to security-based swaps, to July 17, 2013. *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and

Commission is extending the expiration date for these Expiring Temporary Exemptions until February 11, 2014 [3] and requesting comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension.

II. Discussion

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') amended the Exchange Act definition of ''security'' to expressly encompass security-based swaps.[4] The expansion of the definition of the term ''security'' results in the expansion of the scope of the regulatory provisions of the Exchange Act to security-based swaps. This expansion has raised certain complex questions that require further consideration by the staff.

On July 1, 2011, the Commission granted temporary relief from compliance with certain provisions of the Exchange Act by providing for the Expiring Temporary Exemptions.[5] Specifically, the Expiring Temporary Exemptions, which are set to expire on the compliance date for final rules further defining the terms ''security-based swap'' and ''eligible contract participant,'' provide for the following exemptions from Exchange Act: (a) Temporary exemptions in connection with security-based swap activity by certain ''eligible contract participants''; and (b) temporary exemptions specific to security-based swap activities by registered brokers and dealers.[6] As previously noted, these Expiring Temporary Exemptions are currently scheduled to expire on February 11, 2013 for purposes of the Exchange Act Exemptive Order.[7]

The Commission recently received a request to extend the Expiring Temporary Exemptions until July 17, 2013, citing concerns that key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved and that the expiration of these exemptions on February 11, 2013 would be premature.[8] The request also noted concerns about the potential for unnecessary disruption to the security-based swap market.[9]

To date, the Commission has proposed substantially all of the rules related to the new regulatory regime for derivatives under Title VII and has recently begun the process of adopting these rules.[10] In furtherance of the Dodd-Frank Act's stated objective of promoting financial stability in the U.S. financial system, the Commission has expressed its intent to move forward deliberatively in implementing the requirements of the Dodd-Frank Act, while minimizing unnecessary disruption and costs to the markets.[11]

The Commission believes it is necessary or appropriate in the public interest and consistent with the protection of investors to extend the Expiring Temporary Exemptions until February 11, 2014 in order to both avoid a potential unnecessary disruption to the security-based swap market that may result without an extension,[12] and provide the Commission with additional time to consider the potential impact of the revision of the Exchange Act definition of ''security'' in light of recent Commission rulemaking efforts under Title VII of the Dodd-Frank Act. Extending the Expiring Temporary Exemptions also would facilitate a coordinated consideration of these issues with related relief provided by FINRA under its rulebook.[13] While the comment letter recommended extending the temporary relief to July 17, 2013, we have determined to extend the relief to February 11, 2014. Accordingly, pursuant to the Commission's authority under Section 36 of the Exchange Act,[14] the Commission is extending the expiration date for the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order until February 11, 2014.[15]

III. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension for the Expiring Temporary Exemptions. Comments may be

Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Exchange Act Release No. 68471 (Dec. 19, 2012).

[3] The Exchange Act Exemptive Order also provided a temporary exemption from Sections 5 and 6 of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities. The Exchange Act Exemptive Order also provided a temporary exemption that no security-based swap contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of Section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the Exchange Act for which the Commission has provided exemptive relief in the Exchange Act Exemptive Order, until such time as the underlying exemptive relief expires. This Order does not affect the timing of the expiration of either of these exemptions.

[4] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124, Stat. 1376 (2010); Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by Section 761(a)(2) of the Dodd-Frank Act.

Title VII established a new regulatory framework for swaps and security-based swaps. Under the comprehensive framework established in Title VII, the Commission is given authority over security-based swaps, the CFTC is given regulatory authority over swaps, and the CFTC and SEC are provided with joint regulatory authority over mixed swaps. *See* Section 3(a)(68) of the Exchange Act, 15 U.S.C.78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the CEA, 7 U.S.C. 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. *See also Product Definitions Adopting Release.*

[5] *See* Exchange Act Exemptive Order.

[6] *See* Exchange Act Exemptive Order at 39–44.

[7] *See Product Definitions Adopting Release.*

[8] *See* SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012), which is available at *http://www.sec.gov/comments/s7-27-11/s72711-12.pdf.* The Commission has also received a request for certain permanent exemptions upon the expiration of the exemptions contained in the Exchange Act Exemptive Order. *See* SIFMA SBS Exemptive Relief Request (Dec. 5, 2011), which is available at *http://www.sec.gov/comments/s7-27-11/s72711-10.pdf.*

[9] *See* SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012).

[10] *See Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Exchange Act Release No. 67177 (Jun. 11, 2012). *See also Product Definitions Adopting Release; Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (''*Entity Definitions Adopting Release*''); *Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to all Self-Regulatory Organizations,* Exchange Act Release No. 67286 (Jun. 28, 2012), 88 FR 41602 (Jul. 13, 2012); *Clearing Agency Standards,* Exchange Act Release No. 68080, (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[11] *See* Exchange Act Exemptive Order.

[12] *See supra* note 8 and 9.

[13] *See supra* note 2.

[14] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order 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 such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[15] The expiration date coincides with the Commission's recent amendment to the expiration dates in interim final rules that provide exemptions under the Securities Act of 1933, the Exchange Act, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as ''securities'' under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Act. *See Extension of Exemptions for Security-Based Swaps,* Release No. 33–9383 (Jan. 29, 2013), 78 FR 7654 (Feb. 4, 2013).

submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/exorders.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–27–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–27–11. This file number should be included on the subject line if email is used. To help us 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/exorders.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St. NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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.

IV. Conclusion

It is hereby ordered, pursuant to Section 36 of the Exchange Act, that, the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order in connection with the revision of the Exchange Act definition of ''security'' to encompass security-based swaps are extended until February 11, 2014.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–03214 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68867; File No. SR–ICEEU–2013–02]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise Rules Related to Legal Segregation With Operational Commingling

February 7, 2013.

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 February 6, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule changes is to implement the enhanced margin segregation model for cleared swaps that the Commodity Futures Trading Commission (''CFTC'') adopted in Part 22 of the CFTC regulations (generally referred to as ''legal segregation with operational commingling'' or ''LSOC''). As result of the LSOC requirements, ICE Clear Europe principally proposes to (i) introduce new procedures for allocating initial margin to the positions carried for each customer of an FCM/BD Clearing Member on a customer-by-customer basis, (ii) introduce new procedures for calling for, holding and returning customer margin in light of the requirement to allocate initial margin on a customer-by-customer basis, and (iii) change the net sum calculation for defaulting Clearing Members to limit ICE Clear Europe's ability to use customer margin in the event that an FCM/BD Clearing Member defaults, consistent with the requirements of LSOC. The LSOC requirements are intended to mitigate the risk that one customer of an FCM/BD Clearing Member would suffer a loss because of a default by another customer. ICE Clear Europe also will be removing existing provisions of the ICE Clear Europe Rules (''Rules'') that addressed the holding of excess margin for customers of such Clearing Members and will not be necessary in ICE Clear Europe's initial implementation of LSOC.

Specifically, ICE Clear Europe proposes to amend Parts 9 and 16 of the Rules, as well as related definitions, to incorporate Part 22 of the CFTC Regulations. The amendments to Part 9 of the Rules change the net sum calculation for defaulting FCM/BD Clearing Members. The amendments to Part 16 of the Rules contain the procedures for allocating initial margin on a customer-by-customer basis and related procedures for calling for, holding and returning such margin. The other proposed changes in the Rules reflect conforming changes and drafting clarifications, and do not affect the substance of the ICE Clear Europe Rules or forms of cleared products.

Another purpose of the proposed rule changes is to adopt a set of settlement and notices terms (''Settlement and Notices Terms'') that will apply to all Customer-CM CDS Transactions and, where specified, to the clearing arrangements between an FCM/BD CDS Clearing Member and its FCM/BD Customers and, in each case, to the related CDS Contracts. The Settlement and Notices Terms will be published by ICE Clear Europe as an exhibit to the Rules but will not form part of ICE Clear Europe's Rules, Procedures or Standard Terms. The Settlement and Notices Terms adopt certain notice and related procedures for the customer clearing model for CDS products (in which customers of ICE Clear Europe Clearing Members will have the ability to clear CDS products through ICE Clear Europe Clearing Members).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for proposing the LSOC changes to the Rules and the Settlement and Notices Terms exhibit. The text of these statements may be examined at the places specified in Item III below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by ICE Clear Europe.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule amendments in connection with the LSOC model are intended to update the particular characteristics of the Rules applicable to the segregation of customer margin. Specifically, the proposed rule changes affect Parts 9 and 16 of the ICE Clear Europe Rules, and related definitions, by providing, in summary, that initial margin allocated to a particular customer's positions may not be used to cover losses arising from another customer's positions. Each of these changes is described in detail as follows.

Under Rules 905(f) and 906(a), the net sum calculation with respect to ''*L*'' has been revised to clarify that certain expenses resulting from a defaulting Clearing Member are allocated to the House Account of the defaulting Clearing Member rather than a Customer Account. Further, in Rule 906(a) of the Rules, the net sum calculation with respect to ''*M*'' has been revised to state that for a Swap Customer Account of an FCM/BD Clearing Member, any property provided by or on behalf of the Defaulter as initial or original margin (or similar margin) allocated to a particular Customer Swap Portfolio (i.e., the positions of a particular customer) and proceeds thereof can only be included in the net sum calculation to the extent of obligations to ICE Clear Europe in respect of Open Contract Positions in such Customer Swap Portfolio in accordance with CFTC Rule 22.15.

A new definition for ''Customer Swap Portfolio'' has been added under Rule 1602(f) to accommodate the LSOC model, including the customer-by-customer tracking of positions. Under the proposed new Rule 1604(e), ICE Clear Europe has incorporated new CFTC Rule 22.15, which limits ICE Clear Europe's use of the initial margin provided in respect of customer swap positions. Revisions to Rule 1605(d) eliminate various provisions that are now covered by CFTC regulations and are no longer necessary with the implementation of the LSOC framework. To comply with LSOC, under new Rule 1605(h), ICE Clear Europe will calculate the initial margin requirement separately for each Customer Swap Portfolio and compare it to the value of initial margin provided by the FCM/BD Clearing Member and allocated by ICE Clear Europe under CFTC Rules to that portfolio. In each margin cycle, ICE Clear Europe will call for additional initial margin for each Customer Swap Portfolio for which there is a shortfall. ICE Clear Europe will separately make available for return to the FCM/BD Clearing Member any excess initial margin held with respect to a Customer Swap Portfolio. Further, under the proposed new Rule 1605(i), ICE Clear Europe states that it will not accept the deposit of Margin from a FCM/BD Clearing Member in respect of Contracts or Open Contract Positions recorded in a Swap Customer Account in excess of the amount required by ICE Clear Europe, within the meaning of CFTC Rule 22.13(c).

The Settlement and Notices Terms are an exhibit to the Rules that is intended to complement the customer clearing model for CDS products whereby customers of ICE Clear Europe Clearing Members have the ability to clear CDS products through ICE Clear Europe Clearing Members.

The Settlement and Notices Terms establish the processes for dealing with certain aspects of Physical Notices in the limited circumstances under the Rules and CDS Procedures in which physical, as opposed to electronic, notices may be delivered. ''Physical Notices'' mean those notices that may be delivered in connection with CDS Contracts and, where applicable, Customer-CM CDS Transactions (other than Electronic Notices and other equivalent electronic notices under Customer-CM CDS Transactions which are or are required pursuant to the Rules or CDS Procedures to be given through Deriv/SERV). Physical Notices include Manual MP Notices (and equivalent notices under Customer-CM CDS Transactions) and notices relating to physical settlement delivered pursuant to or in connection with a CDS Contract or Customer-CM CDS Transaction, including all notices in connection with the physical settlement processes to which the Settlement and Notices Terms apply. Further, for restructuring credit events, there is an electronic notice facility provided by DTCC which is of mandatory use under ICE Clear Europe's rules. Physical Notices relating to restructuring credit events may only be used in the unlikely event of a DTCC or clearing house technology failure or a self-certified clearing member technology failure, as a back-up methodology. Other physical notices are only relevant to physical settlement of CDS, which is nowadays considered a highly unlikely eventuality, following the introduction of ISDA protocols aimed at ensuring that CDS contracts are auction settled where there is sufficient interest in a particular name. The Settlement and Notice Terms also specify certain procedures for fall back settlement of CDS Contracts in the limited circumstances where normal settlement under the Rules and CDS Procedures does not apply.

ICE Clear Europe believes that the proposed LSOC rule amendments and the Settlement and Notices Terms are consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to ICE Clear Europe. The LSOC rule amendments are intended to adopt a more comprehensive segregation model for the protection of customer property, and thus further the protection of investors and the public interest. ICE Clear Europe believes such segregation also will facilitate the prompt and accurate clearance of transactions. ICE Clear Europe believes the Settlement and Notices Terms also are designed to improve the operational procedures for cleared trades, and thereby promote the prompt and accurate clearance of transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed Settlement and Notices Terms and the proposed rule changes to implement the CFTC's Part 22 regulations would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the LSOC proposed amendments and Settlement and Notices Terms have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. 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–ICEEU–2013–02 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–ICEEU–2013–02. 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 filings also will be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICEEU–2013–02 and should be submitted on or before March 6, 2013.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule changes are consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to ICE Clear Europe.[5] Specifically, the Commission finds that the proposed LSOC rule amendments are consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest.[6] Additionally, the Commission finds that the proposed Settlement and Notices Terms also are consistent with Section 17A(b)(3)(F) of the Act, which further requires that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[7]

In its filing, ICE Clear Europe requested that the Commission approve the proposed rule changes on an accelerated basis for good cause shown. ICE Clear Europe believes there is good cause for accelerated approval because the LSOC rule changes are required in order to be in compliance with Part 22 of the CFTC Regulations in connection with clearing of customer positions in swaps. ICE Clear Europe will not be able to commence customer clearing in CDS or other swaps (including those CDS subject to mandatory clearing under the CFTC's rules) without implementing the LSOC rule amendments. Furthermore, ICE Clear Europe has stated that the changes relating to the Settlement and Notices Terms are part of the implementation of ICE Clear Europe's CDS customer clearing framework recently approved by the Commission and are therefore also important to the commencement of customer clearing in CDS.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[8] for approving the proposed rule changes prior to the 30th day after the date of publication of notice in the **Federal Register** because, as a derivatives clearing organization registered with the CFTC, ICE Clear Europe must amend certain of its rules to comply with CFTC's Part 22 Regulations, and the Settlement and Notices Terms are an important part of its implementation of customer clearing in CDS.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–ICEEU–2013–02) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03277 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68863; File No. SR–NYSEArca–2012–142]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade the Guggenheim Enhanced Total Return ETF Under NYSE Arca Equities Rule 8.600

February 7, 2013.

I. Introduction

On December 13, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Guggenheim Enhanced Total Return ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 27, 2012.[3] On February 4, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68488 (December 20, 2012), 77 FR 76326 (''Notice''). *See also* Securities Exchange Act Release No. 68488 (December 20, 2012), 78 FR 1892 (January 9, 2013) (SR–NYSEArca–2012–142) (correcting a typographical error by the **Federal Register** to the File No. reference).

[4] Amendment No. 1 amended the following sentence: ''The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only, principal-only or inverse floater securities.'' As amended, the sentence reads: ''The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only or principal-only securities.'' This amendment was intended to clarify that the Fund will not invest in inverse floaters. *See* Notice, *supra* note 3, at 76328. Because the changes made by Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by the Claymore Exchange-Traded Fund Trust 2 (''Trust''),[5] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The investment adviser for the Fund is Guggenheim Funds Investment Advisors, LLC (''Adviser''). The Bank of New York Mellon is the custodian and transfer agent for the Fund. Guggenheim Funds Distributors, LLC is the distributor for the Fund. The Exchange states that the Adviser is affiliated with a broker-dealer and that the Adviser has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.[6]

Guggenheim Enhanced Total Return ETF

The Fund's investment objective will be to seek maximum total return, composed of income and capital appreciation. The Fund will normally[7] invest in a portfolio of fixed-income instruments of varying maturities and equity securities.

Fixed-Income Instruments Investments

The fixed-income instruments in which the Fund will invest include bonds, debt securities, and other similar instruments—such as Treasury securities, collateralized mortgage obligations, collateralized loan obligations, and mortgage- and asset-backed securities—issued by various U.S. and non-U.S. public- or private-sector entities. The Fund will normally invest at least 65% of its assets in fixed-income instruments. In addition, the Fund may invest in U.S. and non-U.S. dollar-denominated debt securities of U.S. and foreign corporations, governments, agencies, and supra-national agencies.[8]

While the Fund generally will invest more than 50% of its assets in investment-grade fixed-income instruments, the Fund also expects to invest to a maximum of 35% of its total assets in high-yield debt securities (''junk bonds''), which are debt securities that are rated below investment-grade by nationally recognized statistical rating organizations, or are unrated securities that the Adviser believes are of comparable quality. The Fund may invest up to 30% of its total assets in debt securities denominated in foreign currencies and may invest without limitation in U.S. dollar-denominated debt securities of foreign issuers. The Fund may invest up to 20% of its total assets in debt securities and instruments that are economically tied to emerging market countries.[9]

The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only or principal-only securities.[10] This limitation does not apply to securities issued or guaranteed by federal agencies or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration, the Federal Housing Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. The Fund may purchase or sell securities on a when-issued, delayed-delivery, or forward-commitment basis and may engage in short sales.

The Fund may invest in short-term instruments such as commercial paper,[11] repurchase agreements,[12] and reverse repurchase agreements.[13] The Fund may invest in money market instruments (including other funds that invest exclusively in money market instruments). These investments in money market instruments may be as part of a temporary defensive strategy to protect against temporary market declines.

The Fund may invest in debt securities that have variable or floating interest rates that are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates, or whenever a specified interest rate change occurs in the case of a floating rate instrument. The Fund will not, however, invest in inverse

[5] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 9, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–135105 and 811–21910) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29271 (May 18, 2010) (File No. 812–13534) (''Exemptive Order'').

[6] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[7] The term ''normally'' includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] Generally, a corporate bond must have $100 million or more par amount outstanding to be considered as an eligible investment.

[9] Emerging market countries are countries that major international financial institutions, such as the World Bank, generally consider to be less economically mature than developed nations. Emerging market countries can include every nation in the world except the United States, Canada, Japan, Australia, New Zealand, and most countries located in Western Europe. Generally, a corporate bond of an issuer in an emerging market must have $200 million or more par amount outstanding to be considered as an eligible investment.

[10] *See supra* note 4.

[11] The commercial paper in which the Fund may invest includes variable-amount master demand notes and asset-backed commercial paper. Commercial paper normally represents short-term unsecured promissory notes issued in bearer form by banks or bank holding companies, corporations, finance companies, and other issuers.

[12] Repurchase agreements are fixed-income securities in the form of agreements backed by collateral. These agreements, which may be viewed as a type of secured lending by the Fund, typically involve the acquisition by the Fund of securities from the selling institution (such as a bank or a broker dealer), coupled with the agreement that the selling institution will repurchase the underlying securities at a specified price and at a fixed time in the future (or on demand). These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund may accept a wide variety of underlying securities as collateral for the repurchase agreements entered into by the Fund. Such collateral may include U.S. government securities, corporate obligations, equity securities, municipal debt securities, mortgage-backed securities, and convertible securities. Any such securities serving as collateral are marked to market daily in order to maintain full collateralization (typically purchase price plus accrued interest).

[13] Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally the effect of such transactions is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases the Fund is able to keep some of the interest income associated with those securities.

floaters. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations. Many securities with variable or floating interest rates purchased by the Fund will be subject to payment of principal and accrued interest (usually within seven days) on the Fund's demand. The terms of such demand instruments require payment of principal and accrued interest by the issuer, a guarantor, or a liquidity provider. The Adviser will monitor the pricing, quality, and liquidity of the variable or floating rate securities held by the Fund.

With respect to fixed-income instrument investments, the Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Equity Securities Investments

The Fund may invest up to 35% of its total assets in U.S. exchange-listed equity securities and foreign equity securities.[14] The Fund may invest up to 30% of its total assets in U.S. exchange-listed preferred stock, convertible securities,[15] and other equity-related securities. The Fund may gain exposure to commodities through investment of up to 30% of its total assets, which may include investments in exchange-traded products (''Underlying ETPs'') [16] and exchange-traded notes (''ETNs'').[17] The Fund may invest in the securities of exchange-listed real estate investment trusts (''REITs''), which pool investors' funds for investments primarily in commercial real estate properties, to the extent allowed by law. Investment in REITs may be the most practical available means for the Fund to invest in the real estate industry.

Other Investments

As a non-principal investment strategy, the Fund may invest in insurance-linked securities and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular security or security index) other than ETNs. The Fund may invest in certificates of deposit (''CDs''), time deposits, and bankers' acceptances from U.S. banks. A bankers' acceptance is a bill of exchange or time draft drawn on and accepted by a commercial bank. A CD is a negotiable interest-bearing instrument with a specific maturity. CDs are issued by banks and savings and loan institutions in exchange for the deposit of funds and normally can be traded in the secondary market prior to maturity. A time deposit is a non-negotiable receipt issued by a bank in exchange for the deposit of funds. Like a CD, it earns a specified rate of interest over a definite period of time; however, it cannot be traded in the secondary market.

The Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities. Because zero-coupon and pay-in-kind securities do not pay current cash income, the price of these securities can be volatile when interest rates fluctuate.

The Fund may use delayed-delivery transactions as an investment technique. Delayed-delivery transactions, also referred to as forward-commitments, involve commitments by the Fund to dealers or issuers to acquire or sell securities at a specified future date beyond the customary settlement for such securities. These commitments may fix the payment price and interest rate to be received or paid on the investment. The Fund may purchase securities on a delayed-delivery basis to the extent that it can anticipate having available cash on the settlement date. Delayed-delivery agreements will not be used as a speculative or leverage technique.

The Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers, or dealers to purchase or sell foreign currencies at a future date (''forward contracts'').

The Fund may invest in the securities of other investment companies. Under Section 12(d) of the 1940 Act, or as otherwise permitted by the Commission, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.[18]

The Fund will be considered non-diversified and can invest a greater portion of assets in securities of individual issuers than a diversified fund.[19]

The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or its instrumentalities.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities [20] (calculated at the

[14] The foreign equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or markets that are parties to a comprehensive surveillance sharing agreement with the Exchange.

[15] Convertible securities include bonds, debentures, notes, preferred stocks, and other securities that entitle the holder to acquire common stock or other equity securities of the same or a different issuer.

[16] Underlying ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[17] ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).

[18] 15 U.S.C. 80a–12(d).

[19] A ''non-diversified company,'' as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

[20] The Fund may invest in master demand notes, which are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master demand note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula, or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand feature, the payee may demand payment of the principal amount of the note upon relatively short notice. Master demand notes are generally illiquid and therefore subject to the Fund's percentage limitations for holdings in illiquid securities. In addition, the Fund may purchase participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution (''Lender'') or from other holders of a participation interest (''Participant''). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (''Borrower''). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund's rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers

time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities and other illiquid assets.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.[21]

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange further represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[22] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[23]

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[24]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[25] and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[28] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[29] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[30] The NAV per Share of the Fund will be determined as of the close of the New York Stock Exchange (usually 4:00 p.m. Eastern Time) each day the New York Stock Exchange is open for trading, and a basket composition file, which will include the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the securities exchanges on which such securities are listed and traded. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[31] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange

participation interests to be illiquid and therefore subject to the Fund's percentage limitations for holdings in illiquid securities.

[21] 26 U.S.C. 851.

[22] 17 CFR 240.10A–3.

[23] The Exchange represents that the Fund's broad-based securities benchmark index will be identified in an amendment to the Registration Statement to be filed following the Fund's first full calendar year of performance.

[24] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[25] 15 U.S.C. 78f.

[26] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[30] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: ticker symbol (if applicable); name of security and financial instrument; number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[31] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[32] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[33] All of the equity investments to be held by the Fund, including the non-U.S.-listed equity securities, will trade in markets that are ISG members or markets that are parties to a comprehensive surveillance sharing agreement with the Exchange.[34] The Exchange represents that it may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[35]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[36]

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions, when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[37] as provided by NYSE Arca Equities Rule 5.3.

(6) While the Fund generally will invest more than 50% of its assets in investment-grade fixed-income instruments, the Fund may invest up to 35% of its total assets in high-yield debt securities.

(7) Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, master demand notes, and loan participation interests.[38]

(9) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[39] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NYSEArca-2012–142), as modified by Amendment No. 1 thereto be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03276 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[33] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[34] *See supra* note 14.

[35] *See supra* note 6. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[36] *See supra* note 14.

[37] 17 CFR 240.10A–3.

[38] *See supra* note 20.

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68861; File No. SR–NYSE–2013–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Cease Operating New York Block Exchange and Contemporaneously Delete the Text of Rule 1600, Which Governs NYBX Functionality

February 7, 2013.

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 February 5, 2013, the New York Stock Exchange LLC (''NYSE'' or 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 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 contemporaneously delete the text of Rule 1600, which governs NYBX functionality. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange intends to cease operating New York Block Exchange (''NYBX''), effective February 28, 2013, and as such, proposes to contemporaneously delete the text of Rule 1600, which governs NYBX's functionality.[3] NYBX is an electronic exchange facility that provides for the continuous matching and execution of all non-displayed NYBX orders with the aggregate of liquidity in the NYBX Facility, the NYSE Display Book® and considers the protected quotations of all automated trading centers for securities listed on the NYSE. The Exchange is ceasing operations of NYBX Facility because after years of operations the facility has not garnered enough volume to achieve critical mass and does not have strong support customers [sic]. The Exchange will provide advance notice to its members and member organizations of the discontinuation of this functionality.

The Exchange also proposes to make conforming changes to remove references to Rule 1600 and NYBX from the following other Exchange rules: Rule 13, Rule 15, Supplementary Materials .15 and .20 to Rule 79A, Rule 80C, Supplementary Material .10 to Rule 104, Supplementary Material .10, .12, and .13 to Rule 104T, Supplementary Material .40 to Rule 116, Rule 123B, Supplementary Material .10 to Rule 123C, Supplementary Material .25 to Rule 123D, and Supplementary Material .11 to Rule 1000.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change, in conjunction with a related communication to members and member organizations, will provide advance notice to NYSE members and member organizations that the Exchange will cease operation of NYBX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to remove references for NYBX from the Exchange Rules to correspond with the Exchange ceasing operations of NYBX facility. The Exchange is ceasing operations of NYBX Facility because after years of operations the facility has not garnered enough volume to achieve critical mass and does not have strong support customers [sic]. The Exchange is ceasing operations of NYBX because the facility was not competitive, therefore ceasing operations should not have any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[8]

The Exchange has requested a waiver of the 30-day operative delay so that the Exchange can cease operations of the NYBX Facility by February 28, 2013. The Exchange notes that NYBX has not achieved significant volume during its operations and does not believe that ceasing its operation will significantly affect the protection of investors or the public interest. The Exchange further notes that discontinuing operations of NYBX at month end will coincide with the Exchange's billing cycle and avoid the expense and inconvenience of extending operations into a partial month. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to cease operations of NYBX without incurring the expense of extending operations into a partial month. Therefore, the Commission

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In 2011, the Exchange filed a similar filing to cease operations of NYSE Matchpoint and delete Rules related the exchange facility. *See* Securities Exchange Act Release No. 63898 (February 11, 2011), 76 FR 9616 (February 18, 2011) (SR–NYSE–2011–03).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19–b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

designates the proposed rule change as operative as of February 28, 2013.[9]

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–NYSE–2013–12 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.

All submissions should refer to File Number SR–NYSE–2013–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–12 and should be submitted on or before March 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03275 Filed 2–12–13; 8:45 am]

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[9] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68860; File No. SR–CBOE–2013–015]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 7, 2013.

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 January 30, 2013, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate the customer transaction fee for XSP index options. Currently, the Exchange has a $0.18 customer transaction fee per contract for all index products, with some exceptions.[3] The Exchange is proposing to eliminate those customer transaction fees for transactions in XSP index options. Eliminating the customer transaction fee for XSP index options will allow Trading Permit Holders who engage in XSP options trading the opportunity to pay lower fees for such transactions and provide greater incentives for customers to trade XSP index options. Thus, the proposed changes to the customer XSP options transaction fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants.

The propose changes are to take effect on February 1, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its

[3] *See* Exchange Fee Schedule which outlines exceptions from this transaction fee. (*http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

Trading Permit Holders and other persons using its facilities.

In particular, the proposed change is reasonable because it will allow TPHs who engage in XSP options trading the opportunity to pay lower fees for such transactions. The proposed changes to the customer XSP options transaction fees are equitable and not unfairly discriminatory because they are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants.

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. The Exchange does not believe that the proposed changes to customer XSP options transaction fees will cause any unnecessary burden on intramarket competition because, while customers are assessed different, and often lower, fee rates than other market participants, this is a common practice within the options marketplace, and customers often do not have the sophisticated trading algorithms and systems that other market participants often possess. Further, to the extent that any change in intramarket competition may result from the proposed changes to customer XSP options transaction fees, such possible change is justifiable and offset because the changes to such fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The Exchange does not believe that the proposed changes to customer XSP options transaction fees will cause any unnecessary burden on intermarket competition because the changes are minimal and apply to a single index on the Exchange. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

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) of the Act [6] and paragraph (f) of Rule 19b–4 [7] 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–2013–015 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–2013–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–015, and should be submitted on or before March 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03274 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68865; File No. SR–BATS–2013–006]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Short Term Options Series Program

February 7, 2013.

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 January 23, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market (''BATS Options'') to amend its rules to modify the short term option series (''Short Term Option Series'' or ''STOS'') Program [5] to permit, during the week before expiration week and expiration week of an option class that is selected for the STOS Program, the strike price intervals for the related non-short term option series options to be the same as the strike price interval for the Short Term Option Series [6] options, to permit the Exchange to open STOS that are opened by other securities exchanges, and to adopt a rule to open Short Term Option Series for trading at $0.50 strike price intervals for option classes that trade in one dollar increments and are in the STOS Program. The Exchange also proposes to increase the number of expirations, strikes per class, and classes that are eligible to participate in the STOS Program, along with a clarifying change regarding the number of initial strikes per class. Lastly, the Exchange is proposing to amend the definition of Short Term Option Series in order to reflect the proposed increase in the number of expirations eligible for participation in the STOS Program and to add titles to several of its rules in order to make clear the subject matter that the rule covers.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[5] The STOS Program was established in August of 2010 on BATS Options. *See* Securities Exchange Act Release No. 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR–BATS–2010–020) (notice of filing and immediate effectiveness establishing Short Term Option Series Program on BATS). Other exchanges have also established permanent short term option programs, including The NASDAQ Stock Market LLC (''NOM''), NASDAQ OMX PHLX LLC (''PHLX''), Chicago Board Options Exchange (''CBOE''), International Securities Exchange (''ISE''), NYSE Arca Options (''NYSE Arca''), NYSE Amex, LLC (''Amex''), NASDAQ OMX BX (''BX''), and Boston Options Exchange LLC (''BOX'').

[6] Short Term Option Series are series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. *See* BATS Rules 16.1(a)(57) and 29.2(n).

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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend BATS Rules 16.1(a)(57), 19.6, 29.2(n), and 29.11(h) related to the STOS Program. Specifically, the Exchange proposes to: (1) Adopt a rule to permit the Exchange to list Short Term Option Series at $0.50 strike price intervals for option classes that trade in one dollar increments and are in the STOS Program (''Eligible Option Classes''); (2) expand the number of expirations to five consecutive expirations under the STOS Program for trading on the Exchange; (3) increase the number of classes (from 15 to 30) that are eligible to participate in the STOS Program; (4) increase the number of strikes that may be listed per class (from 20 to 30) that participates in the STOS Program; (5) allow the Exchange to open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules; (6) indicate that during the expiration week of an option class that is selected for the STOS Program, the strike price intervals for the related non-STOS option shall be the same as the strike price intervals for the STOS option and that during the week before the expiration week of a STOS option, the Exchange shall open the related non-STOS option for trading in STOS option intervals in the same manner as for STOS options; (7) make clear that the Exchange may open up to 20 initial series for each option class that participates in the STOS Program; (8) amend the definitions of Short Term Option Series in order to reflect the proposed increase in expirations; and (9) make BATS Rules clearer by adding titles to certain paragraphs.

$0.50 Strikes in the STOS Program

The Exchange is proposing to amend BATS Rules 19.6 and 29.11(h) to permit the Exchange to list Short Term Option Series at $0.50 strike price intervals for option classes that trade in one dollar increments and are in the STOS Program. Currently, BATS Rules do not permit the Exchange to list Short Term Option Series at $0.50 strike price intervals. Rather, BATS Rules 19.6 and 29.11(h) only state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on the Friday of the following business week that is a business day.

The principal reason for the proposed structure is to compete on an equal playing field with other options exchanges in satisfying the high market demand for weekly options. Multiple options exchanges, including ISE, have implemented substantially similar STOS Programs, although there are some differences in the practical implementation of permitted strike prices. ISE's STOS Program differs from the other programs in that ISE permits $0.50 strike price intervals for weekly options for option classes that trade in one dollar increments and are in the STOS Program.[7] On the other hand, PHLX, for instance, permits $0.50 strike price intervals when the strike price is below $75, and $1 strike price intervals when the strike price is between $75 and $150.[8] The Exchange is proposing to allow $0.50 strikes in a manner identical to ISE.

There is continuing strong customer demand for having the ability to execute hedging and trading strategies effectively via STOS, particularly in the current fast, multi-faceted trading and investing environment that extends across numerous markets and platforms.[9] The Exchange has observed increased demand for STOS classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings have occurred. The STOS Program is one of the most popular and

[7] *See* Securities Exchange Act Release No. 67754 (August 29, 2012), 77 FR 54629 (September 5, 2012) (SR–ISE–2012–33).

[8] *See* Securities Exchange Act Release No. 67753 (August 29, 2012) 77 FR 54635 (September 5, 2012) (SR–PHLX–2012–78).

[9] These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds, exchange traded notes, currencies, and over-the-counter instruments.

quickly expanding options expiration programs.

The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange. The Exchange notes that in conformance with Exchange Rules, the Exchange shall not list $0.50 or $1 strike price intervals on Related non-STOS options within five (5) days of expiration. For example, if a Related non-STOS in an options class is set to expire on Friday, September 21, the Exchange could begin to trade $0.50 strike price intervals surrounding that Related non-STOS on Thursday, September 13, but no later than Friday September 14.

The Exchange believes that there are substantial benefits to market participants in the ability to trade the Eligible Option Classes at more granular strike price intervals [sic] the proposed interval for the Eligible Option Classes would allow traders and investors, and in particular public (retail) investors to more effectively and with greater precision consummate trading and hedging strategies on the Exchange. The Exchange believes that this precision is increasingly necessary, and in fact crucial, as traders and investors engage in trading and hedging strategies across various investment platforms (*e.g.* equity and ETF, index, derivatives, futures, foreign currency, and even commodities products).

Additional STOS Program Expirations

The Exchange is also proposing to amend BATS Rules 19.6 and 29.11(h) to permit the Exchange to open up to five consecutive expirations under the STOS Program for trading on the Exchange. Currently under the STOS Program, the Exchange may open STOS option series for only one week expirations.

This proposal seeks to allow the Exchange to add a maximum of five consecutive week expirations under the STOS Program, however it will not add a STOS expiration in the same week that a monthly options series expires or, in the case of Quarterly Option Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class. In other words, the total number of consecutive expirations will be five, including any existing monthly or quarterly expirations.[10] As noted above, the STOS Program has been well-received by market participants, in particular by retail investors, and the Exchange believes that the proposed revision to the STOS Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series as well as to allow the Exchange to compete with other options exchanges offering similar short term options programs, such as NYSE Arca.[11]

Additional Classes Participating in the STOS Program

The Exchange is also proposing to amend BATS Rules 19.6 and 29.11(h) to permit the Exchange to increase the number of classes that are eligible to participate in the STOS Program from 15 to 30. Currently, for each option class that has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day.

Several other options exchanges, including NASDAQ Options Market (''NOM''),[12] have rules that allow 30 classes to be eligible to participate in their STOS Programs. As a result, the Exchange is competitively disadvantaged because it operates a substantially similar STOS Program as ISE, NOM, and PHLX, but is limited to selecting only 15 classes that may participate in its STOS Program (whereas ISE, NOM, and PHLX may each select 30 classes).

The proposed increase to the number of classes eligible to participate in the STOS Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar short term options series programs.

Additional Series per Class in the STOS Program

The Exchange is also proposing to amend its rules to permit the Exchange to increase the number of series that the Exchange may open per class that is eligible to participate in the STOS Program from 20 to 30 as well as to make a clarifying change that states that the Exchange may open 20 initial series for each option class that participates in the STOS Program. Currently, for each class that has been approved for listing and trading on the Exchange as part of the STOS Program, the Exchange may open up to 20 series.

ISE's rules and the rules of other exchanges allow them to open up to 30 STOS for each option class eligible for participation in the STOS Program.[13] As a result, the Exchange is competitively disadvantaged because it operates a substantially similar STOS Program as ISE and other exchanges but is limited to opening only 20 series per expiration in each class that is eligible to participate in its STOS Program (whereas ISE may select 30 series).

The Exchange is proposing to amend its rules to allow the Exchange to open up to ten additional series (a total of 30) for each option class that participates in the STOS Program when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. The Exchange is also proposing to amend its rules in order to clarify that it may open up to 20 initial series for each option class that participates in the STOS Program.

STOS Opened by Other Exchanges

The Exchange is also proposing to amend its rules to allow the Exchange to open STOS that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules. Currently, for each option class eligible for participation in the STOS Program, the Exchange may open up to 20 short term option series for each expiration date in that class.[14]

This proposal seeks to allow the Exchange to open STOS that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules. This change is being proposed notwithstanding the current cap of 20 series per class under the STOS Program. This too is a competitive change and is based on approved filings and existing rules of ISE, NOM, and PHLX.[15]

[10] For example, if quarterly options expire week 1 and monthly options expire week 3, the proposal would allow the following expirations: week 1 quarterly, week 2 STOS, week 3 monthly, week 4 STOS, and week 5 STOS. If quarterly options expire week 3 and monthly options expire week 5, the following expirations would be allowed: week 1 STOS, week 2 STOS, week 3 quarterly, week 4 STOS, and week 5 monthly.

[11] *See* Securities Exchange Act Release No. 68190 (November 8, 2012), 77 FR 68193 (November 15, 2012) (SR–NYSEArca–2012–95).

[12] *See* Securities Exchange Act Release No. 65528 (October 11, 2011), 76 FR 64142 (October 17, 2011) (SR–NASDAQ–2011–138).

[13] *See* Securities Exchange Act Release Nos. 65771 (November 17, 2011), 76 FR 72472 (November 23, 2011) (SR–ISE–2011–60) and 65806 (November 22, 2011), 76 FR 73753 (November 29, 2011) (SR–NYSEArca-2011–88).

[14] As previously discussed, the Exchange is also proposing to increase the number of series that may be opened on each class from 20 series per class to 30 series per class.

[15] *See* Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72473 (November 23, 2011) (SR–NASDAQ–2011–138)

Continued

The Exchange is competitively disadvantaged because it operates a substantially similar STOS Program as ISE, NOM, and PHLX, but is limited to listing a maximum of 20 series per options class that participates in its STOS Program (whereas ISE, NOM, and PHLX are not similarly restricted).

The Exchange again notes that the STOS Program has been well-received by market participants, in particular by retail investors. The Exchange believes that the current proposed revision to the STOS Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series, as well as provide consistency and uniformity among competing options exchanges.

Strike Price Intervals in the non-STOS Options

The Exchange is also proposing to add Rule 19.6(g) and to amend Rule 19.6 Commentary .05(e) and Rule 29.11(h)(5) to indicate during the expiration week of an option class that is selected for the STOS Program, the strike price intervals for the related non-STOS option shall be the same as the strike price intervals for the STOS option. Currently, the Exchange does not list STOS options during the expiration week of an option class. The Exchange is not proposing to change this functionality, but rather, the Exchange is proposing to allow the use of the same strike price intervals for the related non-short term option during expiration week as are used for the short term option. This will allow option classes that are selected for the STOS Program that are trading at narrower strike price intervals as part of the STOS Program to continue trading at the narrower strike price intervals during expiration week, even though the short term option will not be traded during that week. In addition, the Exchange proposes that during the week before the expiration week of a STOS option, the Exchange shall open the related non-STOS option for trading in STOS option intervals in the same manner that they are opened for STOS options. Thus, a non-STOS option may be opened in STOS option intervals on a Thursday or Friday that is a business day before the non-STOS option expiration week. This functionality is identical to that of BOX,[16] among others, and would promote consistency in strike prices during the week prior to expiration, when the Exchange does not list short term options.

Definition of STOS

The Exchange is also proposing to amend Rules 16.1(a)(57) and 29.2(n) to make the definition of Short Term Option Series accurately reflect the proposed additional expirations proposed above. Currently, the definitions only include one expiration for STOS. The Exchange is proposing to include the additional expirations proposed above in both definitions of STOS.

Adding Titles to Certain Paragraphs

The Exchange is also proposing to amend its rules in order to make more clear which paragraphs are related to the initials series and additional series for each option class that participates in the STOS Program as well as the strike intervals on Short Term Option Series.

With regard to the impact of these proposals on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with proposed expansion to the STOS Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(5) of the Act [18] 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. This will be effectuated by the following rule changes: STOS Program strike price intervals of $0.50 for option classes that trade in $1 increments; during the expiration week of the non-short term option, the strike price intervals for the non-short term option will be the same as for the short term option; allowing the Exchange to open STOS that are opened by other securities exchanges in option classes selected under their respective short term option rules; expanding the number of expirations to five consecutive expirations under the STOS Program for trading on the Exchange; and increasing the number of classes and strikes that are eligible to participate in the STOS Program. The Exchange believes that expanding the current STOS Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions, while ensuring conformity between short term options and related non-short term options. While the expansion of the STOS Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a limited number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

(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 believes that the proposal will allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their short term options series programs that are identical to the changes proposed by this filing.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the

(order granting approval of proposed rule change expanding the short term option series program) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–PHLX–2011–131) (order granting approval of proposed rule to increase the number of series permitted per class in the short term option series program); *see also* Securities Exchange Act Release No. 66623 (March 20, 2012), 77 FR 17531 (March 26, 2012) (SR–ISE–2012–23).

[16] *See* Securities Exchange Act Release No. 67870 (September 17, 2012), 77 FR 58600 (September 21, 2012) (SR–BOX–2012–012).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Act[19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have expanded and modified their STOS programs, which been approved by the Commission or filed for immediate effectiveness as ''copycat'' filings.[21] Waiver of the delay would allow BATS to compete with these exchanges and clarify its rules without undue delay. Therefore, the Commission grants the Exchange's waiver request and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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–BATS–2013–006 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–BATS–2013–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2013–006 and should be submitted on or before March 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03304 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange satisfied this requirement.

[21] *See supra,* notes 7–8, 11–13, and 15–16.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68862; File No. SR–NYSEArca–2013–08]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the SPDR Blackstone/GSO Senior Loan ETF Under NYSE Arca Equities Rule 8.600

February 7, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 24, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the SPDR Blackstone/GSO Senior Loan ETF under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[4] on the Exchange: SPDR Blackstone/GSO

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

Senior Loan ETF (the ''Fund'').[5] The Shares will be offered by SSgA Active ETF Trust (the ''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[6] SSgA Funds Management, Inc. (''Adviser'' or ''SSgA FM'') serves as the investment adviser to the Fund (the ''Adviser''). GSO/Blackstone Debt Funds Management LLC will serve as sub-adviser (''Sub-Adviser'' or ''GSO'') to the Portfolio (as referenced below) and the Fund, subject to supervision by the Adviser and the Trust's Board of Trustees (''Board''). State Street Global Markets, LLC (the ''Distributor'' or ''Principal Underwriter'') will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company (the ''Administrator,'' ''Custodian'' or ''Transfer Agent'') will serve as administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and the Sub-Adviser are each affiliated with a broker-dealer and have implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

SPDR Blackstone/GSO Senior Loan ETF

The investment objective of the Fund is to provide current income consistent with the preservation of capital. Under normal market conditions,[8] the Fund will invest all of its assets in the shares of the Blackstone/GSO Senior Loan Portfolio (the ''Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Portfolio.

According to the Registration Statement, in pursuing its investment objective, the Fund, under normal market conditions, will seek to outperform a primary and secondary loan index (as described below), by investing at least 80% of its net assets (plus any borrowings for investment purposes) in ''Senior Loans,'' which are described further below in ''Description of Senior Loans and the Senior Loan Market.'' The S&P/LSTA U.S. Leveraged Loan 100 Index (the ''Primary Index'') is comprised of the 100 largest Senior Loans, as measured by the borrowed amounts outstanding. The Markit iBoxx USD Leveraged Loan Index (the ''Secondary Index'') selects the 100 most liquid Senior Loans in the market. In addition to size, liquidity is also measured, in part, based on the number of market makers who trade a specific Senior Loan and the number and size of transactions in the context of the prevailing bid/offer spread. Markit utilizes proprietary models for the Secondary Index composition and updates to the Secondary Index.

The Fund will not seek to track either the Primary or Secondary Index, but rather will seek to outperform those indices. In doing so, the Sub-Adviser represents that the Portfolio will primarily invest in Senior Loans.[9] The

[5] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of five fixed income funds of the PIMCO ETF Trust); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing and trading of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (order approving listing and trading of Peritus High Yield ETF). Additionally, the Commission has previously approved the listing and trading of five other actively managed SSgA FM advised funds on the Exchange under Rule 8.600. Securities Exchange Act Release No. 66343 (February 7, 2012) 77 FR 7647 (February 13, 2012).

[6] The Trust is registered under the 1940 Act. On April 1, 2011, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act''), and under the 1940 Act relating to the Fund (File Nos. 333–173276 and 811–22542) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The terms ''under normal market conditions'' or ''under normal market circumstances'' include, but are not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the investment Sub-Adviser would continue to seek to achieve the Fund's investment objective. Specifically, the Portfolio and Fund would continue to invest in Senior Loans. In response to prolonged periods of constrained or difficult market conditions the Sub-Adviser will likely focus on investing in the largest and most liquid loans available in the market.

[9] The Sub-Adviser represents that, in general, the Portfolio (*i.e.,* the master fund) is where investments will be held, which investments will primarily consist of Senior Loans; and may, to a lesser extent, include ''other investments'' as described under ''Other Investments'' below. The Fund (*i.e.,* the feeder fund) will invest in shares of the Portfolio and will not invest in ''Other Investments,'' but may be exposed to such investments by means of the Fund's investment in

Portfolio intends to hold a large percentage of the components of the Primary and Secondary Indices. It is anticipated that the Portfolio, in accordance with its principal investment strategy, will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion and meet the liquidity thresholds of the Primary and/or the Secondary Indices. Each of the Portfolio's Senior Loan investments is expected to have no less than $250 million USD par outstanding.

The Sub-Adviser considers Senior Loans to be first lien senior secured floating rate bank loans. A Senior Loan is an advance or commitment of funds made by one or more banks or similar financial institutions to one or more corporations, partnerships or other business entities and typically pays interest at a floating or adjusting rate that is determined periodically at a designated premium above a base lending rate, most commonly the London-Interbank Offered Rate (''LIBOR''). A Senior Loan is considered senior to all other unsecured claims against the borrower, senior to or pari passu with all other secured claims, meaning that in the event of a bankruptcy the Senior Loan, together with other first lien claims, is entitled to be the first to be repaid out of proceeds of the assets securing the loans, before other existing unsecured claims or interests receive repayment. However, in bankruptcy proceedings, there may be other claims, such as taxes or additional advances which take precedence.[10]

According to the Registration Statement, the Portfolio will invest in Senior Loans that are made predominantly to businesses operating in North America, but may also invest in Senior Loans made to businesses operating outside of North America. The Portfolio may invest in Senior Loans directly, either from the borrower as part of a primary issuance or in the secondary market through assignments of portions of Senior Loans from third parties, or participations in Senior Loans, which are contractual relationships with an existing lender in a loan facility whereby the Portfolio purchases the right to receive principal and interest payments on a loan but the existing lender remains the record holder of the loan. Under normal market conditions, the Portfolio expects to maintain an average interest rate duration of less than 90 days.

In selecting securities for the Portfolio, the Portfolio's Sub-Adviser will seek to construct a portfolio of loans that it believes is less volatile than the general loan market. In addition, when making investments, the Sub-Adviser will seek to maintain appropriate liquidity and price transparency for the Portfolio. On an on-going basis, the Sub-Adviser will add or remove those individual loans that it believes will cause the Portfolio to outperform or underperform, respectively, either the Primary or Secondary Index.

When identifying prospective investment opportunities in Senior Loans, the Sub-Adviser currently intends to invest primarily in Senior Loans that are below investment grade quality and will rely on fundamental credit analysis in an effort to attempt to minimize the loss of the Portfolio's capital.[11] The Sub-Adviser expects to invest in Senior Loans or other debt of companies possessing the attributes described below, which it believes will help generate higher risk adjusted total returns.[12] The Sub-Adviser does not intend to purchase Senior Loans that are in default. However, the Portfolio may hold a Senior Loan that has defaulted subsequent to its purchase by the Portfolio.

The Sub-Adviser intends to invest in Senior Loans or other debt of companies that it believes have developed strong positions within their respective markets and exhibit the potential to maintain sufficient cash flows and profitability to service their obligations in a range of economic environments. The Sub-Adviser will seek Senior Loans or other debt of companies that it believes possess advantages in scale, scope, customer loyalty, product pricing, or product quality versus their competitors, thereby minimizing business risk and protecting profitability.

The Sub-Adviser intends to invest primarily in Senior Loans or other debt of established companies which have demonstrated a record of profitability and cash flows over several economic cycles. The Sub-Adviser believes such companies are well-positioned to maintain consistent cash flow to service and repay their obligations and maintain growth in their businesses or market share. The Sub-Adviser does not intend to invest in Senior Loans or other debt of primarily start-up companies, companies in turnaround situations or companies with speculative business plans.

The Sub-Adviser intends to focus on investments in which the Senior Loans or other debt of a target company has an experienced management team with an established track record of success. The Sub-Adviser will typically require companies to have in place proper incentives to align management's goals with the Portfolio's goals.

Often the Sub-Adviser will seek to participate in transactions sponsored by what it believes to be high-quality private equity firms. The Sub-Adviser believes that a private equity sponsor's willingness to invest significant sums of equity capital into a company is an implicit endorsement of the quality of the investment. Further, private equity sponsors of companies with significant investments at risk have the ability and a strong incentive to contribute

shares of the Portfolio. In extraordinary instances, the Fund reserves the right to make direct investments in Senior Loans and other investments.

[10] Senior Loans consist generally of obligations of companies and other entities (collectively, ''borrowers'') incurred for the purpose of reorganizing the assets and liabilities of a borrower; acquiring another company; taking over control of a company (leveraged buyout); temporary refinancing; or financing internal growth or other general business purposes. Senior Loans are often obligations of borrowers who have incurred a significant percentage of debt compared to equity issued and thus are highly leveraged.

[11] The Portfolio will primarily invest in securities (including Senior Loans) which typically will be rated below investment grade. Securities rated below investment grade, commonly referred to as ''junk'' or ''high yield'' securities, include securities that are rated Ba1/BB+/BB+ or below by Moody's Investors Service, Inc. (''Moody's''), Fitch Inc., or Standard & Poor's, Inc. (''S&P''), respectively, and may involve greater risks than securities in higher rating categories.

[12] According to the Registration Statement, the loan market, as represented by the S&P/LSTA (Loan Syndications and Trading Association) Leveraged Loan Index, experienced significant growth in terms of number and aggregate volume of loans outstanding since the inception of the index in 1997. In 1997, the total amount of loans in the market aggregated less than $10 billion. By April of 2000, it had grown to over $100 billion, and by July of 2007 the market had grown to over $500 billion. The size of the market peaked in November of 2008 at $594 billion. During this period, the demand for loans and the number of investors participating in the loan market also increased significantly.

According to the Registration Statement, since 2008, the aggregate size of the market has contracted, characterized by limited new loan issuance and payoffs of outstanding loans. From the peak in 2008 through July 2010, the overall size of the loan market contracted by approximately 15%. The number of market participants also decreased during that period. Although the number of new loans being issued in the market since 2010 is increasing, there can be no assurance that the size of the loan market, and the number of participants, will return to earlier levels. An increase in demand for Senior Loans may benefit the Fund by providing increased liquidity for such loans and higher sales prices, but it may also adversely affect the rate of interest payable on such loans acquired by the Portfolio and the rights provided to the Portfolio under the terms of the applicable loan agreement, and may increase the price of loans that the Portfolio wishes to purchase in the secondary market. A decrease in the demand for Senior Loans may adversely affect the price of loans in the Portfolio, which could cause the Fund's net asset value (''NAV'') to decline.

additional capital in difficult economic times should operational issues arise.

The Sub-Adviser will seek to invest in Senior Loans or other debt broadly among companies and industries, thereby potentially reducing the risk of a downturn in any one company or industry having a disproportionate impact on the value of the Portfolio's holdings. However, as a result of its investment in participations in loans and the fact that originating banks may be deemed issuers of loans, the Portfolio may be deemed to concentrate its investments in the financial services industries. Loans, and the collateral securing them, are typically monitored by agents for the lenders, which may be the originating bank or banks.[13]

The Portfolio and the Fund are expected to be managed in a ''master-feeder'' structure, under which the Fund, under normal market conditions, will invest all of its assets in the Portfolio, the corresponding ''master fund,'' which is a separate 1940 Act-registered mutual fund that has an identical investment objective. As a result, the Fund (*i.e.,* a ''feeder fund'') has an indirect interest in all of the securities owned by the Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments.

The Sub-Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, investment advisory fees charged at the master-fund level are deducted from the advisory fees charged at the feeder-fund level. According to the Registration Statement, this arrangement avoids a ''layering'' of fees, *e.g.,* the Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objectives directly. In addition, the Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Trust's Board of Trustees determines that doing so would be in the best interests of shareholders.

According to the Registration Statement, historically, the amount of public information available about a specific Senior Loan has been less extensive than if the loan were registered or exchange-traded. As noted above, the loans in which the Portfolio will invest will, in most instances, be Senior Loans, which are secured and senior to other indebtedness of the borrower. Each Senior Loan will generally be secured by collateral such as accounts receivable, inventory, equipment, real estate, intangible assets such as trademarks, copyrights and patents, and securities of subsidiaries or affiliates. The value of the collateral generally will be determined by reference to financial statements of the borrower, by an independent appraisal, by obtaining the market value of such collateral, in the case of cash or securities if readily ascertainable, or by other customary valuation techniques considered appropriate by the Sub-Adviser. The value of collateral may decline after the Portfolio's investment, and collateral may be difficult to sell in the event of default. Consequently, the Portfolio may not receive all the payments to which it is entitled. By virtue of their senior position and collateral, Senior Loans typically provide lenders with the first right to cash flows or proceeds from the sale of a borrower's collateral if the borrower becomes insolvent (subject to the limitations of bankruptcy law, which may provide higher priority to certain claims such as employee salaries, employee pensions, and taxes). This means Senior Loans are generally repaid before unsecured bank loans, corporate bonds, subordinated debt, trade creditors, and preferred or common stockholders. To the extent that the Portfolio invests in unsecured loans, if the borrower defaults on such loan, there is no specific collateral on which the lender can foreclose. If the borrower defaults on a subordinated loan, the collateral may not be sufficient to cover both the senior and subordinated loans.

According to the Registration Statement, there is no organized exchange on which loans are traded and reliable market quotations may not be readily available. A majority of the Portfolio's assets are likely to be invested in loans that are less liquid than securities traded on national exchanges. Loans with reduced liquidity involve greater risk than securities with more liquid markets. Available market quotations for such loans may vary over time, and if the credit quality of a loan unexpectedly declines, secondary trading of that loan may decline for a period of time. During periods of infrequent trading, valuing a loan can be more difficult and buying and selling a loan at an acceptable price can be more difficult and delayed. In the event that the Portfolio voluntarily or involuntarily liquidates Portfolio assets during periods of infrequent trading, it may not receive full value for those assets. Therefore, elements of judgment may play a greater role in valuation of loans. To the extent that a secondary market exists for certain loans, the market may be subject to irregular trading activity, wide bid/ask spreads and extended trade settlement periods.

According to the Registration Statement, Senior Loans will usually require, in addition to scheduled payments of interest and principal, the prepayment of the Senior Loan from free cash flow, as described in the Registration Statement. The degree to which borrowers prepay Senior Loans, whether as a contractual requirement or at their election, may be affected by general business conditions, the financial condition of the borrower and competitive conditions among loan investors, among others. As such, prepayments cannot be predicted with accuracy. Recent market conditions, including falling default rates among others, have led to increased prepayment frequency and loan renegotiations. These renegotiations are often on terms more favorable to borrowers. Upon a prepayment, either in part or in full, the actual outstanding debt on which the Portfolio derives interest income will be reduced. However, the Portfolio may receive a prepayment penalty fee assessed against the prepaying borrower.

Other Investments

According to the Registration Statement, in addition to the principal investments described above, the Portfolio may invest in other investments, as described below. The Fund may (indirectly through its investments in the Portfolio or, in extraordinary circumstances, directly) invest in the following types of investments. The investment practices of the Portfolio are the same in all material respects to those of the Fund.

The Portfolio may invest in bonds, including corporate bonds; high yield debt securities; and U.S. Government

[13] According to the Registration Statement, the Portfolio may be reliant on the creditworthiness of the agent bank and other intermediate participants in a Senior Loan, in addition to the borrower, since rights that may exist under the loan against the borrower if the borrower defaults are typically asserted by or through the agent bank or intermediate participant. Agents are typically large commercial banks, although for Senior Loans that are not broadly syndicated they can also include thrift institutions, insurance companies or finance companies (or their affiliates). Such companies may be especially susceptible to the effects of changes in interest rates resulting from changes in U.S. or foreign fiscal or monetary policies, governmental regulations affecting capital raising activities or other economic or market fluctuations. It is the expectation that the Portfolio will only invest in broadly syndicated loans.

obligations.[14] The Portfolio also may invest in preferred securities.

The Portfolio may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and its securities lending cash collateral. A repurchase agreement is an agreement under which the Portfolio acquires a financial instrument (*e.g.,* a security issued by the U.S. government or an agency thereof, a banker's acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. In addition, the Portfolio may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing.

The Portfolio may invest in commercial paper. Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing.

Subject to limitations, the Portfolio may invest in secured loans that are not first lien loans or loans that are unsecured. These loans have the same characteristics as Senior Loans except that such loans are not first in priority of repayment and/or may not be secured by collateral. Accordingly, the risks associated with these loans are higher than the risks for loans with first priority over the collateral. Because these loans are lower in priority and/or unsecured, they are subject to the additional risk that the cash flow of the borrower may be insufficient to meet scheduled payments after giving effect to the secured obligations of the borrower or in the case of a default, recoveries may be lower for unsecured loans than for secured loans.[15]

The Portfolio may invest in short-term instruments, including money market instruments (including money market funds advised by the Adviser), cash and cash equivalents, on an ongoing basis to provide liquidity or for other reasons.

The Portfolio may invest in the securities of other investment companies, including closed-end funds (including loan-focused closed end funds), subject to applicable limitations under Section 12(d)(1) of the 1940 Act.[16] To the extent allowed by law, regulation, the Portfolio's investment restrictions and the Trust's Exemptive Order, the Portfolio may invest its assets in securities of investment companies that are money market funds, including those advised by the Adviser or otherwise affiliated with the Adviser, in excess of the limits discussed above.

In addition, the Portfolio may invest in exchange-traded notes (''ETNs''), such as securities listed on the Exchange under NYSE Arca Equities Rule 5.2(j)(6), which are debt obligations of investment banks that are traded on exchanges and the returns of which are linked to the performance of certain reference assets, which may include market indexes.

The Portfolio will not invest 25% or more of the value of its total assets in securities of issuers in any one industry; however it may be deemed to concentrate its investment in any of the industries or group of industries in the financial services sector (consisting of financial institutions, including commercial banks, insurance companies and other financial companies and their respective holding companies) to the extent that the banks originating or acting as agents for the lenders, or granting or acting as intermediaries in participation interests, in loans held by the Portfolio are deemed to be issuers of such loans.[17]

The Portfolio may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser and Sub-Adviser. The Portfolio will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Portfolio's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[18]

Except for investments in ETFs that may hold non-U.S. issues, the Portfolio will not otherwise invest in non-U.S.-registered equity issues.

The Portfolio will not invest in options contracts, futures contracts or swap agreements.

In certain situations or market conditions, the Portfolio may temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Portfolio's investment objective and is in the best interest of the Portfolio. For example, the Portfolio may hold a higher than normal proportion of its assets in cash in times of extreme market stress.[19] The Portfolio may borrow money from a bank as permitted by the 1940 Act or other governing statute, by applicable rules thereunder, or by Commission or other regulatory agency with authority over the Portfolio, but only for temporary or emergency purposes.

The Portfolio will be classified as a ''diversified'' investment company under the 1940 Act.[20]

The Portfolio intends to qualify for and to elect treatment as a separate

[14] U.S. Government obligations are a type of bond and include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies or instrumentalities. The Portfolio also may purchase U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities.

[15] According to the Registration Statement, secured loans that are not first lien and loans that are unsecured generally have greater price volatility than Senior Loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in these loans, which would create greater credit risk exposure for the holders of such loans. Secured loans that are not first lien and loans that are unsecured share the same risks as other below investment grade instruments.

[16] The Portfolio may invest in other debt or fixed income exchange-traded funds (''ETFs''), such as securities listed on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100 and 8.600, (including ETFs managed by the Adviser). ETFs may be structured as investment companies that are registered under the 1940 Act, typically as open-end funds or unit investment trusts. These ETFs are generally based on specific domestic and foreign market securities indices.

[17] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[18] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[19] *See* note 8, *supra.*

[20] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5).

regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[21]

The Portfolio's investments will be consistent with the Portfolio's investment objective and will not be used to enhance leverage.

Criteria To Be Applied to the Fund

While the Fund, which would be listed pursuant to the criteria applicable to actively managed funds under NYSE Arca Equities Rule 8.600, is not eligible for listing under NYSE Arca Equities Rule 5.2(j)(3) applicable to listing and trading of Investment Company Units based on a securities index, the Adviser and Sub-Adviser represent that, under normal market conditions, the Fund would satisfy the generic fixed income initial listing requirements in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 on a continuous basis measured at the time of purchase, as described below.[22]

With respect to the requirement of Commentary .02(a)(1), as noted in the Registration Statement, the Fund (though its investment in the Portfolio) will invest at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. The Adviser and Sub-Adviser expect that substantially all of the Fund's assets will be invested in Fixed Income Securities or cash/cash-like instruments. With respect to the requirement of Commentary .02(a)(2), the Portfolio's Adviser and Sub-Adviser expect that substantially all, but at least 75% of the Portfolio's portfolio will be invested in loans that have an aggregate outstanding exposure of greater than $100 million. With respect to the requirement of Commentary .02(a)(3), the Sub-Adviser represents that the Portfolio will not typically invest in convertible securities; however, should the Portfolio make such investments, the Sub-Adviser would direct the Portfolio to divest any converted equity security as soon as practicable.

With respect to the requirement of Commentary .02(a)(4), the Sub-Adviser represents that the Portfolio will not concentrate its investments in excess of 30% in any one security (excluding Treasury Securities and GSE Securities), and will not invest more than 65% of its assets in five or fewer securities (excluding Treasury Securities and GSE Securities).

With respect to the requirement of Commentary .02(a)(5), the Sub-Adviser represents that the Portfolio will invest in Senior Loans issued to at least 13 non-affiliated borrowers.

With respect to the requirements of Commentary .02(a)(6), the Sub-Adviser represents that the Portfolio's portfolio may make investments on a continuous basis in compliance with such requirement at the time of purchase; however, the market for Senior Loans differs in several material respects from the market of other fixed income securities (*e.g.,* bonds). A significant percentage of the Senior Loan market would not meet the criteria set forth in Commentary .02(a)(6), but would be readily tradable in the secondary market. For the 12 month period ending August 12, 2012, 53.4% of the borrowers of primary Senior Loans (also known as leveraged loans) had total indebtedness of $1 billion or less and Senior Loans outstanding of $250 million or more. (Source: S&P). In order to add to the Portfolio's diversification and to expand the Portfolio's investment universe, the Portfolio may invest in Senior Loans borrowed by entities that would not meet the criteria set forth in Commentary .02(a)(6) above provided the borrower has at least $250 million outstanding in Senior Loans. The Senior Loans borrowed by such entities would be well known to participants in the Senior Loan markets, would typically attract multiple market makers, and would share liquidity and transparency characteristics of senior secured debt borrowed by entities meeting the criteria in the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.

Description of Senior Loans and the Senior Loan Market

The Sub-Adviser represents that Senior Loans represent debt obligations of sub-investment grade corporate borrowers, similar to high yield bonds; however, Senior Loans are different from traditional high yield bonds in several important respects. First, Senior Loans are typically senior to other obligations of the borrower and secured by the assets of the borrower. Senior Loans rank at the top of a borrower's capital structure in terms of priority of payment, ahead of any subordinated debt (high yield) or the borrower's common equity. These loans are also secured, as the holders of these loans have a lien on most if not all of the corporate issuer's plant, property, equipment, receivables, cash balances, licenses, trademarks, etc. Furthermore, the corporate borrower of Senior Loans executes a credit agreement that typically restricts what it can do (debt incurrence, asset dispositions, etc.) without the lenders' approval, and, in addition, often requires the borrower to meet certain ongoing financial covenants (EBITDA, leverage tests, etc.). Finally, Senior Loans are floating rate obligations which typically pay a fixed spread over 3 month LIBOR.

Institutional investors access the market today primarily through commingled funds or separately managed accounts. Individual investors have gained exposure to Senior Loans primarily through registered open end or closed end mutual funds and business development companies or occasionally through limited partnerships.

The performance of a Senior Loans portfolio is driven by credit selection. Investing in Senior Loans involves detailed credit analysis and sound investment judgment culminating in the timely payout of interest and ultimate return of principal. Loans are generally prepayable at any time, typically without penalty. Loans are typically

[21] 26 U.S.C. 851.

[22] NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 sets forth generic listing criteria applicable to listing under Rule 19b–4(e) under the Exchange Act of Investment Company Units (''Units'') based on an index or portfolio of ''Fixed Income Securities,'' which are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a) is as follows: (a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Units pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 on the Corporation, the components of an index or portfolio underlying a series of Units shall meet the following criteria: (1) The index or portfolio must consist of Fixed Income Securities; (2) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more; (3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio; (4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio; (5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and (6) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

purchased at close to 100 (''par'') and are also typically repaid at 100; the return to the investor comes from the quarterly interest coupons and the return of principal. Underperformance comes from making investment misjudgments whereby the corporate borrower fails to repay the loan at maturity or otherwise defaults on the obligation.[23]

The Sub-Adviser represents that the Senior Loan market, in terms of total outstanding loans by dollar volume is approximately equal in size to the high yield corporate bond market in the U.S.—between $1.2 trillion and $1.5 trillion. The market for Senior Loans is almost exclusively comprised of non-investment grade corporate borrowers. The Loan Syndication and Trading Association (''LSTA''), a trade group sponsored by both underwriters of and institutional investors in senior bank loans, has been tracking trading volumes and bid-offer spreads for the asset class since 2007. For the month ended June 30, 2012—a representative period—$30 billion of Senior Loans changed hands representing 1,109 individual transactions. (Source: LSTA.) Average quarterly Senior Loan trading volume exceeded $100 billion during 2011. Quarterly trading volumes fell modestly to $98 billion in the second calendar quarter of 2012.[24]

The Portfolio, as noted above, will primarily invest in the more liquid and higher rated segment of the Senior Loan market. The average credit rating of the Senior Loans that the Fund typically will hold will be rated between BB+ and B+ as rated by S&P. The most actively traded loans will generally have a tranche size outstanding (or total float of the issue) in excess of $250 million. The borrowers of these broadly syndicated bank loans will typically be followed by many ''buy-side'' and ''sell-side'' credit analysts who will in turn rely on the borrower to provide transparent financial information concerning its business performance and operating results. The Sub-Adviser represents that such borrowers typically provide significant financial transparency to the market through the delivery of financial statements on at least a quarterly basis as required by the executed credit agreements. Additionally, bid and offers in the Senior Loans are available throughout the trading day on larger Senior Loans issues with multiple dealer quotes available.

The Sub-Adviser represents that the underwriters, or agent banks, which distribute, syndicate and trade Senior Loans are among the largest global financial institutions, including JPMorgan, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, Wells Fargo, Deutsche Bank, Barclays, Credit Suisse and others. It is common for multiple firms to act as underwriters and market makers for a specific Senior Loan issue. For example, two underwriters may co-underwrite and fund a Senior Loan that has a $1 billion institutional tranche. One of the underwriters acting as syndication agent for the financing, will then draft an offering memorandum (similar to an equity IPO prospectus), distribute it to potential investors, schedule management meetings with the largest loan investors and arrange a bank meeting that includes management presentations along with a question and answer session. The investor audience attends in person as well as via telephone with both live and recorded conference call options. After a two week syndication process where investors can complete their due diligence work with access to company management and underwriter bankers to answer credit questions, investors' commitments are collected by the underwriter. The underwriter will typically allocate the loan to 80–120 investors within the following week, with the largest position representing 3–5% of the tranche size in a successful syndication. The underwriters will both make executable two sided markets in the loan with eighth to a quarter point bid/ask spreads on sizes in the $2 million to $20 million range, depending on the issue. Other banks also have Senior Loan trading desks that make secondary bid/ask markets in the loans after they are allocated. Senior Loan investors can also obtain information on Senior Loans and their borrowers from numerous public sources, including Bloomberg, FactSet, public financial statement filings (Forms 10–K and 10–Q), and sell side research analysts.

The Sub-Adviser represents that the segment of the Senior Loan market that the Portfolio will focus on is highly liquid. Senior Loans of $250 million or more in issuance are typically quite liquid and will have multiple market makers and typically 75 or more institutional holders. The standard bid/offer spreads for such loans are ¼ to ½ point, although the largest firms, such as the Sub-Adviser, can transact on a 1/8th point market across dealers for Senior Loans of $250 million or more outstanding.[25]

The Sub-Adviser represents that, while Senior Loans are not reported through TRACE,[26] there is significant transparency with dealers updating investors on trades and trading activity throughout the day. Dealers update their ''trading runs'' of Senior Loans throughout the day and distribute these via electronic messaging to the institutional investor community. The Adviser represents further that, upon commencement of trading in the Fund, the Adviser and Sub-Adviser would ensure that all ''Authorized Participants'' (as described below) for the Portfolio were added to these intraday market maker Senior Loan ''trading runs.''

Description of the S&P/LSTA U.S. Leveraged Loan 100 Index[27]

The Primary Index is a market value-weighted index designed to measure the performance of the largest segment of the U.S. syndicated leveraged loan market. The Primary Index consists of 100 loan facilities drawn from a larger benchmark—the S&P/LSTA Leveraged Loan Index (''LLI'')—which covers more than 900 facilities and, as of June 30, 2011, had a market value of more than US$ 490 billion. As of June 30, 2011, the Primary Index had a total market value of US$ 183.4 billion.

[23] Additional capital features inherent to Senior Loans include the following: (1) Such loans are subject to mandatory and discretionary prepayments and can be prepaid in full, often without penalty, for a variety of reasons; (2) companies may opt to refinance an existing loan at a lower spread or repay the loan with a high yield bond issuance; (3) required excess cash flow sweeps; (4) covenants requiring loan prepayment from proceeds of asset sales; and (5) quarterly amortization.

[24] As of October 2012, 195 open ended loan funds and open ended bond funds were invested in the Senior Loan market as a primary or secondary asset class. (Source: Morningstar.) As of October 2012, there were approximately $65 billion of assets under management in 39 open ended loan funds and approximately $252 billion of assets under management in 158 open ended high yield bond funds. 86 of the 158 open ended high yield bond funds made an allocation to Senior Loans, and, among high yield bond funds that had an allocation to Senior Loans, such allocation was 4.99% on average. (Source: Morningstar Direct.)

[25] The Exchange notes that the PowerShares Senior Loan Portfolio (Symbol: BKLN), is an index-based exchange-traded fund listed on the Exchange since March 5, 2011 under NYSE Arca Equities Rule 5.2(j)(3). The underlying index for BKLN is the S&P/LSTA U.S. Leveraged Loan 100 Index, the Fund's Primary Index. As of November 20, 2012, BKLN had assets under management of approximately $1.28 billion. Since inception, BKLN's average daily trading volume has been 545,065 shares, with an average premium/discount to NAV of 0.43%.

[26] TRACE (Trade Reporting and Compliance Engine), is a vehicle developed by the Financial Industry Regulatory Authority (''FINRA'') that facilitates the mandatory over-the-counter secondary market transactions in eligible fixed income securities.

[27] The description herein of the Primary Index is based on information in ''S&P LSTA U.S. Leveraged Loan 100 Index Methodology, August 2011'' (''Primary Index Description'').

The Primary Index is designed to reflect the largest facilities in the leveraged loan market. It mirrors the market-weighted performance of the largest institutional leveraged loans based upon market weightings, spreads and interest payments.

The Primary Index is rules based, although the S&P/LSTA U.S. Leveraged Loan 100 Index Committee (the ''Index Committee,'' described below) reserves the right to exercise discretion when necessary.[28]

The Primary Index is rebalanced semi-annually to avoid excessive turnover, but reviewed weekly to reflect pay-downs and ensure that the Primary Index portfolio maintains 100 loan facilities. The constituents of the Primary Index (the ''Index Loans'') are drawn from a universe of syndicated leveraged loans representing over 90% of the leveraged loan market.

All syndicated leveraged loans covered by the LLI universe are eligible for inclusion in the Primary Index. Term loans from syndicated credits must meet the following criteria at issuance in order to be eligible for inclusion in the LLI:

- Senior secured
- Minimum initial term of one year
- Minimum initial spread of LIBOR + 125 basis points
- U.S. dollar denominated.

All Primary Index loans must have a publicly assigned CUSIP.

According to the Primary Index Description, the Primary Index is designed to include the largest loan facilities from the LLI universe. Par outstanding is a key criterion for loan selection. Loan facilities are included if they are among the largest first lien facilities from the Primary Index in terms of par amount outstanding. There is no minimum size requirement on individual facilities in the Primary Index, but the LLI universe minimum is US$ 50 million. Only the 100 largest first lien facilities from the LLI that meet all eligibility requirements are considered for inclusion. The Primary Index covers all borrowers regardless of origin; however, all facilities must be denominated in U.S. dollars.

A Primary Index addition is generally made only if a vacancy is created by a Primary Index deletion. Primary Index additions are reviewed on a weekly basis and are made according to par outstanding and overall liquidity. Liquidity is determined by the par outstanding and number of market bids available. Facilities are retired when they are no longer priced by ''LSTA/LPC Mark-to-Market Pricing'' or when the facility is repaid.[29]

Each loan facility's total return is calculated by aggregating the interest return, reflecting the return due to interest paid and accrued interest, and price return, reflecting the gains or losses due to changes in end-of-day prices and principal prepayments.

The Primary Index is maintained in accordance with the following rules:

- The Primary Index is reviewed each week to ensure that it includes 100 Index Loans.
- A complete review and rebalancing of all Primary Index constituents is completed on a semi-annual basis coinciding with the last weekly rebalance in June and in December.
- Eligible loan facilities approved by the Primary Index Committee are added to the Primary Index during the semi-annual rebalancing. Eligible loan facilities are added to the Primary Index at the weekly review only if other facilities are repaid or otherwise drop out of the Primary Index, in order to maintain 100 Index Loans.
- Any loan facility that fails to meet any of the eligibility criteria or that has a term to maturity less than or equal to 12 months plus 1 calendar day, as of the weekly Rebalancing Date, will not be included in the Primary Index.
- Par amounts of Primary Index loans will be adjusted on the weekly Rebalancing Date to reflect any changes that have occurred since the previous Rebalancing Date, due, for example, to partial pre-payments and pay-downs.[30]
- Constituent facilities are capped at 2% of the Primary Index and drawn-down at the weekly rebalancing. When a loan facility exceeds the 2% cap, the weight is reduced to 1.90% and the proceeds are invested in the other Primary Index components on a relative-weight basis.

The Primary Index is normally reviewed and rebalanced on a weekly basis to maintain 100 constituents. The Primary Index Committee (as described below), nevertheless, reserves the right to make adjustments to the Primary Index at any time that it believes appropriate.

Weekly Primary Index rebalancing maintenance (additions, deletions, pay-downs, and other changes to the Primary Index) is based on data as of Friday (or the last business day of the week in the case of holidays) and is announced the following Wednesday (or Tuesday in the case of a holiday) for implementation on the following Friday. Publicly available information, up to and including each Wednesday's close, is considered in each weekly rebalancing.

Primary Index changes published in the announcement generally are not subject to revision and will become effective on the date listed in the announcement.

The Primary Index Committee

The Primary Index Committee maintains the Primary Index.[31] The Primary Index Committee is comprised of employees of S&P. The Primary Index Committee is chaired by the Managing Director and Primary Index Committee Chairman at S&P.

Meetings are held annually and, from time to time, as needed. It is the sole responsibility of the Primary Index Committee to decide on all matters relating to methodology, maintenance, constituent selection and index procedures. The Primary Index Committee makes decisions based on all available information and Primary Index Committee discussions are kept confidential to avoid any unnecessary impact on market trading.

Markit iBoxx USD Liquid Leveraged Loan Index [32]

According to the Secondary Index Description, the Markit iBoxx USD Liquid Leveraged Loan Index is a subset of the benchmark Markit iBoxx USD Leveraged Loan Index (USD LLI). The Secondary Index limits the number of constituent loans by selecting larger and more liquid loans from the wider USD LLI index universe as determined by the Liquidity Ranking Procedure, described below. The procedure utilizes daily liquidity scores from the Markit Loan Pricing Service, which is a broader measure of liquidity, summarizing the performance of each loan across several

[28] S&P is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index.

[29] LSTA/LPC Mark-to-Market Pricing is used to price each loan in the index. LSTA/LPC Mark-to-Market Pricing is based on bid/ask quotes gathered from dealers and is not based upon derived pricing models. The Primary Index uses the average bid for its market value calculation.

[30] The Sub-Adviser represents that loan prepayments in 2011 were 40% of the S&P/LSTA Leveraged Loan Index and LTM September 30, 2012 are 28% (Source: LCD Quarterly Review, Third Quarter 2012). As a result of prepayments, the weighted average life of a loan is typically 2–3 years versus average maturity of 5–7 years. Existing investors in the Senior Loan may decline to participate in a loan refinancing that occurs at a lower spread in which case the loan would be repaid.

[31] The Primary Index Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index.

[32] The description herein of the Secondary Index is based on ''Markit iBoxx USD Liquid Leveraged Loan Index—Index Guide,'' September 2011 (''Secondary Index Description'').

liquidity metrics, such as number of quotes, or bid-offer sizes.[33]

The selection process for the Secondary Index will be used on the index inception date and at every monthly rebalancing (''Secondary Index Selection Date''). The selection process will involve the identification of the eligible universe using the eligibility criteria set out below. If the size of the eligible universe is greater than the target number of loans, the Liquidity Ranking Procedure will be used to determine the final index constituents. Once the index members are selected, they are automatically carried forward to the following month's selection, unless they no longer satisfy the eligibility criteria or enter a prolonged period of relative illiquidity. The Secondary Index eligibility criteria and the liquidity ranking procedure are described in further detail below.

The following six selection criteria are used to derive the eligible universe from the MarkitWSO USD-denominated loan universe: loan type; minimum size; liquidity/depth of market; spread; credit rating; and minimum time to maturity.[34]

Only USD-denominated loans are eligible for the Secondary Index.

Eligible loan types are fully funded term loans (fixed and floating rate) and defaulted loans. Ineligible loan types are 364-day facility; delayed term loans; deposit-funded tranche; letters of credit; mezzanine; PIK Toggle; PIK; pre-funded acquisition; revolving credit; strips; synthetic lease; and unfunded loans.

A minimum facility size of $500 million USD nominal is required to be eligible for the Secondary Index. A constituent is removed at the next rebalancing if its nominal outstanding falls below $500 million USD.

According to the Secondary Index Description, liquidity and depth of the market can be measured by the number of prices available for a particular loan and the length of time prices have been provided by the minimum required number of price contributors. The liquidity check is based on the 3-month period prior to the rebalancing cut-off date (liquidity test period). Only loans with a minimum liquidity/depth of 2 for at least 50% of trading days of the liquidity test period are eligible. Loans issued less than 3 months prior to the rebalancing cut-off date require a minimum liquidity/depth of 3 for at least 50% of trading days in the period from the issue date to the rebalancing cut-off date.

Only sub-investment grade loans are eligible for the Secondary Index. Each rated loan is assigned a composite index rating based on the ratings from Moody's and S&P's. If more than one agency publishes a rating for a loan, the average of the ratings determines the composite rating. The average rating is calculated as the numerical average of the ratings provided. To calculate the average, each rating [sic] assigned an integer number as follows: AAA/Aaa is assigned a 1, AA+/Aa1 a 2, etc. The resulting average is rounded to the nearest integer with .5 rounded up. Loans designated as ''Not Rated'' by both Moody's and S&P must have a minimum current spread of 125 basis points over LIBOR to be eligible for the Secondary Index. Loans designated as ''Not Rated'' are not assigned an index rating. Defaulted loans are eligible for the Secondary Index provided they meet all other criteria.[35]

The initial time to maturity is measured from the loan's issue date to its maturity date. A minimum initial time to maturity of one year is required for potential constituents. The minimum time to maturity threshold reduces the Secondary Index turnover and transaction costs associated with short-dated loans. Existing constituents with time to maturities of less than 1 year remain in the Secondary Index until maturity provided they meet all other eligibility criteria.

In order to determine the final Secondary Index constituents, the loans in the eligible universe are ranked according to their liquidity scores, as provided by the Markit Loan Pricing Service. Each loan in the MarkitWSO database[36] is assigned a daily score based on the loan's performance on the following liquidity metrics:

- Sources Quote: The number of dealers sending out runs.
- Frequency of Quotes: Total number of dealer runs.
- Number of Sources with Size: The number of dealer runs with associated size.
- Bid-offer spreads: The average bid-offer spread in dealer runs.
- Average quote size: The average size parsed from quotes.
- Movers Count: The end of day composite contributions which have moved on that day.

Each loan carries a score ranging from 1 to 5 in ascending order of liquidity, depending on the daily values for the above components. A loan with a score of 1 will have the best performance in each of the categories above. In the liquidity ranking procedure described below, average liquidity scores are calculated for each loan, over a calendar one or three month period immediately preceding each rebalancing date.

On the Secondary Index inception day, the target number of loans will be 100. Loans will be removed from the Secondary Index if they are no longer present in the current eligible universe or are not ranked within the first 125 places in terms of 3 month average liquidity score. On every subsequent rebalancing, the number of new loans to be selected will be equal to the number of loans which will be removed from the Secondary Index.

According to the Secondary Index Description, the parameters used in the selection process, including the target number of loans and the eligibility criteria, are subject to an annual review process to ensure that the Secondary Index continues to reflect the underlying loans market. The results of the analysis are submitted to the oversight committee for the Markit iBoxx USD Leveraged Loans Indices (''Oversight Committee'').[37] The review will consist of a qualitative and quantitative assessment of any developments in the loans market in terms of market size, depth, and overall liquidity conditions of the market together with a recommendation whether current index rules should be modified. Factors that will be considered in the assessment will include: size of the market; new issuance patterns and trends; outstanding number of loans and borrowers; and liquidity conditions.

All Markit iBoxx USD Leveraged Loans Indices are calculated at the end of each business day and re-balanced at the end of each month.

The Markit iBoxx USD Leveraged Loans Indices are calculated on the basis of end-of-day prices provided by Markit Loan Pricing services on each recommended Securities Industry and Financial Markets Association (''SIFMA'') U.S. trading day.

On each pricing day, end-of-day bid, mid and ask price quotes for the applicable loans are received from Markit Loan Pricing. Prices for all loans are taken at 4:15 p.m. Eastern time

[33] Markit is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

[34] MarkitWSO is a corporate loan data base that Markit maintains using information provided by agent banks on each constituent Senior Loan in its data base of approximately 4,300 Senior Loans.

[35] While the Secondary Index can include defaulting Senior Loans, the Sub-Adviser does not intend to invest in such loans.

[36] *See* note 34, *supra.*

[37] The Oversight Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

(''E.T.''). Secondary Index data is published and distributed on the next day by 8:00 a.m. E.T. and is available on the Markit index Web site, *http://indices.markit.com,* and through Bloomberg and Reuters.

Markit will provide bid, mid and ask prices for all eligible loans at the end of each index calculation day. Reference loan data will be provided by Markit, which represents up-to-date reference and transactional information on over 1,000 leveraged loans.

Creations and Redemptions of Shares

The Fund will issue and redeem Shares only in Creation Units at the NAV next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the New York Stock Exchange (''NYSE''), generally, 4:00 p.m. E.T. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the Authorized Participant agreement (as referred to below).

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (primarily Senior Loans) (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of the Deposit Securities (''Deposit Cash'') and the ''Cash Component,'' computed as described below. The primary method of creation and redemption transactions will be in cash. In-kind creation and redemption transactions will be available only if requested by an Authorized Participant and approved by the Trust.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

According to the Registration Statement, to be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''); or (ii) a Depository Trust Company (''DTC'') participant. In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Principal Underwriter and the Transfer Agent, and that has been accepted by the Trust, with respect to purchases and redemptions of Creation Units.

The Custodian, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange's Core Trading Session (currently 9:30 a.m., E.T.), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is subject to any applicable adjustments as described below, in order to effect purchases of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day.

With respect to the Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Portfolio's portfolio securities (''Fund Securities'') or the required amount of Deposit Cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.

The creation/redemption order cut-off time for the Fund is expected to be 4:00 p.m. Eastern Time for purchases of Shares. On days when the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, are accrued daily and taken into account for purposes of determining NAV.[38] The NAV of the Fund will be

[38] Markit will be the primary price source for Senior Loans in calculating the Portfolio's NAV. To

calculated by the Custodian and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that such exchange is open, provided that fixed-income assets (and, accordingly, the Fund's NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that SIFMA (or the applicable exchange or market on which the Fund's investments are traded) announces an early closing time. Creation/redemption order cut-off times may also be earlier on such days.

In calculating the Portfolio's and Fund's NAV per Share, the Portfolio's investments will generally be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer) or (iii) based on amortized cost. The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Fund's Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Pricing and Investment Committee to determine a security's fair value if a market price is not readily available.[39] In determining such value the Trust's Pricing and Investment Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (*e.g.,* movement in interest rates, market indices, and prices from the Fund's index providers). In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [40] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.spdrs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[41] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[42]

On a daily basis, the Disclosed Portfolio will include each portfolio security, including Senior Loans, and other financial instruments of the Portfolio with the following information on the Fund's Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities (including Senior Loans) and financial instruments held in the Portfolio, and percentage weighting of the security and financial instrument in the Portfolio. The Web site information will be publicly available at no charge.

One or more major market data vendors will widely disseminate, every fifteen seconds during the NYSE Arca Core Trading Session, a Portfolio Indicative Value (''PIV'') (as defined in NYSE Arca Equities Rule 8.600 (c)(3)), relating to the Fund.[43] The PIV calculations will be estimates of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The PIV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the PIV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which is calculated only once a day.

In addition, a basket composition file, which includes the security names, amount and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

The Primary Index description and Secondary Index description are publicly available. Primary and Secondary Index information, including values, components, and weightings, is updated and provided daily on a subscription basis by S&P and Markit, respectively. Complete methodologies for the Primary and Secondary Index are

the extent ''Other Investments'' are held, International Data Corporation (''IDC'') will be the primary price source for such investments.

[39] The Trust's Board has established a Pricing and Investment Committee that is composed of officers of the Trust, investment management personnel of the Adviser and senior operations and administrative personnel of State Street Bank and Trust Company. The Pricing and Investment Committee is responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Pricing and Investment Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

[40] 17 CFR 240.10A–3.

[41] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[42] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[43] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

made available on the Web sites of S&P and Markit, respectively.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line.

The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying Portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the Portfolio securities, including Senior Loans and other assets, will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[44] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[45] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.[46]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[47] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

[44] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[45] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[46] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[47] 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In pursuing its investment objective, the Portfolio seeks to outperform the Primary Index by normally investing at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. It is anticipated that the Portfolio, in accordance with its principal investment strategy, will invest 50% to 75% of its net assets in Senior Loans that are eligible for inclusion and meet the liquidity thresholds of the Primary and/or the Secondary Indices. Each of the Portfolio's Senior Loan investments will have no less than $250 million USD par outstanding. The Portfolio will not invest 25% or more of the value of its total assets in securities of borrowers in any one industry. The Portfolio may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and Sub-Adviser. The Adviser and the Sub-Adviser are each affiliated with a broker-dealer and have implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's Portfolio. The Portfolio's and Fund's investments will be consistent with the Portfolio's and Fund's investment objective and will not be used to enhance leverage. The Portfolio will not invest in options contracts, futures contracts or swap agreements. The Adviser and Sub-Adviser represent that, under normal market conditions, the Fund would satisfy the generic fixed income listing requirements in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 on a continuous basis measured at the time of purchase, as described above. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered equity issues. The Primary Index Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index. The Oversight Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. S&P and Markit are not broker-dealers or affiliated with a broker-dealer and each has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index and Secondary Index, respectively. The PIV will be disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The intra-day, closing and settlement prices of the Portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2013–08. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca-2013–08 and should be submitted on or before March 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03278 Filed 2–12–13; 8:45 am]

BILLING CODE 8011–01–P

[48] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before April 15, 2013.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, *mailto:202–205–7507%20%20gail.hepler@sba.gov,* 202–205–7528, *sandra.johnston@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations require that we determine that a participating Certified Development Company's Non-Bank Lender Institutions' or Microlender's management, ownership, etc. is of ''good character''. To do so requires the information requested on the Form 1081. This form also provides data used to determine the qualifications and capabilities of the lenders key personnel.

Title: ''Statement of Personal History.''

Description of Respondents: Small Business Lending Companies.

Form Number: 1081.

Annual Responses: 243.

Annual Burden: 122.

SUPPLEMENTARY INFORMATION: Under Small Business Administration (SBA) Dealer Floor Plan Pilot initiative SBA can now guarantee floor plan lines of credit made by participating lenders. The information collected from these lenders helps SBA to determine whether and to what extent the lines are revolving, as well as to develop more efficient and effective subsidy model for revolving loans.

Title: ''Lenders Disbursement & Collection Report.''

Description of Respondents: Small Business Lending Companies.

Form Number: 1502R.

Annual Responses: 750.

Annual Burden: 180.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Brenda Washington, Senior Program Analyst Office of HUBZone, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Brenda Washington, Office of HUBZone, *mailto:202–205–7507%20%20gail.hepler@sba.gov,* 202–205–7663, *brenda.washington@sba.gov.;* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The purpose of collecting this data is to perform economic impact analysis of the HUBZone Program. With the data collected, the Program will be able to measure the effect of the jobs creation and capital investment of the participating firms on various economic activity indicators of the designed communities such as unemployment rate, income and poverty rate.

Title: ''HUBZone Application Data Update.''

Description of Respondents: Small Business Concerns.

Form Number: 2298.

Annual Responses: 500.

Annual Burden: 250.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman-Karton, Program Analyst, *mailto:202–205–7507%20%20 gail.hepler@sba.gov202–619–1816Rachel.newman@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Administration's (SBA) resource partners are required under their cooperative agreement with the agency to provide business management training to small business owners and nascent owners. This information is needed to monitor and access the quality of training provided by these resource partners. Respondents are attendees at their training sessions.

Title: ''Training Program Evaluation.''

Description of Respondents: Small Business Recourse Partners.

Form Number: 20.

Annual Responses: 200,000.

Annual Burden: 40,000.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–03222 Filed 2–12–13; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 15, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, *curtis.rich@sba.gov* (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Servicing Agent Agreement''.

Frequency: On Occasion.

SBA Form Number: 1506.

Description of Respondents: Certified Development Companies and SBA Borrowers.

Responses: 7,830.

Annual Burden: 7,830.

Title: ''U.S. Small Business Administration Application for Section 504 Loan''.

Frequency: On Occasion.

SBA Form Number: 1244.

Description of Respondents: 504 Participants.

Responses: 6,800.

Annual Burden: 15,735.

Title: ''PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Request''.

Frequency: On Occasion.

SBA Form Number: 2234.

Description of Respondents: PCLP Lenders.

Responses: 1,700.

Annual Burden: 1,558.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–03223 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Chicago Executive Airport, Wheeling, IL.

SUMMARY: The FAA is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property located at Chicago Executive Airport, Wheeling, IL. The Parcels are now considered excess land not beneficial for future airport use. Proceeds from the sale of the land will be used for future airport improvement projects. This notice announces that the FAA is considering the release of the subject airport property at Chicago Executive Airport, from all federal land covenants. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

DATES: Comments must be received on or before March 15, 2013.

FOR FURTHER INFORMATION CONTACT: Gary D. Wilson, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7631/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the Chicago Executive Airport, 1020 Plant Road, Wheeling, Illinois 60093.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposal consists of Parcels 56, 58, 59, 88, 90, 107, 108, 109, 110, and 111, totaling 5.28 acres located west of the airport. The parcels were purchased with Federal funds for the relocation of Wolf Road around Runway 16. Following is a legal description of the properties being released located in Cook County, Illinois, and described as follows:

Parcels 58, 59 and 111

Part of the East 580 feet of the North half of the Southeast Quarter of the Northeast Quarter of Section 14, and part of Lot 13 in J.R. Willens Wheeling Estates, a subdivision in said North half recorded as Document No. 17012886 all in Township 42 North, Range 11, East of the third Principal Meridian Cook, Illinois described as follows:

Beginning at the Southwest corner of said Lot 13; thence North 00 Degrees 03 Minutes 47 Seconds West along the West line of said Lot 13, a distance of 150.65 feet to the South right of line of Debra Lane as dedicated by said J.R. Willen Wheeling Estates; thence South 89 Degrees 56 Minutes 17 Seconds East along said South line, a distance of 89.18 feet to a point on a non tangent curve; thence Southerly along a curve concave East having a radius of 1989.86 feet and a chord bearing of South 20 Degrees 45 Minutes 28 Seconds East, an ARC distance of 63.74 feet; thence South 21 Degrees 40 Minutes 26 Seconds East, a distance of 270.83 feet; thence South 31 Degrees 12 Minutes 26 Seconds West, a distance of 18.87 feet to the North line of Cindy Lane as dedicated by said J.R. Willens Wheeling Estates; thence North 89 Degrees 56 Minutes 17 Seconds West along said North line a distance of 68.94 feet to the West line of said East 590 feet; thence

North 00 Degrees 04 Minutes 4.28 seconds West along said West line, a distance of 176.65 feet to the Southeast corner of said Lot 13; thence North 89 Degrees 56 Minutes 17 Seconds West along the South line of said Lot 13, a distance of 132.68 feet to the place of beginning.

Parcels 88 and 90

Part of Lots 9–12. Both inclusive in Wolf Road Estates, a subdivision of the North 495.92 feet of the South ½ of the Northeast Quarter of the Northeast Quarter of Section 14, Township 42 North, Range 11 East of the Third Principal Meridian Recorded July 8, 1954 as Document No. 15954435 in Cook County, Illinois and that part of said South ½ described as follows:

Beginning at the Southwest corner of said Lot 12; thence North 00 Degrees 09 Minute 20 Seconds West along the West line of said Lots 9–12. A distance of 462.64 feet to the South Right of Way line of Kerry Lane as dedicated by said Wolf Road Estates; thence South 89 Degrees 59 Minutes 35 Seconds East along said South line, a distance of 75.70 feet; thence South 37 Degrees 26 Minutes 44 Seconds East, a distance of 50.48 feet to a point on a non tangent curve; thence Southerly along a curve concave Easterly having a radius of 1989.86 feet and a chord bearing of South 10 Degrees 12 Minutes 58 Seconds East, an ARC distance of 598.51 feet to the North Right of Way line of Debra Lane as dedicated by J.R. Willens Wheeling Estates a subdivision in the North half of the Southeast Quarter of the Northeast Quarter of said Section 14 recorded as Document No. 17012886; thence North 89 Degrees 56 Minutes 17 Seconds West along said Debra Lane, A distance of 682.70 feet to the West line of said Northeast Quarter of the Northeast Quarter; thence North 00 Degrees 09 Minutes 01 Second West along said West line. A distance of 163.57 feet to the South line of said Wolf Road Estates; thence South 89 Degrees 59 Minutes 35 Seconds East along the South line of Wolf Road Estates. A distance of 472.24 feet to the place of beginning.

Parcels 56, 107, 108, 109, and 110

Part of Lots 9–12, both inclusive in Wolf Road Estates, a subdivision of the North 495.92 feet of the South ½ of the Northeast Quarter of the Northeast Quarter of Section 14, Township 42 North, Range 11 East of the Third Principle Meridian recorded July 8, 1954 as Document No. 15954435 in Cook County, Illinois and that part of said South ½ described as follows:

Beginning at the Southwest corner of said Lot 12; thence North 00 Degrees 09 Minutes 20 Seconds West along the West line of said Lots 9–12, a distance of 462.64 feet to the South Right of Way line of Kerry Lane as dedicated by said Wolf Road Estates; thence South 89 Degrees 59 Minutes 35 Seconds East along said South line, a distance of 75.70 feet; thence South 37 Degrees 26 Minutes 44 Seconds East, a distance of 50.48 feet to a point on a non tangent curve; thence Southerly along a curve concave Easterly having a radius of 1989.86 feet and a chord bearing of South 10 Degrees 12 Minutes 58 Seconds East, an ARC distance of 598.51 feet to the North Right of Way line of Debra Lane as dedicated by J.R. Willens Wheeling Estates, a subdivision in the North half of the Southeast Quarter of the Northeast Quarter of said Section 14 recorded as Document No. 17012886; thence North 89 Degrees 56 Minutes 17 Seconds West along said Debra Lane, a distance of 682.70 feet to the West line of said Northeast Quarter of the Northeast Quarter; thence North 00 Degrees 09 Minutes 01 Seconds West along said West line, a distance of 163.57 feet to the South line of said Wolf Road Estates, a distance of 472.24 feet to the place of beginning. Said parcels contain 5.28 acres, more or less.

Issued in Des Plaines, Illinois on, February 5, 2013.

James G. Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2013–03334 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Lewis University Airport, Romeoville, IL.

SUMMARY: The FAA is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The Will County Department of Highways has offered fair market value to purchase the land for the Weber Road improvement project. The parcel is not needed for aeronautical purposes and the proceeds from the sale of the land will be used for future airport improvement projects. This notice announces that the FAA is considering the release of the subject airport property at the Lewis University Airport, Romeoville, IL, from all federal land covenants. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

DATES: Comments must be received on or before March 15, 2013.

FOR FURTHER INFORMATION CONTACT: Gary D. Wilson, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7631/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the Lewis University Airport, George Michas Drive, 1 Executive Terminal, Romeoville, Illinois 60446–1806.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposal consists of Parcel 12–1A–1, totaling 0.029 acres located on the west side of airport property. The parcel was purchased with Federal funds for land use compatibility and approach protection. Following is a legal description of the properties being released located in Will County, Illinois, and described as follows:

Parcel 12–1A–1

A part of the West Half of the Northwest Quarter of Section 17, Township 36 North, Range 10 East of the Third Principal Meridian, described as follows: the east 25.00 feet of the west 75.00 feet of the South 50.00 feet of the West Half of the Northwest Quarter of said Section 17, in Will County, Illinois.

Said Parcel containing 0.029 acres, more or less.

Issued in Des Plaines, Illinois on, February 5, 2013.

James G. Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2013–03336 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Will and Kankakee Counties, IL and Lake County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier Two Environmental Impact Statement will be prepared for the Illiana Corridor in Will and Kankakee Counties, Illinois and Lake County, Indiana.

FOR FURTHER INFORMATION CONTACT: J. Michael Bowen, P.E., Acting Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. John Fortmann, P.E., Deputy Director of Highways, Region One Engineer, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000. James A. Earl, II, P.E., Project Manager, Indiana Department of Transportation, 100 North Senate Avenue, IGCN 642, Indianapolis, Indiana 46204, Phone: (317) 232–2072.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT) and the Indiana Department of Transportation (INDOT), will prepare a Tier Two Environmental Impact Statement (EIS) for the Illiana Corridor. The study area is an approximately 2,000 foot wide, 47-mile long east-west oriented corridor with a western terminus at I–55 just north of the City of Wilmington in Illinois and an eastern terminus at I–65 approximately 3 miles north of State Route 2 in Indiana. The Tier Two EIS will present further detail on a range of alternatives within the selected corridor identified in Tier One, an evaluation of impacts of the alternatives, and actions for mitigating project impacts to environmental resources. In general, the range of alternatives considered in a Tier Two study will be confined to the selected corridor. However, the flexibility will exist to consider alternatives with minor excursions outside the selected corridor to avoid impacts within the selected corridor not anticipated in the Tier One EIS, or to address context sensitive design issues in a way that does not materially increase overall impacts.

The primary environmental resources that may be affected are: residential properties, agricultural land, floodplains, wetlands, and sensitive wildlife species. This project is being developed using the Context Sensitive Solutions policies of the Illinois and Indiana Departments of Transportation and will strive to achieve sustainable design concepts. Alternatives to be evaluated will include (1) taking no action and (2) evaluating alternatives within the corridor that was selected in Tier One, including consideration of multiple alignment or design options within the selected corridor, financing options, and construction sequencing options.

As part of the EIS process, a scoping meeting for obtaining input from federal and state resource and regulatory agencies will be held on February 22, 2013. The scoping meeting will discuss the level of detail and methodologies to be used in the Tier Two EIS, as well as addressing the continuation of the bi-state agency coordination process, and will be conducted interactively on February 22, 2013 at multiple locations including Chicago and Springfield, Illinois and Indianapolis, Indiana. For details regarding these locations, Mr. J. Michael Bowen may be contacted at (217) 492–4600. A Tier Two Stakeholder Involvement Plan (SIP), which meets the requirements of a coordination plan, will be developed to ensure that a full range of issues related to the Tier Two studies are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. The web site established for this project (*http://illianacorridor.org/*) is one element of the public involvement program.

Comments or questions concerning this proposed action and the Tier Two EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. The Tier Two Draft EIS will be available for public and agency review after its publication. A public hearing will be held during the public comment period for the Draft EIS. Public notice will be given of the time and place of public meetings and hearings.

The Tier Two EIS will conclude with a Record of Decision identifying a selected alignment for the transportation facility.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: February 7, 2013.

J. Michael Bowen,

Acting Division Administrator, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 2013–03289 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Establishment of the National Freight Network

Correction

In notice document 2013–02580 appearing on pages 8686–8689, in the issue of Wednesday, February 6, 2013, make the following correction:

In the Table appearing on page 8687, in the third column, in the final row, ''Connect top water ports marked by weight and values'' should read ''Connect top land ports for both weight and values''.

[FR Doc. C1–2013–02580 Filed 2–12–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project on Georgia Street Bridge over University Avenue in the City of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 13, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Kevin Hovey, Senior Environmental Planner, Caltrans, 4050

Taylor Street, San Diego, CA 92110, 7 a.m.–3 p.m., 619–688–0240, *Kevin_Hovey@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Retrofit and rehabilitate the Georgia Street Bridge. The project is located within the City of San Diego and the bridge spans University Avenue. The federal aide project number is BRLO–5004(009). The actions by the Federal agency, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project, approved on February 4th, 2013, and in other documents in the FHWA project records. The CE and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations.
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.
3. Federal-Aid Highway Act of 1970, 23 U.S.C 109.
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141).
5. Clean Air Act Amendments of 1990 (CAAA).
6. Clean Water Act of 1977 and 1987.
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987).
8. Noise Control Act of 1972.
9. Safe Drinking Water Act of 1944, as amended.
10. Endangered Species Act of 1973.
11. Executive Order 11990, Protection of Wetlands.
12. Executive Order 13112, Invasive Species.
13. Executive Order 13186, Migratory Birds.
14. Fish and Wildlife Coordination Act of 1934, as amended.
15. Migratory Bird Treaty Act.
16. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130.
17. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979).
18. Title VI of the Civil Rights Act of 1964, as amended.
19. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: February 7, 2013.

Rebecca Bennett,

Director, Local Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013–03307 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2006–25246; FMCSA–2010–0385]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 7, 2013. Comments must be received on or before March 15, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–2000–7918; FMCSA–2006–25246; FMCSA–2010–0385], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR–2010–12–29/pdf/2010–32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers

of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 15 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael L. Ballatyne (MO)
David S. Carman (NJ)
Richard C. Dickinson (GA)
Glen T. Garrabrant (NJ)
Richard A. Guthrie (MT)
Glen T. Garrabrant (NJ)
Richard A. Guthrie (MT)
Alan L. Johnston (IL)
Bryon K. Lavender (OH)
Victor M. McCants (AL)
James E. Menz (NY)
Dennis I. Nelson (WI)
William K. Otwell (LA)
Rance A. Powell (AL)
Shannon E. Rasmussen (WY)
Thomas S. Roth (DE)
Henry L. Walker (LA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 68 FR 10300; 70 FR 7546; 72 FR 180; 72 FR 7111; 72 FR 9397; 74 FR 6211; 74 FR 6212; 75 FR 77942; 76 FR 5425; 76 FR 9861). Each of these 15 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 15, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 4, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–03338 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0021]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 8 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before March 15, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0021 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

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

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 8 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Michael L. Bergman

Mr. Bergman, age 56, has a prosthetic right eye due to a traumatic incident in 2009. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2012, his optometrist noted, ''I believe that Mike's vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bergman reported that he has driven straight trucks for 37 years, accumulating 74,000 miles, and tractor-trailer combinations for 25 years, accumulating 250,000 miles. He holds a Class A Commercial Driver's License (CDL) from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Efrain Gonzalez

Mr. Gonzalez, 52, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2012, his optometrist noted, ''At this time, Mr. Gonzalez has sufficient vision to safely operate a commercial motor vehicle.'' Mr. Gonzalez reported that he has driven straight trucks for 12 years, accumulating 360,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony Hall

Mr. Hall, 43, has had a retinal vein occlusion in his right eye since 2003. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''In my opinion, the patient has full fields of his left eye and 20/20 vision in his left eye. He is capable of operating a commercial vehicle.'' Mr. Hall reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.2 million miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Shane Holum

Mr. Holum, 32, has had optic nerve atrophy in his right eye since 2002 due to a traumatic incident. The best corrected visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my opinion he has sufficient vision to drive and operate a commercial vehicle.'' Mr. Holum reported that he has driven straight trucks for 4 years, accumulating 16,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daryl W. Morris

Mr. Morris, 70, has had optic nerve atrophy in his left eye since 1992. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2012, his optometrist noted, ''I want to certify in my medical opinion that Mr. Morris has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Morris reported that he has driven straight trucks for 8 years, accumulating 80,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dan Nestel

Mr. Nestel, 53, has had a ruptured globe in his right eye due to a traumatic incident in 2009. The best corrected visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''In my medical opinion Mr. Nestel does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nestel reported that he has driven tractor-trailer combinations for 25 years, accumulating 1.2 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas G. Normington

Mr. Normington, 47, has a prosthetic right eye due to a traumatic incident in 1986. The best corrected visual acuity in his left eye is 20/15. Following an

examination in 2012, his optometrist noted, ''In my opinion, Mr. Normington has sufficient vision to perform the driving tasks required to safely operate a commercial vehicle.'' Mr. Normington reported that he has driven straight trucks for 14 years, accumulating 280,000 miles, and tractor-trailer combinations for 14 years, accumulating 140,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas L. Terrell

Mr. Terrell, 57, has had a chronic retinal detachment in his left eye due to a traumatic incident in 1984. The best corrected visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2012, his ophthalmologist noted, ''He has sufficient vision in his right eye and unless he has some future problem in the right eye, he should have no problems performing his duties of operating a commercial vehicle.'' Mr. Terrell reported that he has driven straight trucks for 39 years, accumulating 78,000 miles, and tractor-trailer combinations for 39 years, accumulating 273,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 15, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 4, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–03337 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2013 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Transit Administration (FTA) is directed to publish annually a list of all certifications required under 49 U.S.C. Chapter 53. For Federal Fiscal Year 2013 (FY 2013), FTA consolidated and updated the various pre-award Certifications and Assurances required to be submitted by an Applicant seeking an award of Federal public transportation assistance (funding) during FY 2013. This notice announces the availability of the FY 2013 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements and the FTA Master Agreement, both of which are available at the FTA Web site, *http://www.fta.dot.gov*. This notice also highlights the changes made to FTA's Certifications and Assurances for FY 2013 that differ from previous provisions and also provides instructions on how and when to submit Certifications and Assurances for FY 2013.

DATES: *Effective Date:* These FY 2013 Certifications and Assurances are effective October 1, 2012, the first day of Federal Fiscal Year (FY) 2013.

FOR FURTHER INFORMATION CONTACT: The appropriate Regional or Metropolitan Office listed in this Notice. For copies of related documents and information, see our Web site at *http://www.fta.dot.gov* or contact our Office of Administration at 202–366–4007.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Telephone # 617–494–2055

Region 2: New York

States served: New York, and New Jersey; Telephone # 212–668–2170

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia; Telephone # 215–656–7100

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee; Territories served: Puerto Rico and the U.S. Virgin Islands
Telephone # 404–865–5600

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Telephone # 312–353–2789

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Telephone # 817–978–0550

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska; Telephone # 816–329–3920

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Telephone # 720–963–3300

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada,
Territories served: Guam, American Samoa, and the Northern Mariana Islands
Telephone # 415–744–3133

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington; Telephone # 206–220–7954

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area; Telephone #312–886–1616

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area; Telephone # 213–202–3950

Lower Manhattan Recovery Office

Area served: Lower Manhattan; Telephone # 212–668–1770

New York Metropolitan Office

Area served: New York Metropolitan Area; Telephone # 212–668–2201

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area; Telephone # 215–656–7070

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area; Telephone # 202–219–3562/202–219–3565

SUPPLEMENTARY INFORMATION:

1. What are FTA's responsibilities?

The second sentence of 49 U.S.C. 5323(n) states in pertinent part that ''The Secretary [of Transportation] shall publish annually a list of all certifications required under this

chapter [49 U.S.C. chapter 53] * * *.'' Below is our list of certifications required for our programs:

01. Required Certifications and Assurances for Each Applicant.
02. Lobbying.
03. Private Sector Protections.
04. Procurement and Procurement System.
05. Rolling Stock Reviews and Bus Testing.
06. Demand Responsive Service.
07. Intelligent Transportation Systems.
08. Interest and Finance Costs and Leasing Costs.
09. Transit Asset Management and Agency Safety Plans.
10. Alcohol and Controlled Substances Testing.
11. Fixed Guideway Capital Investment Program (New Starts, Small Starts, and Core Capacity) and Capital Investment Program in Effect before MAP–21.
12. State of Good Repair Program.
13. Fixed Guideway Modernization Grant Program.
14. Bus/Bus Facilities Programs.
15. Urbanized Area Formula Programs and Job Access and Reverse Commute (JARC) Program.
16. Seniors/Elderly/Individuals with Disabilities Programs and New Freedom Program.
17. Rural/Other Than Urbanized Areas/Appalachian Development/Over-the-Road Bus Accessibility Programs.
18. Public Transportation on Indian Reservations and ''Tribal Transit Programs''.
19. Low or No Emission/Clean Fuels Grant Programs.
20. Paul S Sarbanes Transit in Parks Program.
21. State Safety Oversight Program.
22. Public Transportation Relief Program.
23. Expedited Project Delivery Pilot Program.
24. Infrastructure Finance Programs.

Since 1995, we have consolidated Certifications and Assurances into a single document for publication in the **Federal Register.** To receive Federal funding made available or appropriated for the grant and cooperative agreement programs we administer, your Applicant must submit the annual Certifications and Assurances required for the type of funding your Applicant is seeking. We are now publishing our FY 2013 Certifications and Assurances, after our **Federal Register** publication of our ''Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance,'' 77 FR 63670, October 16, 2012 (FTA FY 2013 Apportionments Notice).

In addition to reading the information in this Notice and its Appendix A (located at our Web site, *http://www.fta.dot.gov*) we strongly advise your Applicant's certified or authorized representative (you) to read the information accompanying the apportionment tables in the FTA FY 2013 Apportionments Notice, particularly in light of the following legislation signed into law during FY 2012:

a. The Moving Ahead for Progress in the 21st Century Act (MAP–21) Pub. L. 112–141, July 6, 2012, which is FTA's most recent authorizing legislation, and

b. The Continuing Appropriations Resolution, 2013 (CR), Pub. L. 112–175, September 28, 2012, which provides appropriations to FTA for October 1, 2012 through March 27, 2013.

2. What is Their Legal Effect?

a. *With Certain Exceptions, the Latest FTA Certifications and Assurances Control.* Certifications and Assurances are pre-award representations typically required by Federal law or regulation that your Applicant must submit before FTA may provide Federal funding for a Project. Typically, FTA's FY 2013 Certifications and Assurances have superseded any FTA Certifications and Assurances published in an earlier fiscal year, except as FTA determines otherwise in writing. Our annual Certifications and Assurances also supersede other Certifications and Assurances that may have appeared as illustrations in a discontinued FTA circular. For this year, however, certain Certifications and Assurances in effect before MAP–21 became effective will continue to apply to certain Projects and Project activities. For this reason, our Certifications and Assurances have increased to accommodate requirements for Programs funded by MAP–21 and Programs funded in FY 2012 or a previous fiscal year. Therefore, it is critically important that you know the fiscal year in which the funding awarded for your Project was appropriated.

After publication in the **Federal Register**, your Applicant must submit sufficient FY 2013 Certifications and Assurances required by Federal law or regulations before FTA may award Federal funds to support your Applicant's Project.

b. Binding Commitment. An Applicant typically acts through its certified or authorized representative. In that case, your Applicant will be required to comply with any Certifications or Assurances you make on its behalf irrespective of how long you remain your Applicant's authorized representative. When you provide your Applicant's Certifications and Assurances to FTA, both you and your Applicant are agreeing to comply with their terms. As a result, when Certifications and Assurances that would apply under MAP–21 differ from Certifications and Assurances that would apply in FY 2012 or a previous fiscal year, we have included both types in the single Group used to support the funding your Applicant's requests.

c. Length of Commitment. Your Applicant's FY 2013 Certifications and Assurances remain in effect until its Project is closed or the useful life of its Project property has expired, whichever is later. If your Applicant provides different Certifications and Assurances in a later fiscal year, the later Certifications and Assurances generally will apply to its Project, except as we determine otherwise in writing.

d. Duration. You and your Applicant may use the FY 2013 Certifications and Assurances in Appendix A to support applications for FTA funding until we issue our FY 2014 Certifications and Assurances.

e. Our FY 2013 Certifications and Assurances are an Incomplete List of Federal Requirements. We caution that our FY 2013 Certifications and Assurances focus mainly on those representations your Applicant is required to present to FTA before FTA may award Federal funds for your Applicant's Project. Consequently, our Certifications and Assurances do not include many other Federal requirements that will apply to your Applicant and its Project.

f. Federal Requirements. In addition to the information in this Notice and our FTA FY 2013 Apportionments Notice, we also strongly encourage you and your Applicant's staff and Third Party Participants to review all Federal legislation, regulations, and guidance that apply to your Applicant and its proposed Project. Our FY 2013 Master Agreement identifies many of those requirements and can be accessed at *http://www.fta.dot.gov.*

g. Penalties for False or Fraudulent Statements. If you or your Applicant provides any false or fraudulent statement to the Federal government, you or your Applicant may incur both Federal civil and criminal penalties. *See:*

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.,*

(2) U.S. Department of Transportation (U.S. DOT) regulations, ''Program Fraud Civil Remedies,'' 49 CFR part 31, and

(3) Section 5323(l)(1) of title 49, U.S.C., which provides for Federal criminal penalties and termination of Federal funding should you or your Applicant provide a false or fraudulent certificate, submission, or statement in connection with the Federal transit program authorized by 49 U.S.C. chapter 53.

3. What are your responsibilities?

a. Make Sure All Involved With Your Applicant's Project Understands the Federal Requirements That Will Apply to Your Applicant and Its Project.

Your Applicant will be responsible for compliance with all Federal requirements that apply to itself and its Project. Nevertheless, people and organizations participating in your Applicant's Project (Third Party Participants) can seriously affect your Applicant's ability to comply with those Federal requirements. Therefore, all Third Party Participants involved in your Applicant's Project need to know and agree to comply with the Federal requirements that affect their Project related activities.

b. Subrecipient and Other Third Party Participation. Except in limited circumstances when we have determined otherwise, your Applicant is ultimately responsible for compliance with all Certifications and Assurances that you select on its behalf even though much of its Project will be carried out by Subrecipients or other Third Party Participants. Therefore, we strongly recommend that you take appropriate measures to ensure that the Subrecipients and other Third Party Participants in your Applicant's Project do not take actions that will cause your Applicant to violate the representations made in its Certifications and Assurances.

c. Submit Your Applicant's Certifications and Assurances. You must submit all Groups of the FY 2013 Certifications and Assurances that apply to your Applicant and the Projects for which it seeks FTA funding in FY 2013. For your convenience, we recommend that you submit all 24 Groups of Certifications and Assurances. Those provisions of the various Certifications and Assurances that do not apply to your Applicant or its Project will not be enforced.

d. Obtain the Affirmation of Your Applicant's Attorney. You must obtain an affirmation of your Applicant's Attorney, signed in FY 2013, stating that your Applicant has sufficient authority under its State and local law to certify its compliance with the FY 2013 Certifications and Assurances that you have selected on its behalf. Your Applicant's Attorney must sign this affirmation during FY 2013. An Affirmation of your Applicant's Attorney dated in a previous fiscal year is insufficient, unless FTA expressly determines otherwise in writing.

e. When To Submit.

(1) If your Applicant is applying for funding under any of the discretionary capital programs (New Starts, Small Starts, or Core Capacity Improvement), we expect to receive your FY 2013 Certifications and Assurances within ninety (90) days from the date of this publication or soon after the submittal of your Applicant's request for FY 2013 funding. Likewise, if your Applicant is a current FTA grantee with an active project funded with FTA capital or formula funds, we expect to receive your FY 2013 Certifications and Assurances within ninety (90) days from the date of this publication or soon after the submittal of your Applicant's request for FY 2013 funding.

(2) If your Applicant seeks funding from an FTA program other than a formula program or a discretionary capital program, we expect to receive your Applicant's FY 2013 Certifications and Assurances as soon as possible.

4. Where are FTA's FY 2013 certifications and assurances?

a. Appendix A of this Notice, which is available at our Web site, *http://www.fta.dot.gov*, and

b. TEAM-Web, our electronic award and management system, *http://ftateamweb.fta.dot.gov*, at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page in the ''Recipients'' option.

5. What changes have been made since FY 2012?

a. *Recent Federal Statutes.* MAP–21 and the CR have required many changes to FTA's annual Certifications and Assurances and the Projects to which they apply. FTA's FY2013 Certifications and Assurances encompass those necessary changes:

b. *Application of Statutes.* When FTA issued its FY 2013 Certifications and Assurances, the CR provided for continuing projects or activities for which funding was available in FY 2012, except as provided in section 154 of the CR. In section 154 of the CR, Congress updated the appropriations language for FTA's formula programs providing an obligation limitation and liquidating authority to reflect changes to FTA's formula programs authorized in MAP–21. Section 154 of the CR allows FTA to administer FY 2013 funds for formula grant programs according to the terms and conditions established under MAP–21. Funding under the CR is not available for programs that were repealed by MAP–21. Except for the ''MAP–21 cross-cutting'' requirements listed in subsection 5.c below, the program and eligibility requirements in effect in FY 2012 or a previous fiscal year apply to the following Projects as of October 16, 2012, the date the FTA FY 2013 Apportionments Notice was published:

(1) Projects financed with funding made available or appropriated in FY 2012 or a previous fiscal year, which funding FTA has awarded before October 1, 2012, when MAP–21 became effective,

(2) Projects financed with funding made available or appropriated for FY 2012 or a previous fiscal year, which funding FTA awards or will award after October 1, 2012, when MAP–21 became effective.[1]

c. Notwithstanding the applicability of program and eligibility requirements in effect in FY 2012 or a previous fiscal year for those Projects listed in the preceding subsection 5.b above, FTA has determined that the following MAP–21 requirements apply to Projects funded with appropriations for FY 2012 or a previous fiscal year. (FTA refers to these requirements as ''MAP–21 cross-cutting'' requirements.) As listed in the FTA FY 2013 Apportionments Notice, FTA has determined MAP–21 cross-cutting requirements include, but are not limited to:

(1) Metropolitan and Statewide Planning,

(2) Environmental Review Process,

(3) Agency Safety Plans,

(4) Transit Asset Management Provisions (and Asset Inventory and Condition Reporting),

(5) Costs Incurred by Providers of Public Transportation by Vanpool,

(6) Revenue Bonds as Local Match,

(7) Debt Service Reserve,

(8) Government's Share of Cost of Vehicles, Vehicle-Equipment, and Facilities for ADA and Clean Air Act Compliance,

(9) Private Sector Participation,

(10) Bus Testing,

(11) Buy America,

(12) Corridor Preservation,

(13) Rail Car Procurements,

(14) Veterans Preference/Employment, and

(15) Alcohol and Controlled Substance Testing.

[1] FTA may provide unobligated funds made available or appropriated for FY 2012 or a previous fiscal year for new projects authorized under provisions of law that MAP–21 has repealed.

d. *Preface.* We amended the Preface to identify the Web site for our FY 2013 Master Agreement, *http://www.fta.dot.gov.*

e. *Compliance with All Applicable Requirements.*

(1) In the past, we have cautioned Applicants that their Subrecipients may also be responsible for compliance with certain Federal requirements that are not identified in our annual Certifications and Assurances. Now, throughout this Notice and the FY 2013 Certifications and Assurances, we are cautioning your Applicant that its other Third Party Participants may also need to comply with certain Federal requirements, regardless of whether those requirements are identified in our annual Certifications and Assurances, and

(2) Because TEAM-Web has the capacity for only twenty-four (24) Groups of Certifications and Assurances, we have consolidated related Certifications and Assurances, both old and new, into a single group, so that the total number of groups does not exceed twenty-four (24). Should one or more certifications or assurances within a group not apply to your Applicant or its Project, selecting the entire group will not make those inapplicable certifications or assurances then applicable to your Applicant and its Project. Provisions of any Certification or Assurance that do not apply to your Applicant or its Project will not be enforced.

f. *Group 01, Certification D, ''Nondiscrimination,'' and former Certification E, ''Assurance of Nondiscrimination on the Basis of Disability.''*

(1) For consistency with the MAP–21 amendment to 49 U.S.C. 5332 that added disability to the list of prohibited reasons for discrimination, we made the following changes:

(a) We consolidated the former Group 01, Certification E, prohibiting discrimination against individuals with disabilities with the former Group 01, Certification D, the ''Nondiscrimination'' certifications that apply to various other prohibitions against discrimination,

(b) We added ''disability'' as a prohibited reason for discrimination in Sections 1 and 1.a, and

(c) We substituted ''religion for ''creed,'' in Sections 1 and 1.a,

(2) We added a reference to U.S. DOT regulations, 49 CFR part 39, in Sections 1.f, and

(3) We added a new Section 2 to obtain your Applicant's agreement to follow Federal guidance issued to implement Federal nondiscrimination requirements, except as FTA determines otherwise in writing.

g. *Re-numbering.* We re-numbered:

(1) Former Group 01, Certification F as Group 01, Certification E, and

(2) Former Group 01, Assurance G, as Group 01, Assurance F.

h. *Re-numbered Group 01, Certification F, ''U.S. OMB Assurances in SF–424B and SF–424D'' [former Group 01, Certification G].* We added a reference to the new MAP–21 amendment to 49 U.S.C. 5323(b), which expressly requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.* among the requirements that apply to FTA's Capital Projects funded by 49 U.S.C. chapter 53.

i. *New Group 03, ''Private Sector Protections,'' [consolidating former Group 04 ''Protections for Private Providers of Public Transportation,'' former Group 09 ''Charter Service Agreement,'' and former Group 10 ''School Transportation Agreement''].* We established a new Group 03 focusing on protections for private providers of public transportation:

(1) The ''Private Sector Property Protections'' of Group 03 include the following:

(a) Private Sector Property Protections, with no substantive changes made,

(b) Charter Service Agreement, with the following substantive changes:

(1) Consistent with the exception for JARC activities authorized in FTA's Charter Service Regulations, 49 CFR 604.2, for repealed 49 U.S.C. 5316 in effect in FY 2012 or a previous fiscal year, the Federal Transit Administrator has determined that FTA's Charter Service requirements are not appropriate for the JARC activities that will be funded under 49 U.S.C. 5307, as amended by MAP–21,

(2) Consistent with the exception for New Freedom activities authorized in FTA's Charter Service Regulations, 49 CFR 604.2, for repealed 49 U.S.C. 5317, the Federal Transit Administrator has determined that FTA's Charter Service requirements are not appropriate for the New Freedom activities that will be funded under 49 U.S.C. 5310, as amended by MAP–21, and

(3) Use by intercity and charter operators of FTA funded facilities as specified in 49 U.S.C. 5323(r), as amended by MAP–21, will not result in a violation of FTA's Charter Service Regulations, and

(c) School Bus Agreement, with no substantive changes made.

j. *Re-numbered Group 04, ''Procurement and Procurement System'' [former Group 03, ''Procurement Certification''].* We transferred former Group 03 to Group 04 without making any substantive changes.

k. *New Group 05 ''Rolling Stock Reviews and Bus Testing'' [consolidating former Group 06, ''Acquisition of Rolling Stock for Use in Revenue Service,'' and Group 08, ''Bus Testing''].* We established a new Group 05 focusing certifications that certain reviews and testing required for certain rolling stock have or will be completed:

(1) The following Certifications are included in the new Group 05:

(a) ''Rolling Stock Reviews,'' required by 49 U.S.C. 5323(m), and

(b) ''Bus Testing,'' required by 49 U.S.C. 5318, as amended by MAP–21, and

(2) MAP–21 Changes:

(a) MAP–21 did not make any substantive changes to the ''Rolling Stock Reviews'' certification, but

(b) MAP–21 did change the bus testing requirements, which requirements are now reflected in the FY 2013 ''Bus Testing'' certification.

l. *Former Group 05 ''Public Hearing.''* We deleted the former ''Public Hearing'' certification because MAP–21 amended 49 U.S.C. 5323(b) to repeal FTA's special statutory public hearing requirements.

m. *Re-numbered Group 06, ''Demand Responsive Service,'' [former Group 11].* We transferred the ''Demand Responsive Service'' certification from former Group 11 to Group 06 without making any substantive changes.

n. *Re-numbered Group 07, ''Intelligent Transportation Systems,'' [former Group 14]:*

(1) We transferred the ''Intelligent Transportation Systems'' assurance from former Group 14 to Group 7, and

(2) We changed the assurance to add the new citation to the Intelligent Transportation System statutory provisions now codified at 23 U.S.C. 517.

o. *New Group 08, ''Interest and Financing Costs and Leasing Costs,'' [consolidating former Group 13, ''Interest and Other Financing Costs,'' and former Group 07, ''Acquisition of Capital Assets by Lease''].*

(1) We established a new Group 08 focused on certifications involving finance that includes the following certifications:

(a) ''Interest and Financing Costs,'' and

(b) ''Acquisition of Capital Assets by Lease,''

(2) In addition to transferring the certifications identified above,

(a) Rather than include in the ''Financing and Leasing Costs

certification the several citations to those requirements in 49 U.S.C. chapter 53 (both before and after MAP–21 was signed into law), we have listed the types of projects to which the ''Interest and Financing Costs'' certifications would apply, and

(b) We made no substantive changes to the ''Acquisition of Capital Assets through a Lease'' certification.

p. *New Group 09, ''Transit Asset Management and Safety Plans.''* We established a new Group 09 focused on plans MAP–21 requires:

(1) The ''Transit Asset Management Plan'' certification of compliance with the rule issued under 49 U.S.C. 5326(d), as amended by MAP–21, are required by 49 U.S.C. 5337(a)(4), as amended by MAP–21, and

(2) The ''Public Transportation Agency Safety Plan'' certifications required by 49 U.S.C. 5329(d), as amended by MAP–21.

q. *Re-numbered Group 10, ''Alcohol and Controlled Substances Testing,'' [former Group 12, ''Alcohol Misuse and Prohibited Drug Use''].* We transferred former Group 12 to re-numbered Group 10 and revised its provisions to conform to 49 U.S.C. 5331, as amended by MAP–21. We added a provision that should your Applicant reside in a State that permits marijuana use for medical or recreational purposes, your Applicant must comply with Federal (not State) controlled substance testing requirements of 49 CFR part 655.

r. *New Group 11, ''Fixed Guideway Capital Investment Program (New Starts, Small Starts, and Core Capacity) and Capital Investment Program in Effect Before MAP–21.''*

(1) We established a new Group 11 focused on certifications for FTA's new Fixed Guideway Capital Investment Program, consisting of only the New Starts Program, the Small Starts Program, and the Core Capacity Program.

(a) Before MAP–21 became effective, the Capital Investment Program under former 49 U.S.C. 5309 consisted of the:

(i) New Fixed Capital Program,

(ii) Fixed Guideway Modernization Grant Program, and

(iii) Buses and Bus Related Equipment and Facilities Program,

(b) MAP–21:

(i) Repealed the former Fixed Guideway Modernization Grant Program, and

(ii) Established the new Bus and Bus Facilities Formula Program in 49 U.S.C. 5339, as amended by MAP–21.

(c) Therefore, we have established separate certifications for Fixed Guideway Capital Investment Program, encompassing the New Starts Program, the Small Starts Program, and the Core Capacity Program) that remain in 49 U.S.C. 5309, as amended by MAP–21, irrespective of whether those programs are:

(i) Financed with funding that was made available or appropriated for 49 U.S.C. 5309, as amended by MAP–21, or

(ii) Financed with funding that was made available or appropriated for former 49 U.S.C. 5309 in effect in FY 2012 or a previous fiscal year, and

(2) Your Applicant should provide the certifications in Group 11 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5309, as amended by MAP–21, or

(b) Former 49 U.S.C. 5309 in effect in FY2012 or a previous fiscal year.

s. *New Group 12, ''State of Good Repair Program.''* MAP–21 created a new State of Good Repair Program. We request each Applicant for State of Good Repair funding to provide the ''State of Good Repair Program'' certification in new Group 12.

t. *New Group 13, ''Fixed Guideway Modernization Grant Program.''* MAP–21 amended 49 U.S.C. 5309 without re-authorizing the Fixed Guideway Grant Modernization Program. Because unobligated funds remain for that Program, we have included a ''Fixed Guideway Modernization Grant Program'' certification for Applicants seeking those funds.

u. *New Group 14, ''Bus and Bus Facilities Programs.''*

(1) MAP–21 amended former 49 U.S.C. 5309 by:

(a) Changing the Bus and Bus Related Equipment and Facilities Program from a discretionary program to a new formula Bus and Bus Facilities Formula program,

(b) Establishing the new program under 49 U.S.C. 5339, and

(c) Repealing the Alternatives Analysis Program under former 49 U.S.C. 5339 in effect in FY 2012 or a previous fiscal year,

(2) Accordingly, we established a new Group 14 with certifications for Bus and Bus Facilities Projects depending on whether the funding source for those Projects is:

(a) The Bus and Bus Facilities Formula Program under MAP–21, or

(b) The Bus and Bus Related Equipment and Facilities Grant Program (Discretionary),

(3) The ''Bus and Bus Facilities Formula Program'' certification reflects the provisions of MAP–21, while the ''Bus and Bus Related Equipment and Facilities Grant Program (Discretionary)'' certification, reflects the provisions of FTA enabling legislation in effect in FY 2012 or a previous fiscal year,

(4) Notwithstanding 49 U.S.C. 5339(b), as amended by MAP–21, which makes 49 U.S.C. 5307 requirements applicable to the new Bus and Bus Facilities Formula Program, the Federal Transit Administrator has determined that:

(a) The certification required by 49 U.S.C. 5307(c)(1)(J), as amended by MAP–21, to spend one (1) percent of the funds made available for security projects does not apply to the Bus and Bus Facilities Formula Program because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, and

(b) The certification required by 49 U.S.C. 5307(c)(1)(K), as amended by MAP–21, to spend one (1) percent of the funds made available for associated transit improvement projects does not apply to the Bus and Bus Facilities Formula Program because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, and

(5) Therefore, to assure that FTA can award the type of funding most suitable for your Applicant's Project, your Applicant should provide the certifications in Group 14 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5339, as amended by MAP–21, or

(b) Former 49 U.S.C. 5309 in effect in FY2012 or a previous fiscal year.

v. *New Group 15, ''Urbanized Area Formula Grant Programs and Job Access and Reverse Commute (JARC) Formula Grant Program,'' [consolidating former Group 15, ''Urbanized Area Formula Program,'' and Group 19, ''Job Access and Reverse Commute Program,'' with the new ''Urbanized Area Formula Program'' authorized by MAP–21]:*

(1) We established a new Group 15 focused on our public transportation programs in urbanized areas, including separate certifications for each of the following three programs:

(a) The Urbanized Area Formula Grant Program under MAP–21,

(b) The Urbanized Area Formula Program in effect in FY 2012 or a previous fiscal year, and

(c) The Job Access and Reverse Commute (JARC) Program, which authorized the separate JARC program,[2] even though MAP–21 repealed former

[2] JARC activities are now eligible for funding made available or appropriated for the Urbanized Area Formula Program authorized by 49 U.S.C. 5307, as amended by MAP–21.

49 U.S.C. 5316 in effect in FY 2012 or a previous fiscal year, and

(2) Therefore, to assure that FTA can award the type of funding most suitable for your Applicant's Project, your Applicant should provide the certifications in Group 15 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5307, as amended by MAP–21,

(b) Former 49 U.S.C. 5307 in effect in FY2012 or a previous fiscal year, or

(c) Former 49 U.S.C. 5316 in effect in FY 2012 or a previous fiscal year.

w. *New Group 16, ''Seniors/Elderly/Individuals with Disabilities and New Freedom Programs,'' [consolidating former Group 18, ''Elderly and Individuals with Disabilities Formula Program and Pilot Program,'' and Group 20, ''New Freedom'' Program,'' with the new certification for the ''Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program''].*

(1) We established a new Group 16 focused on our programs that provide specialized public transportation for seniors and individuals with disabilities, including separate certifications for each of the following three programs:

(a) The Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program,

(b) The Formula Grants for the Special Needs of Elderly Individuals and Individuals with Disabilities Program in effect in FY 2012 or a previous fiscal year, and

(c) The New Freedom Program, even though MAP–21 repealed former 49 U.S.C. 5317 in effect in FY 2012 or a previous fiscal year, which authorized the separate New Freedom program,[3]

(2) Consistent with the legislation under former 49 U.S.C. 5310 in effect in FY 2012 and previous fiscal years, the new Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, as amended by MAP–21, must comply with the requirements of 49 U.S.C. 5307, as amended by MAP–21, but does permit exceptions. Therefore, as authorized by 49 U.S.C. 5310(c)(1), as amended by MAP–21, and consistent with similar determinations made for the Formula Grants for the Special Needs of Elderly Individuals and Individuals with Disabilities Program authorized by former 49 U.S.C. 5310 in effect in FY 2012 or a previous fiscal year, the Federal Transit Administrator has determined that the following Certifications required by 49 U.S.C. 5307(c)(1), as amended by MAP–21, are not appropriate for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program:

(a) The half fare requirements of U.S.C. 5307(c)(1)(D), as amended by MAP–21, are not appropriate for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program because:

(i) The services financed under this Program are designed specifically for and available primarily to seniors and individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design, and

(ii) The half fare provisions that benefit those individuals are focused on peak periods, and peak demand that has not been relevant to the provision of 49 U.S.C. 5310 specialized services,

(b) The public participation, planning, and coordination provisions of 49 U.S.C. 5307(c)(1)(F), as amended by MAP–21, are not appropriate for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program because 49 U.S.C. 5310, as amended by MAP–21, prescribes specific public participation, planning, and coordination provisions for this Program,

(c) The requirements of 49 U.S.C. 5307(c)(1)(I), as amended by MAP–21, for a ''locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation'' are not appropriate for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program because 49 U.S.C. 5310(c)(2)(B), as amended by MAP–21, expressly requires a locally coordinated transportation plan from which projects to support public transportation for seniors and individuals with disabilities are to be selected,

(d) The requirement of 49 U.S.C. 5307(c)(1)(J), as amended by MAP–21, to spend one (1) percent of funds made available for 49 U.S.C. 5310, as amended by MAP–21, for security projects is not appropriate for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, and

(e) The requirement of 49 U.S.C. 5307(c)(1)(K), as amended by MAP–21, to spend one (1) percent of funds authorized for 49 U.S.C. 5310, as amended by MAP–21, for associated transit improvements is not appropriate for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, and

(4) To assure that FTA will be able to award the type of funding most suitable for your Applicant's Project, your Applicant should provide the certifications in Group 16 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5310, as amended by MAP–21,

(b) Former 49 U.S.C. 5310 in effect in FY 2012 or a previous fiscal year, or

(c) Former 49 U.S.C. 5317 in effect in FY 2012 or a previous fiscal year.

x. *New Group 17, ''Rural/Other Than Urbanized Areas/Appalachian Development/Over-the-Road Bus Accessibility Programs,'' [former Group 18, ''Nonurbanized Area Formula Program for States''].*

(1) We established a new Group 17 focused on our public transportation programs in rural areas, including separate certifications for the following four programs:

(a) The Formula Grants for Rural Areas Program,

(b) The Formula Grants for Other than Urbanized Areas Program,

(c) The Appalachian Development Public Transportation Assistance Program, and

(d) The Over-the-Road Bus Accessibility Program, and

(2) Therefore, to assure that FTA will be able to award the type of funding most suitable for your Applicant's Project, your Applicant should provide the certifications in Group 17 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5311(b), as amended by MAP–21,

(b) Former 49 U.S.C. 5311(b) in effect in FY2012 or a previous fiscal year,

(c) 49 U.S.C. 5311(c)(2), as amended by MAP–21, or

(d) Former section 3038 of the Transportation Equity Act for the 21st Century, as amended by section 3039 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

y. *New Group 18, ''Public Transportation on Indian Reservations''*

[3] New Freedom activities are now an eligible for funding made available or appropriated for the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, as amended by MAP–21.

and 'Tribal Transit' Programs'' [former Group 22, ''Tribal Transit Program''].

(1) We established a new Group 18 focused on our public transportation programs in Indian tribal areas, including separate certifications for the following two programs:

(a) The Public Transportation on Indian Reservations Program, and

(b) The ''Tribal Transit Program,'' and

(2) Therefore, to assure that FTA can award the type of funding most suitable for your Applicant's Project, your Applicant should provide the certifications in Group 18 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5311(c)(1), as amended by MAP–21, or

(b) Former 49 U.S.C. 5311(c)(1) in effect in FY2012 or a previous fiscal year.

z. *New Group 19, ''Low or No Emission/Clean Fuels Grant Programs'' [former Group 16, ''Clean Fuels Grant Program'']*.

(1) We established a new Group 19 focused on our programs to reduce emissions, including separate certifications for the following two programs:

(a) The Low or No Emission Vehicle Deployment Program, authorized by 49 U.S.C. 5312(d)(5), as amended by MAP–21, and

(b) The Clean Fuels Grant Program, authorized by former 49 U.S.C. 5308 in effect in FY 2012 or a previous fiscal year,

(2) Consistent with the determinations made for the Clean Fuels Program authorized by former 49 U.S.C. 5308 in effect in FY 2012 or a previous fiscal year, the new Low or No Emission Vehicle Deployment Program must comply with the requirements of 49 U.S.C. 5307, as amended by MAP–21. The Federal Transit Administrator has determined, however, that the following Certifications required by 49 U.S.C. 5307(c)(1), as amended by MAP–21, are not appropriate for the Low or No Emission Vehicle Deployment Program:

(a) The certification required by 49 U.S.C. 5307(c)(1)(J), as amended by MAP–21, to spend one (1) percent of funds made available for the Low or No Emission Vehicle Deployment Program, 49 U.S.C. 5312(d)(5), as amended by MAP–21, for security projects:

(i) Does not apply to the Low or No Emission Vehicle Deployment Program because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, but

(ii) Does apply to the Low or No Emission Vehicle Deployment Program if funds made available or appropriated for 49 U.S.C. 5307 will be used for projects within the Low or No Emission Vehicle Deployment Program, and

(b) The certification required by 49 U.S.C. 5307(c)(1)(K), as amended by MAP–21, to spend one (1) percent of funds made available for 49 U.S.C. 5312(d)(5), as amended by MAP–21, for associated transit improvement projects:

(i) Does not apply to the Low or No Emission Vehicle Deployment Program because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, but

(ii) Does apply to the extent that funds made available or appropriated for 49 U.S.C. 5307 will be used for a project within the Low or No Emission Vehicle Deployment Program, and

(3) To assure that FTA can award the type of funding most suitable for your Applicant's Project, your Applicant should provide the certifications in Group 19 if it seeks funding made available or appropriated for:

(a) 49 U.S.C. 5312(d)(5), as amended by MAP–21, or

(b) Former 49 U.S.C. 5308 in effect in FY2012 or a previous fiscal year.

aa. *Re-Numbered Group 20, ''Paul S. Sarbanes Transit in Parks Program,'' [former Group 21]*. MAP–21 repealed the Paul S. Sarbanes Transit in Parks Program, authorized by former 49 U.S.C. 5320 in effect in FY 2012 or a previous fiscal year. Because unobligated funds remain under that Program, we have included certifications required for Applicants seeking those funds.

bb. *New Group 21, ''State Safety Oversight Grant Program.''* MAP–21 created a new State Safety Oversight Grant Program. We request that each Applicant for State Safety Oversight Program funding to provide the Assurances in new Group 21.

cc. *New Group 22, ''Public Transportation Emergency Relief Program.''* MAP–21 created a new Public Transportation Emergency Relief Program. We request each Applicant for Public Transportation Emergency Relief Program funding to provide the Assurances in new Group 22.

dd. *New Group 23, ''Expedited Project Delivery Pilot Program.''* MAP–21 established a new Pilot Program requiring a certification that an Applicant's public transportation system is in a state of good repair. We request each Applicant for that Pilot Program funding to provide the Assurances in new Group 23.

ee. *New Group 24, ''Infrastructure Finance Programs,'' [consolidating former Group 23, ''TIFIA Projects'' and former Group 24, ''Deposits of Federal Financial Funding to State Infrastructure Banks'']*.

(1) We established a new Group 24 focused on infrastructure finance programs, including:

(a) The Transportation Infrastructure Finance and Innovation Act (TIFIA) Program under 23 U.S.C. 601–609, and

(b) The State Infrastructure Banks (SIB) Program under 23 U.S.C. 610,

(2) For the TIFIA Program, we added references to MAP–21, TIFIA financing, and the 49 U.S.C. 5337 requirements added for Projects funded with TIFIA financing pursuant to 49 U.S.C. 5323(o), as amended by MAP–21,[4] and

(3) For the SIB Program, we added references to MAP–21, SIB financing, and the 49 U.S.C. 5337 requirements added for Projects funded with SIB financing pursuant to 49 U.S.C. 5323(o), as amended by MAP–21.[5]

(4) To clarify, the Federal Transit Administrator has determined that the following Certifications required by 49 U.S.C. 5307(c)(1), as amended by MAP–21, are not appropriate for the TIFIA or SIB Programs:

(a) The certification required by 49 U.S.C. 5307(c)(1)(J), as amended by MAP–21, to spend one (1) percent of funds made available for the TIFIA and for the SIB Programs, as amended by MAP–21, for security projects:

(i) Does not apply to the TIFIA or SIB Programs because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, but

(ii) Does apply to any TIFIA or SIB Program to the extent that funds made available or appropriated for 49 U.S.C. 5307 will be used for a project within a TIFIA or SIB Program, and

(b) The certification required by 49 U.S.C. 5307(c)(1)(K), as amended by MAP–21, to spend one (1) percent of funds made available for 49 U.S.C. 5312(d)(5), as amended by MAP–21, for associated transit improvement projects, which:

(i) Does not apply to the Low or No Emission Vehicle Deployment Program because the requirement applies only to the 49 U.S.C. 5307 urbanized area formula apportionments, but

(ii) Does apply if funds made available or appropriated for 49 U.S.C.

[4] Although Section 2002 of MAP–21 made several changes to 23 U.S.C. 601–609, which authorize the TIFIA program, we only added references to MAP–21, TIFIA financing, and 49 U.S.C. 5337 requirements for transit asset management plans, which MAP–21 added for TIFIA Projects. Apart from having a transit asset management plan, the provisions of 49 U.S.C. 5337, as amended by MAP–21, however, do not add new Certification requirements to those of 49 U.S.C. 5307 or 5309.

[5] Apart from having a transit asset management plan, the provisions of 49 U.S.C. 5337, as amended by MAP–21, however, do not add new Certification requirements to those of 49 U.S.C. 5307 or 5309.

5307 will be used for projects within the Low or No Emission Vehicle Deployment Program, and

6. How do I submit them?

a. *Electronic Submission.* Except in unusual circumstances as determined by FTA, you must submit your Applicant's FY 2013 Certifications and Assurances in TEAM-Web. To submit the Certifications and Assurances on behalf of your Applicant, you must be registered in TEAM-Web.

The TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page contains fields for selecting among the 24 Groups of Certifications and Assurances that apply to your Applicant and also a designated field for selecting all 24 Groups of which only the requirements that apply to your Applicant will be enforced.

The ''Cert's & Assurances'' tab has a field for you to enter your personal identification number (PIN), which is your electronic signature. There is also a field for the Attorney's PIN, affirming your Applicant's legal authority to make and comply with the Certifications and Assurances you have selected on your Applicant's behalf. You may enter your PIN in place of the Attorney's PIN, provided that your Applicant has on file a similar affirmation that has been written, dated, and signed by its Attorney in FY 2013.

b. *Paper Submission.* You may submit your Applicant's FY 2013 Certifications and Assurances on paper only if you cannot submit them electronically in TEAM-Web and FTA agrees to accept hard copy submissions. In that case, you must submit the Signature Page(s) in Appendix A of this Notice indicating the Groups of Certifications and Assurances your Applicant is providing if you cannot submit them electronically. You may place a single mark in the designated space to signify your Applicant's agreement to comply with all Groups of Certifications and Assurances to the extent that they apply to your Applicant, or select the specific Groups of Certifications and Assurances that apply to your Applicant and its Projects.

You must enter your signature on the Signature Page(s) and provide an Affirmation by your Applicant's Attorney concerning your Applicant's legal capacity to make and comply with the FY 2013 Certifications and Assurances you have selected on your Applicant's behalf. You may enter your signature in place of the Attorney's signature in the Affirmation by Applicant's Attorney part of the Signature Page, provided that your Applicant has on file a similar affirmation, written, dated, and signed by its Attorney in FY 2013.

For more information, you may contact the appropriate FTA Regional or Metropolitan Office.

Authority. 49 U.S.C. chapter 53; the Moving Ahead for Progress in the 21st Century Act (MAP–21) Pub. L. 112–141, June 6, 2012; other Federal laws administered by FTA; U.S. DOT and FTA regulations codified or to be codified in Title 49, Code of Federal Regulations; and FTA Circulars.

Issued in Washington, DC, this 7th day of February, 2013.

Peter M. Rogoff,

Administrator.

[FR Doc. 2013–03335 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Agency Information Collection Activity Under OMB Review; Reports, Forms and Recordkeeping Requirements

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 2012, and comments were due on December 21, 2012. No comments were received.

DATES: Comments must be submitted on or before March 15, 2013.

ADDRESSES: Send comments regarding this collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively comments may be sent via email to the Office of Information and Regulatory Affairs, Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Simmons, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2321; FAX: 202–366–7901 or email: *lisa.simmons@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Application for Capital Construction Fund and Exhibits.

OMB Control Number: 2133–0027.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Form Number: None.

Abstract: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. Chapter 535 and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Annual Estimated Burden Hours: 1790 hours.

Comments Are Invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.93.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–03297 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2013–0004]

Pipeline Safety: Information Collection Activities, Revision to Gas Distribution Annual Report

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: PHMSA is preparing to request Office of Management and Budget (OMB) approval for the revision of the gas distribution annual report currently approved under OMB Control #2137–0522. In addition to making several minor changes to the report, PHMSA will also request a new OMB Control number for this information collection. In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on the proposed revisions to the form and instructions.

DATES: Interested persons are invited to submit comments on or before April 15, 2013.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2013–0004, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on: PHMSA–2013–0004.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for approval.

B. Gas Distribution Annual Report

PHMSA intends to revise the gas distribution annual report (PHMSA F 7100.1–1, gas distribution annual report) to improve the granularity of the data collected. Background for these topics is as follows:

Specify Commodity

We have added a section for operators to specify the commodity type transported, similar to the gas transmission and hazardous liquid reporting forms. These commodity groups include ''Natural Gas,'' ''Synthetic Gas,'' ''Hydrogen Gas,'' ''Propane Gas,'' ''Landfill Gas,'' and ''Other Gas.'' Operators will select a commodity group based on the predominant gas carried and complete the report for that commodity group. If ''Other Gas'' is selected, operators will need to provide the name of the other gas. Operators will need to file a separate report for each commodity group included in a specific Operator Identification number.

Specify Operator Type

We have added a section to the report for submitters to identify the operator type. The operator type groups include ''Municipal,'' ''Privately Owned,'' and ''Other'' (e.g., cooperatives, public utility districts).

Additional Material Type: We are adding ''Reconditioned Cast Iron'' as a pipe material and defining it as a cast iron gas distribution pipe that has been lined internally by use of suitable materials that ensure safe operation at a MAOP not to exceed the previously established MAOP. ''Reconditioned Cast Iron'' does not include cast iron pipe inserted with a gas pipe that is, by itself, suitable for gas service under Part 192, (e.g., an ASTM D2513 pipe meeting code requirements for the intended gas service.) Such insertions are to be reported as the material used in the insertion. The definition is intended to make a clear distinction between a liner and inserted pipe. Reconditioning techniques would not include new, stand-alone polyethylene pipe, composite pipe, or a tight-fitting liner that does not rely on the structural integrity of the host pipe (the cavity of the host pipe is simply used for installation purposes). Other methods, such as pipe-splitting or bursting that involve the installation of a new stand-alone pipe while the host pipe is destroyed do not result in ''Reconditioned Cast Iron''.

Removal of Requirement To Populate Certain Fields in Part B Tables

We have removed the requirement to populate certain fields in Tables B1, B2, and B3 as that data will now be calculated automatically and populated appropriately from the operator filling in the data for certain other fields in the tables.

Revision of Leak Cause Categories in Part C

We have revised the ''Cause of Leak'' categories in Part C to align the leak causes in the gas distribution annual report with the incident causes from the gas distribution incident reporting form (PHMSA F 7100.1, Incident Report—Gas Distribution System).

Addition of Excavation Damage Cause Categories in Part D

We added a new data collection in ''Excavation Damage'' to include the

four causes from Part I of the ''Damage Information Reporting Tool (DIRT)—Field Form.'' These cause categories are also aligned with the fields that must be input when completing Part G4, field number 14 in the gas distribution incident reporting form.

C. Summary of Impacted Collections

The following information is provided for that information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA is only focusing on the revisions detailed in this notice and will request revisions to the following information collection activities. PHMSA requests comments on the following information collection:

1. Title: Annual Report for Gas Pipeline Operators.

OMB Control Number: N/A.

Current Expiration Date: N/A.

Type of Request: New Collection.

Abstract: PHMSA is looking to revise the gas distribution annual report (PHMSA F 7100.1–1) to improve the granularity of the data collected in several areas.

Affected Public: Gas distribution pipeline operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,440.
Total Annual Burden Hours: 23,040.
Frequency of Collection: Annually.

Comments are invited on:

(a) The need for the proposed collection of information 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, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on February 8, 2013.

Alan K. Mayberry,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2013–03331 Filed 2–12–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board, DOT.

ACTION: Proposed railroad cost recovery procedures productivity adjustment.

SUMMARY: In a decision served on February 8, 2013, we proposed to adopt 1.009 (0.9% per year) as the measure of average change in railroad productivity for the 2007–2011 (5-year) averaging period. This represents a 0.1% increase over the average for the 2006–2010 period. The Board's February 8, 2013 decision in this proceeding stated that comments may be filed addressing any perceived data and computational errors in our calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 1, 2013.

DATES: The productivity adjustment is effective March 1, 2013. Comments are due by February 26, 2013.

ADDRESSES: Send comments (an original and 10 copies) referring to Docket No. EP 290 (Sub-No. 4) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Michael Smith, (202) 245–0322. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov*. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

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

Decided: February 7, 2013.

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

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–03309 Filed 2–12–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–15—1/18/13) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Megan Conley, (202) 245–0348.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–03444 Filed 2–12–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35715]

Norfolk Southern Railway Company—Temporary Trackage Rights Exemption—Grand Trunk Western Railroad Company and Wisconsin Central Ltd.

Pursuant to a temporary trackage rights agreement dated January 24, 2013, Grand Trunk Western Railroad Company and Wisconsin Central Ltd. (collectively, CN) have agreed to grant temporary overhead trackage rights [1] to Norfolk Southern Railway Company (NSR) over the CN rail lines located: (1)

[1] NSR states that this notice was not filed under the Board's class exemption for temporary trackage rights at 49 CFR. 1180.2(d)(8) because the agreement contemplates that the temporary trackage rights will be in effect for more than one year. *See* 49 CFR 1180.2(d)(8) (''Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are * * * scheduled to expire on a specific date not to exceed 1 year from the effective date of the exemption.'') Therefore, NSR concurrently filed a petition for partial revocation of this exemption in *Norfolk Southern Railway Company—Temporary Trackage Rights Exemption—Grand Trunk Western Railroad Company & Wisconsin Central Ltd.,* Docket No. FD 35715 (Sub-No. 1), wherein NSR requests that the Board permit the proposed trackage rights arrangement described in the present proceeding to expire 24 months after the commencement date of the agreement, or the date that the Gary City Track Connection, at or near Gary, Ind., is completed and in use, whichever comes first. That petition will be addressed by the Board in a separate decision.

Between CN's connection with NSR at or near milepost 99.5 in South Bend, Ind., and at or near milepost 36.1 in Griffith, Ind., on CN's South Bend Subdivision, a distance of approximately 63.4 miles; and (2) between milepost 36.1 in Griffith and CN's Kirk Yard at or near milepost 45.4 in Gary on CN's Matteson Subdivision, a distance of approximately 9.3 miles.

The transaction may be consummated on or after February 27, 2013, the effective date of the exemption (30 days after the exemption is filed).[2]

The purpose of this transaction is to allow NSR to interchange with CN at CN's Kirk Yard in Gary during the construction of the Gary City Track Connection.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 20, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35715, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Christine I. Friedman, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 8, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2013–03345 Filed 2–12–13; 8:45 am]

BILLING CODE 4915–01–P

[2] NSR states in its verified notice of exemption that the trackage rights will be consummated on or after February 24, 2013. However, a transaction filed under 49 CFR1180.2(d) may not be consummated until 30 days after the notice was filed. 49 CFR 1180.4(g). NSR filed this notice on January 28, 2013.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for ADA Accommodations Request Packet

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the ADA Accommodations Packet.

DATES: Written comments should be received on or before April 15, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the packet should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Martha.R.Brinson @irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: ADA Accommodations Request Packet.

OMB Number: 1545–2027.

Abstract: Information is collected so that ADA applicants may receive reasonable accommodation, as needed, to take the Special Enrollment Examination.

Current Actions: There are no changes being made to the packet at this time.

Type of Review: This is an extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03244 Filed 2–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8082

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

DATES: Written comments should be received on or before April 15, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

OMB Number: 1545–0790.

Form Number: 8082.

Abstract: A partner, S corporation shareholder, or the holder of a residual interest in a real estate mortgage investment conduit (REMIC) generally must report items consistent with the way they were reported by the partnership or S corporation on Schedule K–1 or by the REMIC on Schedule Q. Also, an estate or domestic trust beneficiary, or a foreign trust owner or beneficiary, is subject to the consistency reporting requirements for returns filed after August 5, 1997. Form 8082 is used to notify the IRS of any inconsistency between the tax treatment of items reported by the partner, shareholder, etc., and the way the pass-through entity treated and reported the same item on its tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 7,067.

Estimated Time Per Respondent: 7 hr., 13 min.

Estimated Total Annual Burden Hours: 51,024.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03245 Filed 2–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8870

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8870, Information Return for Transfers Associated With Certain Personal Benefit Contracts.

DATES: Written comments should be received on or before April 15, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Katherine Dean at Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3186, or through the Internet at *katherine.b.dean@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Transfers Associated With Certain Personal Benefit Contracts.

OMB Number: 1545–1702.

Form Number: 8870.

Abstract: Section 537 of the Ticket to Work and Work Incentives Improvement Act of 1999 added section 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(F) requires an organization to report annually: (1) Any premiums paid after February 8, 1999, to which section 170(f)(10) applies; (2) the name and taxpayer identification number (TIN) of each beneficiary under each contact to which the premiums related; and (3) any other information the Secretary of the Treasury may require. A charitable organization described in section 170(c) or a charitable remainder trust described in section 664(d) that paid premiums after February 9, 1999, or certain life insurance, annuity, and endowment contracts (personal benefit contracts) must complete and file Form 8870.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 14 hours, 50 minutes.

Estimated Total Annual Burden Hours: 74,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03086 Filed 2–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Definition of Contribution in Aid of Construction Under Section 118(c)(§ 1.118–2).

DATES: Written comments should be received on or before April 15, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulation should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Definition of Contribution in Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: REG–106012–98 (TD 8936).

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Reporting Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03246 Filed 2–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2013 Commemorative Coin Programs—Silver and Clad Coin Options

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing prices for the 2013 Girl Scouts of the USA Centennial Silver Dollar and the 2013 5-Star Generals Commemorative Coin Program for the silver and clad coin options.

Product	Introductory price	Regular price
2013 Girl Scouts of the USA Centennial Proof Silver Dollar	$54.95	$59.95
2013 Girl Scouts of the USA Centennial Uncirculated Silver Dollar	50.95	55.95
2013 5-Star Generals Proof Silver Dollar	54.95	59.95
2013 5-Star Generals Uncirculated Silver Dollar	50.95	55.95
2013 5-Star Generals Proof Half Dollar	17.95	21.95
2013 5-Star Generals Uncirculated Half Dollar	16.95	20.95

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing, United States Mint, 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. §§ 5111, 5112 & 9701; Pub. L. 111–86, sec. 6; Pub. L. 111–262, sec. 6.

Dated: February 6, 2013.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2013–03231 Filed 2–12–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Proposed Information Collection (Declaration of Status of Dependents) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to confirm marital status and dependent children.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 15, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0043'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Revision of a currently approved collection.

Abstract: The form is used to obtain information to obtain current information about marital status and existence of any dependent child(ren). The information is used by VA to determine the correct rate of payment for Veterans and beneficiaries who are entitled to an additional allowance for dependants.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 226,000.

Dated: February 7, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–03262 Filed 2–12–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0300]

Proposed Information Collection (Veterans Application for Assistance in Acquiring Special Housing Adaptations) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assistance disabled Veterans in acquiring special housing and/or adaptations to their current resident.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *April 15, 2013.*

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0300'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

OMB Control Number: 2900–0300.

Type of Review: Revision of a currently approved collection.

Abstract: Title 38, U.S.C. 2101 authorizes assistance to disabled Veterans in acquiring special housing and adaptations to dwellings. Under 38 U.S.C. 2101(b), grants are available to assist Veterans in making adaptations to their current residences or one which they intend to live in as long as the home is owned by the Veteran or a

member of the Veteran's family. VA Form 26–4555d enables field personnel to evaluate the request for adaptations. This form is needed because of the difference in disabilities, the amount of alteration, adaptation to the house and title requirements.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 100.

Dated: February 7, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–03260 Filed 2–12–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 30 February 13, 2013

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[EPA–HQ–OW–2008–0878; FRL–9684–8]

RIN 2040–AD94

National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is finalizing revisions to the 1989 Total Coliform Rule (TCR). The Revised Total Coliform Rule (RTCR) offers a meaningful opportunity for greater public health protection beyond the 1989 TCR. Under the RTCR there is no longer a monthly maximum contaminant level (MCL) violation for multiple total coliform detections. Instead, the revisions require systems that have an indication of coliform contamination in the distribution system to assess the problem and take corrective action that may reduce cases of illnesses and deaths due to potential fecal contamination and waterborne pathogen exposure. This final rule also updates provisions in other rules that reference analytical methods and other requirements in the 1989 TCR (e.g., Public Notification and Ground Water Rules). These revisions are in accordance with the 1996 Safe Drinking Water Act (SDWA) Amendments, which require EPA to review and revise, as appropriate, each national primary drinking water regulation no less often than every six years. These revisions also conform with the SDWA provision that requires any revision to ''maintain, or provide for greater, protection of the health of persons.'' As with the 1989 TCR, the RTCR applies to all public water systems.

DATES: This final rule is effective on April 15, 2013. For judicial purposes, this final rule is promulgated as of February 13, 2013. The compliance date for the rule requirements is April 1, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register (FR) as of April 15, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2008–0878. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Sean Conley, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–1781; email address: *conley.sean@epa.gov.* For general information, contact the Safe Drinking Water Hotline, telephone number: (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Categories and Entities

Entities potentially regulated by the RTCR are all public water systems (PWSs). Regulated categories and entities include the following:

Category	Examples of regulated entities
Industry	Privately-owned community water systems (CWSs), transient non-community water systems (TNCWSs), and non-transient non-community water systems (NTNCWSs).
Federal, State, Tribal, and local governments	Publicly-owned CWSs, TNCWSs, and NTNCWSs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''public water system'' in § 141.2 and the section entitled ''Coverage'' in § 141.3 in title 40 of the Code of Federal Regulations (CFR), and the applicability criteria in § 141.851(b) of this 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.

B. Copies of This Document and Other Related Information

This document is available for download at [INSERT WEBSITE ADDRESS]. For other related information, see preceding discussion on docket. EPA also prepared a *Response to Comments Document* that addresses the comments received during the comment period (to access this document, search for Docket ID No. EPA–HQ–OW–2008–0878 in *www.regulations.gov*).

C. Executive Summary

EPA is finalizing the Revised Total Coliform Rule (RTCR). The RTCR maintains the purpose of the 1989 Total Coliform Rule (TCR) to protect public health by ensuring the integrity of the drinking water distribution system and monitoring for the presence of microbial contamination. EPA anticipates greater public health protection under the RTCR, as it requires public water systems (PWSs) that are vulnerable to microbial contamination to identify and fix problems, and it establishes criteria for systems to qualify for and stay on reduced monitoring, thereby providing incentives for improved water system operation.

The RTCR, as with the 1989 TCR, is the only microbial drinking water regulation that applies to all PWSs. Systems are required to meet a legal limit (i.e., maximum contaminant level (MCL)) for *E. coli,* as demonstrated by required monitoring. The RTCR specifies the frequency and timing of the microbial testing by water systems based on population served, system type, and source water type. The rule also requires public notification when

there is a potential health threat as indicated by monitoring results, and when the system fails to identify and fix problems as required.

The entities potentially affected by the RTCR are PWSs that are classified as community water systems (CWSs) (e.g., systems that provide water to year-round residents in places like homes or apartment buildings) or non-community water systems (NCWSs) (e.g., systems that provide water to people in locations such as schools, office buildings, restaurants, etc.); State primacy agencies; and local and tribal governments. The RTCR applies to approximately 155,000 PWSs that serve approximately 310 million (M) individuals.

The RTCR establishes a health goal (maximum contaminant level goal, or MCLG) and an MCL for *E. coli,* a more specific indicator of fecal contamination and potential harmful pathogens than total coliforms. EPA replaces the MCLG and MCL for total coliforms with a treatment technique for coliforms that requires assessment and corrective action. Many of the organisms detected by total coliform methods are not of fecal origin and do not have any direct public health implication.

Under the treatment technique for coliforms, total coliforms serve as an indicator of a potential pathway of contamination into the distribution system. A PWS that exceeds a specified frequency of total coliform occurrence must conduct an assessment to determine if any sanitary defects exist (a sanitary defect is defined by the RTCR as a ''defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure of a barrier that is already in place''); if any are found, the system must correct them. In addition, under the treatment technique requirements, a PWS that incurs an *E. coli* MCL violation must conduct an assessment and correct any sanitary defects found.

The RTCR links monitoring frequency to compliance monitoring results and system performance. It provides criteria that well-operated small systems must meet to qualify for and stay on reduced monitoring. It requires increased monitoring for high-risk small systems with unacceptable compliance history. It also requires some new monitoring requirements for seasonal systems (such as state and national parks).

The RTCR eliminates public notification requirements based only on the presence of total coliforms. Total coliforms in the distribution system may indicate a potential pathway for contamination but by themselves do not indicate a health threat. Instead, the RTCR requires public notification when an *E. coli* MCL violation occurs, indicating a potential health threat, or when a PWS fails to conduct the required assessment and corrective action.

EPA believes that the provisions of the RTCR will improve public health protection by requiring assessment and corrective action and providing incentives for improved operation. The estimated net incremental cost of the RTCR is $14 million annually at either a three or seven percent discount rate. This represents total increased costs relative to 1989 TCR provisions. PWSs are estimated to incur approximately 97 percent of the rule's net annualized present value costs at the three percent discount rate. States and other primacy agencies incur the remaining costs.

Abbreviations Used in This Document

AGI—Acute Gastrointestinal Illness
AIDS—Acquired Immune Deficiency Syndrome
AIP—Agreement in Principle
AWWA—American Water Works Association
ATP—Alternate Test Procedure
BAT—Best Available Technology
C—Celsius
CCR—Consumer Confidence Report
CDC—Centers for Disease Control and Prevention
CFR—*Code of Federal Regulations*
COI—Cost of Illness
CWS—Community Water System
DBP—Disinfection Byproduct
DWC—Drinking Water Committee
EA—Economic Analysis
EC-MUG—EC Medium with MUG
EPA—United States Environmental Protection Agency
ERS—Economic Research Service
ETV—Environmental Technology Verification
FR—*Federal Register*
GWR—Ground Water Rule
GWUDI—Ground Water Under the Direct Influence of Surface Water
HRRCA—Health Risk Reduction and Cost Analysis
HUS—Hemolytic Uremic Syndrome
ICR—Information Collection Request
IESWTR—Interim Enhanced Surface Water Treatment Rule
M—Million
MCL—Maximum Contaminant Level
MCLG—Maximum Contaminant Level Goal
mg/L—Milligrams per Liter
ml—Milliliters
MRDL—Maximum Residual Disinfectant Level
MUG—4-methylumbelliferyl-Beta-D-glucuronide
NCWS—Non-community Water System
NDWAC—National Drinking Water Advisory Council
NPDWR—National Primary Drinking Water Regulation
NTNCWS—Non-Transient Non-Community Water System
NTU—Nephelometric Turbidity Unit
OMB—Office of Management and Budget
O&M—Operation and Maintenance
PN—Public Notification
PWS—Public Water System
RFA—Regulatory Flexibility Act
RTCR—Revised Total Coliform Rule
SAB—Science Advisory Board
SBA—Small Business Administration
SDWA—Safe Drinking Water Act
SDWIS—Safe Drinking Water Information System
SDWIS/FED—Safe Drinking Water Information System Federal Version
SOP—Standard Operating Procedure
Stage 1 DBPR—Stage 1 Disinfectants and Disinfection Byproducts Rule
Stage 2 DBPR—Stage 2 Disinfectants and Disinfection Byproducts Rule
SWTR—Surface Water Treatment Rule
TCR—Total Coliform Rule
TCRDSAC—Total Coliform Rule/Distribution System Advisory Committee
TMF—Technical, Managerial, and Financial
TNCWS—Transient Non-Community Water System
TWG—Technical Work Group
T&C—Technology and Cost
US—United States
UV—Ultraviolet

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II. Background

A. Statutory Authority

The Safe Drinking Water Act (SDWA) requires the EPA to review and revise, as appropriate, each existing national primary drinking water regulation (NPDWR) no less often than every six years (SDWA section 1412(b)(9), 42 U.S.C. 300g–1(b)(9)). In 2003, EPA completed its review of the 1989 TCR (USEPA 1989a, 54 FR 27544, June 29, 1989) and 68 NPDWRs for chemicals that were promulgated prior to 1997 (USEPA 2003, 68 FR 42908, July 18, 2003). The purpose of the review was to identify new health risk assessments, changes in technology, and other factors that would provide a health-related or technological basis to support a regulatory revision that would maintain or improve public health protection. In the Six-Year Review 1 determination published in July 2003 (USEPA 2003, 68 FR 42908, July 18, 2003), EPA stated its intent to revise the 1989 TCR.

B. Purpose of the Rule

EPA promulgated the 1989 TCR to decrease the risk of waterborne illness. Among all SDWA rules promulgated for preventing waterborne illness, only the TCR applies to all PWSs, making the rule an essential component of the multi-barrier approach in public health protection against endemic and epidemic disease. In combination with the other SDWA rules (e.g., the Ground Water Rule (GWR) (USEPA 2006c, 71 FR 65574, November 8, 2006) and the suite of surface water treatment rules (USEPA 1989b; USEPA 1998b; USEPA 2002; USEPA 2006d)), the RTCR will better address the 1989 TCR objectives and enhance the multi-barrier approach to protecting public health, especially with respect to small ground water PWSs.

In recent years, the number of violations under the 1989 TCR have remained relatively steady, as shown and discussed in Exhibit 4.11 and Appendix G of the *Economic Analysis for the Final Revised Total Coliform Rule* (RTCR EA) (USEPA 2012a). EPA believes that this is reflective of a steady state among PWSs complying with the 1989 TCR and any improvements likely to occur under that rule have largely been achieved. In outlining recommendations for further reductions in occurrence, EPA and the Total Coliform Rule Distribution System Advisory Committee (TCRDSAC) developed an Agreement in Principle (AIP) (USEPA 2008c), which became the basis of the proposed and final RTCR. See section II.C.1 of this preamble, *Total Coliform Distribution System Advisory Committee (TCRDSAC),* for more information about the TCRDSAC and the AIP.

The RTCR aims for greater public health protection than the 1989 TCR in a cost-effective manner by: (1) Maintaining the objectives of the 1989 TCR (i.e., to evaluate the effectiveness of treatment, to determine the integrity of the distribution system, and to signal the possible presence of fecal contamination); (2) reducing the potential pathways of contamination into the distribution system (see section II.D of this preamble, *Public Health Concerns Addressed by the Revised Total Coliform Rule*); (3) using the optimal indicator for the intended objectives (i.e., using total coliforms as an indicator of system operation and

condition rather than an immediate public health concern and using *E. coli* as a fecal indicator (see sections II.D, *Public Health Concerns Addressed by the Revised Total Coliform Rule,* and III.B, *Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique,* of this preamble)); (4) requiring more stringent standards than those of the 1989 TCR for systems to qualify for reduced monitoring (see sections III.C.1.b.iii, *Reduced monitoring,* and III.C.1.c.iii, *Reduced monitoring,* of this preamble); and (5) requiring systems that may be vulnerable to contamination, as indicated by their monitoring results and by the nature of their operation (e.g., seasonal systems), to monitor more frequently and have in place procedures that will minimize the incidence of contamination (e.g., requiring start-up procedures for seasonal systems) (see sections III.C.1.b.iv, *Increased monitoring,* III.C.1.c.iv, *Requirements for returning to monthly monitoring,* and III.C.1.f, *Seasonal systems,* of this preamble). EPA, therefore, anticipates greater public health protection under the RTCR compared to the 1989 TCR because of the RTCR's more preventive approach to identifying and fixing problems that affect or may affect public health.

C. Rule Development

1. Total Coliform Rule Distribution System Advisory Committee (TCRDSAC)

The revisions to the 1989 TCR are primarily based on the recommendations of the Total Coliform Rule Distribution System Advisory Committee (''TCRDSAC'' or the ''advisory committee''). EPA established the TCRDSAC in June 2007 in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App.2, 9(c), to provide recommendations to EPA on revisions to the 1989 TCR and on what information about distribution system issues is needed to better understand and address possible public health impacts from potential degradation of drinking water quality in distribution systems (USEPA 2007a, 72 FR 35869, June 29, 2007).

All advisory committee members agreed to a set of recommendations and signed a final Agreement in Principle (AIP) in September 2008. Pursuant to the AIP, EPA on July 14, 2010 proposed revisions to the 1989 TCR (USEPA 2010a, 75 FR 40926, July 14, 2010) that, to the maximum extent consistent with EPA's legal obligations, had the same substance and effect as the elements of the AIP. The AIP and details about the advisory committee can be found at EPA's Web site at *http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/regulation_revisions_tcrdsac.cfm.*

2. Stakeholder Involvement

In accordance with one of the recommendations of the TCRDSAC, EPA held two annual stakeholder meetings, prior to publishing the proposed revisions, to which all advisory committee members and the public at large were invited. In April 2009 and May 2010, EPA held these stakeholder meetings to provide updates and an opportunity for stakeholders to provide feedback on the development of a proposed RTCR that had the same substance and effect as the recommendations in the AIP.

EPA proposed the RTCR on July 14, 2010 (USEPA 2010a, 75 FR 40926, July 14, 2010) and requested public comment. EPA received approximately 150 comment letters on the proposal and considered the comments in making revisions to the final RTCR. Key issues raised by the commenters are discussed in their corresponding sections of this preamble. A *Response to Comments Document* is available in the docket of the RTCR (search for Docket ID No. EPA–HQ–OW–2008–0878 in *www.regulations.gov*).

During the public comment period for the proposed RTCR, EPA also held several meetings to solicit and provide the public with information about the provisions of the proposed rule. In addition to consulting with the advisory committee and holding stakeholder meetings, EPA consulted with specific stakeholders such as the National Drinking Water Advisory Council (NDWAC), the Science Advisory Board (SAB), and Tribal representatives, among others. These consultations are discussed in section VII of this preamble, *Statutory and Executive Order Review.*

D. Public Health Concerns Addressed by the Revised Total Coliform Rule

1. Public Health Concerns, Fecal Contamination, and Waterborne Pathogens

The RTCR aims to increase public health protection through the reduction of potential pathways of entry for fecal contamination into the distribution system. Since these potential pathways represent vulnerabilities in the distribution system whereby fecal contamination and/or waterborne pathogens, including bacteria, viruses and parasitic protozoa could possibly enter the system, the reduction of these pathways in general should lead to reduced exposure and associated risk from these contaminants. Fecal contamination and waterborne pathogens can cause a variety of illnesses, including acute gastrointestinal illness (AGI) with diarrhea, abdominal discomfort, nausea, vomiting, and other symptoms. Most AGI cases are of short duration and result in mild illness. Other more severe illnesses caused by waterborne pathogens include hemolytic uremic syndrome (HUS) (kidney failure), hepatitis, and bloody diarrhea (WHO 2004). Chronic disease such as irritable bowel syndrome, renal impairment, hypertension, cardiovascular disease and reactive arthritis can result from infection by a waterborne agent (Clark *et al.* 2008; Clark *et al.* 2010; Moorin *et al.* 2010).

When humans are exposed to and infected by waterborne enteric pathogens, the pathogens become capable of reproducing in the gastrointestinal tract. As a result, healthy humans shed pathogens in their feces for a period ranging from days to weeks. This shedding of pathogens often occurs in the absence of any signs of clinical illness. Regardless of whether a pathogen causes clinical illness in the person who sheds it in his or her feces, the pathogen being shed may infect other people directly by person-to-person spread, contact with contaminated surfaces, and other means referred to as secondary spread. As a result, waterborne pathogens that are initially waterborne may subsequently infect other people through a variety of routes (WHO 2004). Sensitive subpopulations are at greater risk from waterborne disease than the general population (Gerba *et al.* 1996). For a discussion of sensitive subpopulations, see section VII.L of this preamble, *Impacts on Sensitive Subpopulations as Required by Section 1412(b)(3)(c)(i)(V) of the 1996 Amendments of the Safe Drinking Water Act (SDWA).*

2. Indicators

Total coliforms are a group of closely related bacteria that, with a few exceptions, are not harmful to humans. Coliforms are abundant in the feces of warm-blooded animals, but can also be found in aquatic environments, in soil, and on vegetation. Coliform bacteria may be transported to surface water by run-off or to ground water by infiltration. Total coliforms are common in ambient water and may be injured by environmental stresses such as lack of nutrients, and water treatments such as chlorine disinfection, in a manner similar to most bacterial pathogens and

many viral enteric pathogens (including fecal pathogens). EPA considers total coliforms to be a useful indicator that a potential pathway exists through which fecal contamination can enter the distribution system. This is because the absence (versus the presence) of total coliforms in the distribution system indicates a reduced likelihood that fecal contamination and/or waterborne pathogens are occurring in the distribution system.

Under the 1989 TCR, each total coliform-positive sample is assayed for either fecal coliforms or *E. coli.* Fecal coliform bacteria are a subgroup of total coliforms that traditionally have been associated with fecal contamination. Since the promulgation of the 1989 TCR, more information and understanding of the suitability of fecal coliform and *E. coli* as indicators have become available. Study has shown that the fecal coliform assay is imprecise and too often captures bacteria that do not originate in the human or mammal gut (Edberg *et al.* 2000). On the other hand, *E. coli* is a more restricted group of coliform bacteria that almost always originate in the human or animal gut (Edberg *et al.* 2000). Thus, *E. coli* is a better indicator of fecal contamination than fecal coliforms. The provisions of the RTCR reflect the improved understanding of the value of total coliforms and *E. coli* as indicators.

3. Occurrence of Fecal Contamination and Waterborne Pathogens

a. Presence of fecal contamination. Fecal contamination is a very general term that includes all of the organisms found in feces, both pathogenic and nonpathogenic. Fecal contamination can occur in drinking water both through use and inadequate treatment of contaminated source water as well as direct intrusion of fecal contamination into the drinking water distribution system. Lieberman *et al.* (1994) discuss the general association between fecal contamination and waterborne pathogens. Biofilms in distribution systems may harbor waterborne bacterial pathogens and accumulate enteric viruses and parasitic protozoa (Skraber *et al.* 2005; Helmi *et al.* 2008). Waterborne pathogens in biofilms may have entered the distribution system as fecal contamination from humans or animals.

Co-occurrence of indicators and waterborne pathogens is difficult to measure. While the analytical methods approved by EPA to assay for *E. coli* are able to detect indicators of fecal contamination, they do not specifically identify most of the pathogenic *E. coli* strains. There are at least 700 recognized *E. coli* strains (Kaper *et al.* 2004) and about 10 percent of recognized *E. coli* strains are pathogenic to humans (Feng 1995; Hussein 2007; Kaper *et al.* 2004). Pathogenic *E. coli* include *E. coli* O157:H7, which is the primary cause of HUS in the United States (Rangel *et al.* 2005). The US Centers for Disease Control and Prevention (CDC) estimates that there are 73,000 cases of illness each year in the US due to *E. coli* O157:H7 (Mead *et al.* 1999). The CDC estimates that about 15 percent of all reported *E. coli* O157:H7 cases are due to water contamination (Rangel *et al.* 2005). Active surveillance by CDC shows that 6.3 percent of *E. coli* O157:H7 cases progress to HUS (Griffin and Tauxe 1991; Gould *et al.* 2009) and about 12 percent of HUS cases result in death within four years (Garg *et al.* 2003). About 4 to 15 percent of cases are transmitted within households by secondary transmission (Parry and Salmon 1998).

Because EPA-approved standard methods for *E. coli* do not typically identify the presence of the pathogenic *E. coli* strains, an *E. coli*-positive monitoring result is an indicator of fecal contamination but is not necessarily a measure of waterborne pathogen occurrence. Specialized assays and methods are used to identify waterborne pathogens, including pathogenic *E. coli.*

One notable exception is the data reported by Cooley *et al.* (2007), which showed high concentrations of pathogenic *E. coli* strains in samples containing high concentrations of fecal indicator *E. coli.* These data are from streams and other poor quality surface waters surrounding California spinach fields associated with the 2006 *E. coli* O157:H7 foodborne outbreak. Data equivalent to these samples are not available from drinking water samples collected under the 1989 TCR.

Because *E. coli* is an indicator of fecal contamination (Edberg *et al.* 2000), and because of the general association between fecal contamination and waterborne pathogens (Lieberman *et al.* 1994; Lieberman *et al.* 2002), *E. coli* is a meaningful indicator for fecal contamination and the potential presence of associated pathogen occurrence.

b. Waterborne disease outbreaks. The CDC defines a waterborne disease outbreak as occurring when at least two persons experience a similar illness after ingesting a specific drinking water (or after exposure to recreational water) contaminated with pathogens (or chemicals) (Kramer *et al.* 1996), or when one person experiences amoebic meningoencephalitis after similar waterborne exposure. The CDC maintains a database on waterborne disease outbreaks in the United States. The database is based upon responses to a voluntary and confidential survey form that is completed by State and local public health officials.

The National Research Council strongly suggests that the number of identified and reported outbreaks in the CDC database for surface and ground waters represents only a small percentage of the actual number of waterborne disease outbreaks (NRC 1997; Bennett *et al.* 1987; Hopkins *et al.* 1985 for Colorado data). Under-reporting occurs because most waterborne outbreaks in community water systems are not recognized until a sizable proportion of the population is ill (Perz *et al.* 1998; Craun 1996), perhaps 1 percent to 2 percent of the population (Craun 1996). EPA drinking water regulations are designed to protect against endemic waterborne disease and to minimize waterborne outbreaks. In contrast to outbreaks, endemic disease refers to the persistent low to moderate level or the usual ongoing occurrence of illness in a given population or geographic area (Craun *et al.* 2006).

III. Requirements of the Revised Total Coliform Rule

The RTCR maintains and strengthens the objectives of the 1989 TCR and is consistent with the recommendations in the AIP. The objectives are: (1) To evaluate the effectiveness of treatment, (2) to determine the integrity of the distribution system, and (3) to signal the possible presence of fecal contamination. The RTCR better addresses these objectives by requiring systems that may be vulnerable to fecal contamination (as indicated by their monitoring results) to do an assessment, to identify whether any sanitary defect(s) is (are) present, and to correct the defects. Therefore, the Agency anticipates greater public health protection under the RTCR compared to the 1989 TCR because of its more preventive approach to identifying and fixing problems that affect or may affect public health. The following is an overview of the key provisions of the RTCR:

• *MCLG and MCL for E. coli and coliform treatment technique for protection against potential fecal contamination.* The RTCR establishes a maximum contaminant level goal (MCLG) and maximum contaminant level (MCL) for *E. coli.* Under the RTCR there is no longer a monthly maximum contaminant level (MCL) violation for multiple total coliform detections. The RTCR takes a preventive approach to protecting public health by establishing

a coliform treatment technique for protection against potential fecal contamination. The treatment technique uses both total coliforms and *E. coli* monitoring results to start an evaluation process that, where necessary, requires the PWS to conduct follow-up corrective action that could prevent future incidences of contamination and exposure to fecal contamination and/or waterborne pathogens. See section III.B of this preamble, *Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique,* for further discussion on the MCLG, MCL, and treatment technique requirements.

• *Monitoring.* As with the 1989 TCR, PWSs will continue to monitor for total coliforms and *E. coli* according to a sample siting plan and schedule specific to the system.

Sample siting plans under the RTCR must continue to be representative of the water throughout the distribution system. Under the RTCR, systems have the flexibility to propose repeat sample locations that best verify and determine the extent of potential contamination of the distribution system rather than having to sample within five connections upstream and downstream of the total coliform-positive sample location. In lieu of proposing new repeat sample locations, the systems may stay with the default used under the 1989 TCR of within-five-connections-upstream-and-downstream of the total coliform-positive sample location.

As with the 1989 TCR, the RTCR allows reduced monitoring for some small ground water systems. The RTCR is expected to improve public health protection compared to the 1989 TCR by requiring small ground water systems that are on or wish to conduct reduced monitoring to meet certain eligibility criteria. Examples of the criteria include a sanitary survey showing that the system is free of sanitary defects, a clean compliance history for 12 months, and a recurring annual site visit by the State and/or a voluntary Level 2 assessment for systems on annual monitoring.

For small ground water systems, the RTCR requires increased monitoring for high-risk systems such as those that do not have a clean compliance history under the RTCR. The RTCR specifies conditions under which systems will no longer be eligible for reduced monitoring and be required to return to routine monitoring or to monitor at an increased frequency.

The RTCR requires systems on a quarterly or annual monitoring frequency (applicable only to ground water systems serving 1,000 or fewer people) to collect at least three additional routine monitoring samples the month following one or more total coliform-positive samples, unless the State waives the additional routine monitoring. This is a reduction in the required number of additional routine samples from the 1989 TCR, which requires at least five routine samples in the month following a total coliform-positive sample for all systems serving 4,100 or fewer people.

The 1989 TCR requires all systems serving 1,000 or fewer people to collect at least four repeat samples while requiring PWSs serving 1,000 people or greater to collect three repeat samples. The RTCR requires three repeat samples after a routine total coliform-positive sample, regardless of the system type and size.

See sections III.C, *Monitoring,* and III.D, *Repeat Samples,* of this preamble for detailed discussions of the routine monitoring and repeat sampling requirements of the RTCR.

• *Seasonal systems.* For the first time, the RTCR establishes monitoring requirements specific to seasonal systems. Seasonal systems represent a special case in that the shutdown and start-up of these water systems present additional opportunities for contamination to enter or spread through the distribution system. Under the RTCR, seasonal systems must demonstrate completion of a State-approved start-up procedure. See sections III.A.4, *Seasonal systems,* and III.C.1.f, *Seasonal systems,* of this preamble for further discussion of requirements for seasonal systems.

• *Assessment and corrective action.* As part of a treatment technique, all PWSs are required to assess their systems when monitoring results show that the system may be vulnerable to contamination. Systems must conduct either a Level 1 assessment or a more detailed Level 2 assessment depending on the level of concern raised by the results of indicator sampling. The system is responsible for correcting any sanitary defect(s) found through either a Level 1 or Level 2 assessment. See section III.E of this preamble, *Coliform Treatment Technique,* for more discussion of the treatment technique requirement of the RTCR.

• *Violations and public notification.* The RTCR establishes an *E. coli* MCL violation, a treatment technique violation, a monitoring violation, and a reporting violation. Public notification is required for each type of violation, with the type of notification dependent on the degree of potential public health concern. This is consistent with EPA's current public notification requirements under 40 CFR part 141 subpart Q. The RTCR also modifies the public notification and Consumer Confidence Report language to reflect the construct of the rule. See sections III.F, *Violations,* and III.G, *Providing Notification and Information to the Public,* of this preamble for further discussions of violations and public notification under the RTCR.

• *Transition to the RTCR.* The RTCR allows all systems to transition to the new rule at their 1989 TCR monitoring frequency, including systems on reduced monitoring under the 1989 TCR. For ground water systems serving 1,000 or fewer people, States must conduct a special monitoring evaluation during each sanitary survey after the compliance effective date of the RTCR. Initial grandfathering of monitoring frequencies reduces State burden by not requiring the State to determine appropriate monitoring frequency at the same time the State is working to adopt primacy, develop policies, and train their own staff and the PWSs in the State.

The provisions of the RTCR are contained in the new 40 CFR part 141 subpart Y, superseding 40 CFR 141.21 beginning April 1, 2016.

A. RTCR Definitions

1. Assessment

a. Provisions. EPA is defining a Level 1 assessment and a Level 2 assessment to help in the implementation of the RTCR and to better differentiate between the two levels of assessments.

A Level 1 assessment is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner (or his designated representative). Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and

characteristics of the distribution system.

A Level 2 assessment is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the State, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the State in the case of an *E. coli* MCL violation.

b. Key issues raised. EPA did not propose definitions for Level 1 and Level 2 assessments. However, based on the comments EPA received, there was concern that the distinction between the two levels of assessment is not sufficiently laid out in the rule language. This might pose some problems in the implementation of the RTCR. In response, EPA is defining a Level 1 assessment and a Level 2 assessment. This issue and the RTCR requirements regarding assessments are discussed further in section III.E.2 of this preamble, *Assessment.*

2. Clean Compliance History

a. Provisions. In the final RTCR, EPA is defining ''clean compliance history'' as a record of no maximum contaminant level (MCL) violations under 40 CFR 141.63; no monitoring violations under 40 CFR 141.21 or subpart Y; and no coliform treatment technique trigger exceedances or coliform treatment technique violations under subpart Y. This is the same definition that the advisory committee recommended in the AIP and that EPA proposed in July 2010 (USEPA 2010a, 75 FR 40926, July 14, 2010). The term is specific to RTCR compliance and is used to determine eligibility of systems for reduced monitoring. It does not include violations under other existing NPDWRs. Systems must have a ''clean compliance history'' for a minimum of 12 months to qualify for reduced monitoring (see sections III.C.1.b.iii, *Reduced monitoring,* and III.C.1.c.iii, *Reduced monitoring,* of this preamble regarding reduced monitoring).

However, while the definition of ''clean compliance history'' includes only 1989 TCR/RTCR violations, the State may (and should) consider compliance history under other rules if relevant. For example, failure to take a triggered source water sample required under the GWR (USEPA 2006, 71 FR 65574, November 8, 2006) may appropriately cause the State to not allow less frequent monitoring because this could (1) lead the system to miss source water contamination and (2) indicate a system's lack of attention to regulatory requirements or proper operation.

b. Key issues raised. EPA received comments that a record of no monitoring violations should not be included in the definition of ''clean compliance history.'' Commenters are concerned that small systems, which experience frequent turnover or shortage of staff, may not be able to qualify for reduced monitoring if they miss a sample or two. EPA believes that a system on a reduced monitoring frequency (i.e., less than monthly, either quarterly or annually) must be able to demonstrate that it is capable of delivering safe water and maintaining proper attention to the water system, even on an infrequent monitoring schedule, by meeting certain criteria (see sections III.C.1.b.iii, *Reduced monitoring,* and III.C.1.c.iii, *Reduced monitoring,* of this preamble for discussion about the reduced monitoring criteria). Small systems monitoring less frequently than monthly, especially those monitoring only annually, already have a lower probability of detecting a contamination event compared to systems that monitor monthly. Because of the intermittent nature of contamination and the fact that these systems are already on a significantly reduced monitoring frequency, it is very important that these systems take their samples as required. Because these systems monitor so infrequently, EPA recommends that the States use the annual site visits as an opportunity to review system operations, reinforce the importance of collecting the required samples, and to identify and require correction of any sanitary defects. The State can make sure that the system takes its required sample, and therefore avoids incurring a monitoring violation because of a missed sample (see section III.C.1.b.iii of this preamble, *Reduced monitoring,* for discussion of annual monitoring). EPA is therefore retaining the definition of ''clean compliance history'' as proposed because EPA believes that removing the record of no monitoring violation from the definition would be less protective of public health. However, EPA is providing flexibility to the States in considering monitoring violations in TNCWSs when determining whether the system must go on increased monthly monitoring. See sections III.C.1.b, *Ground water NCWSs serving ≤ 1,000 people,* and III.C.2.b, *Ground water NCWSs serving ≤ 1,000 people,* of this preamble for a more detailed discussion.

3. Sanitary Defect

a. Provisions. EPA is finalizing the definition of sanitary defect as proposed in July 2010 (USEPA 2010a, 75 FR 40926, July 14, 2010). It is defined as a ''defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.'' As stated in the proposed rule, the first part of the definition focuses on the problems in the distribution system that may provide a pathway for contaminants to enter the distribution system and its implication for potential exposure to both microbial and chemical contaminants. The second part of the definition also recognizes the importance of having barriers in place to prevent the entry of microbial contaminants into the distribution system. Indications of failure or imminent failure of these barriers are defects that require corrective action.

The advisory committee deliberated on the definition of sanitary defect and suggested that the definition should be broad enough to facilitate corrective action without absolute confirmation of cause and effect, as such confirmation may be impossible or may significantly delay corrections that would address a sanitary defect that represents a potential threat to public health. Conversely, the language is not intended to suggest that corrections must be undertaken where the linkage between the defect and public health is tenuous. The advisory committee also agreed that

it is their intent that nothing in the definition of sanitary defects precludes conducting an assessment of every element on the example checklists for Level 1 and Level 2 assessments (USEPA 2008d).

b. Key issues raised. EPA received comments regarding the relationship between sanitary defects under the RTCR and ''significant deficiencies' under other regulations and the possible confusion between the two terms. One commenter said that the requirement to identify and correct sanitary defects under the RTCR is very similar to the GWR's requirement to identify and correct significant deficiencies, and that EPA should therefore consider which rule is more effective at minimizing risk of contamination.

The advisory committee specifically stated that ''sanitary defects'' are specific to the assessment and corrective action requirements of the RTCR and are not intended to be linked directly to ''significant deficiencies'' under the Interim Enhanced Surface Water Treatment Rule (IESWTR) (USEPA 1998, 63 FR 69389, December 16, 1998) and the GWR, although some problems could meet either definition. The term ''significant deficiency'' is tied or associated with the eight elements of a sanitary survey. There are problems that are ''sanitary defects'' and are also ''significant deficiencies''. For instance, source water problems like those associated with the well casing may fit the definition of both a ''sanitary defect'' and a ''significant deficiency.'' Depending on when the problem was identified (i.e., during a sanitary survey or during an assessment triggered under RTCR) and on the guidelines set by the State, the system should coordinate with their State regarding how to characterize the problem and how to coordinate the corrective action requirements under the GWR and RTCR, if needed. Conversely, there are problems that are ''sanitary defects'' but are not ''significant deficiencies'' and vice versa. ''Significant deficiency'' can include problems other than those in the distribution system that can have an effect on the long term viability of the system in delivering safe water to its customers. ''Significant deficiencies'' can also exist in the areas of reporting and data verification, system management and operation, and operator compliance with State requirements, which are not considered ''sanitary defects.''

Furthermore, although there might be overlap between a ''sanitary defect'' and ''significant deficiency,'' there are differences in the required timeframes for responding to them (see 40 CFR 141.403(a)(5) and 142.16(b)(1)(ii), and §§ 141.859(b)(3) and (b)(4) of the RTCR). It might therefore be more confusing to use only one term for the requirements of the GWR and RTCR, as suggested by some commenters.

In addition, the GWR only applies to ground water systems. Relying only on the corrective action provisions of the GWR (triggered by a fecal indicator-positive sample) will leave out those systems not covered by the GWR. Also, these GWR provisions are focused on the source water. Since contamination is intermittent and can be from a location other than the source water, the assessment and corrective action provisions in the RTCR will help to better address other types of defects.

As noted in the preamble to the proposed RTCR, nothing in the RTCR is intended to limit the existing authorities of States under other regulations.

4. Seasonal Systems

a. Provisions. EPA is finalizing the definition of seasonal system as ''a non-community water system that is not operated on a year-round basis and starts up and shuts down at the beginning and end of each operating season.''

The advisory committee recognized that seasonal systems have unique characteristics that make them susceptible to contamination. As their name implies, seasonal systems are not operated year-round. The depressurizing and dewatering of the water system, as often occurs with the temporary shutdown of the system, present opportunities for contamination to enter or spread through the distribution system. For example, loss of pressure after a system's shutdown can lead to intrusion of contaminants. Even a system that remains pressurized may be subject to water quality degradation due to stagnant water or loss of disinfectant residual. Microbial growth prior to start-up can result in biofilm formation, which can lead to the accumulation of contaminants. These systems are also more susceptible to contamination due to changes in the conditions of the source water (such as variable contaminant loading due to increased septic tank or septic field use), the seasonal nature of the demand, and the stress that the system experiences. As a result, the Agency is establishing a definition for seasonal systems and setting forth provisions that mitigate the risk associated with the unique characteristics of this type of system (see section III.C.1.f of this preamble, *Seasonal systems,* for requirements for seasonal systems). The advisory committee recommended that such provisions pertain to seasonal systems.

The definition of seasonal system that EPA is promulgating with this final rule is different from the definition proposed in July 2010 (USEPA 2010a, 75 FR 40926, July 14, 2010), which is ''a non-community water system that is operated in three or fewer calendar quarters per calendar year.'' As discussed in the preamble to the proposed rule, EPA was aware of the limitations of the proposed definition that could lead to less public health protection and less effective and more complicated implementation. EPA gave the example of a system that is operated from March to October. Such a system would operate in all four calendar quarters and therefore would not be considered a seasonal system according to the proposed definition, but would nonetheless be subject to the same possibility of distribution system contamination as a seasonal system operated from April to November (i.e., in only three calendar quarters). To address limitations such as this, EPA specifically requested comment on the proposed definition of a seasonal system. The change in the definition from the proposed rule is based on the comments received. Specific requirements (e.g., monitoring, start-up procedure, etc.) for seasonal systems that address the issues associated with such systems are discussed in section III.C.1.f, *Seasonal systems,* and III.C.2.c, *Seasonal systems,* of this preamble.

The definition does not include intermittent systems, such as those that are open year-round but are not operated continuously (e.g., a church open only on Saturdays and Sundays). It also does not include systems that operate year-round but may shut down part of their distribution system for part of the year (e.g., parts of the distribution system that serve a factory that is open only certain times of the year). Since these systems might be subject to the same type of risks as seasonal systems, States may want to consider whether to establish requirements that will mitigate the risks associated with their operation.

b. Key issues raised. EPA received many responses regarding the definition of a seasonal system. Many commenters suggested addressing the issue of depressurization and dewatering in the definition. They suggested that the important risk factor is not the number of quarters the system is in operation but rather the closure and the depressurization and/or dewatering of the distribution system. Other commenters expressed concern about contamination associated with lack of water movement and loss of disinfectant

residual even in a pressurized system. Although the definition of seasonal systems does not directly address these issues, seasonal systems are required to perform start-up procedures (which may include disinfection, flushing, and coliform sampling) prior to serving water to the public. See section III.C.1.f of this preamble, *Seasonal systems,* for a discussion of the requirements for seasonal systems. EPA believes that it is important for a seasonal system to perform start-up procedures to mitigate the public health risks associated with stagnant water and the depressurization and/or dewatering of the distribution system. Hence, failure to perform start-up procedures will result in a treatment technique violation. See section III.F.b of this preamble, *Coliform treatment technique violation,* for additional discussion on this violation.

Since it is possible and perhaps likely that some systems may keep the distribution system pressurized while out of season, EPA has included an additional provision in the RTCR whereby a State can exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating (see §§ 141.854(i)(3), 141.856(a)(4)(ii), and 141.857(a)(4)(ii) of the RTCR). In providing such exemption, the State should conclude that public health protection is maintained. However, a seasonal system monitoring less frequently than monthly must still monitor during the vulnerable period designated by the State. See section III.C.1.f of this preamble, *Seasonal systems,* for additional discussion.

Some commenters suggested that seasonal systems be defined by the number of days, months, or quarters they are not in operation, e.g., 30, 60, or 90 consecutive days, three or more consecutive months, one full calendar quarter, etc. While such a change could address some of EPA's concerns, it does not address the potential for contamination associated with lack of operation and loss of pressure.

B. Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique

1. MCLG and MCL

a. Requirements. Under the final RTCR, EPA is eliminating the MCLG for total coliforms (including fecal coliforms) and the MCL for total coliforms. EPA is also establishing an MCLG of zero and an MCL for *E. coli.* The MCL for *E. coli* is based on the monitoring results for total coliforms and *E. coli.* A system is in compliance with the *E. coli* MCL unless any of the following conditions occur:

- A system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample; or
- A routine sample is *E. coli*-positive and one of its associated repeat samples is total coliform-positive; or
- A system fails to test for *E. coli* when any repeat sample tests positive for total coliforms; or
- A system fails to take all required repeat samples following a routine sample that is positive for *E. coli.*

Although not explicitly stated, as a logical consequence of the second condition, a system also violates the MCL when an *E. coli*-positive routine sample is followed by an *E. coli*-positive repeat sample because *E. coli* bacteria are a subset of total coliforms.

EPA is establishing an MCLG of zero for *E. coli* and removing the current MCLG of zero for total coliforms (including fecal coliforms) because *E. coli* is a more specific indicator of fecal contamination and potential harmful pathogens in drinking water than are total coliforms (including fecal coliforms). These requirements were part of the July 2010 proposed rule (USEPA 2010a, 75 FR 40926, July 14, 2010) and are unchanged in the final RTCR. See section III.A.2 of the preamble to the proposed RTCR, *MCLG and MCL for E. coli, and coliform treatment technique,* for further discussion on the MCLG, MCL, and treatment technique requirements.

b. Key issues raised. The majority of the commenters supported EPA's proposal to remove the MCLG and MCL for total coliforms (including fecal coliforms) and to establish an MCLG and MCL for *E. coli.*

However, there were some who commented that removing the MCLG and MCL for total coliforms will result in backsliding in public health protection. These commenters stated that the elimination of the non-acute MCL violation removes a strong incentive for water systems to perform proactive maintenance and operations activities to maintain distribution system water quality and avoid MCL violations and subsequent public notice to customers. EPA disagrees. EPA and the advisory committee decided that removing the MCLG and MCL for total coliforms is appropriate. SDWA section 1412(b)(3)(A)(i) directs EPA to use ''the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective science practices'' in conducting the risk assessment when promulgating an NPDWR. In 1989, EPA set an MCLG of zero for total coliforms. Since the promulgation of the 1989 TCR, a better understanding of the nature of total coliforms, especially fecal coliforms, has become available. Many of the organisms detected by total coliform and fecal coliform methods are not of fecal origin and do not have any direct public health implications (Edberg *et al.* 2000). Total coliforms may, however, indicate the presence of a pathway by which fecal contamination can occur; thus, total coliforms are instead used as part of a treatment technique requirement, which is discussed in more detail in the next section and in section III.E of this preamble, *Coliform Treatment Technique.* Inclusion of the MCLG and MCL for total coliforms is not supported by the available science and would be contrary to SDWA section 1412(b)(3)(A)(i).

Commenters agreed with EPA's proposal to eliminate the provisions on fecal coliforms. Therefore, fecal coliforms will no longer be used in the RTCR and all analytical methods used to detect for fecal coliforms are also removed from the rule. For a discussion on analytical methods, see section III.I of this preamble, *Analytical Methods.*

2. Coliform Treatment Technique

a. Requirements. EPA is establishing a treatment technique that will require a PWS to conduct an assessment of its system and, when necessary, perform corrective actions in response to trigger conditions that indicate a possible pathway of contamination into the system. The treatment technique requirements are the same as those in the proposed RTCR. A PWS that exceeds a specified frequency of total coliform occurrence must conduct a Level 1 or Level 2 assessment to determine if any sanitary defect exists and, if found, to correct the sanitary defect. As discussed earlier, the MCLG and MCL for total coliforms are removed. The conditions that defined a non-acute MCL violation under the 1989 TCR are now used to trigger a system to conduct an assessment of the system. A discussion of the treatment technique requirements, i.e., the triggers, the levels of assessment, the completion of the assessment form, etc., can be found in section III.E of this preamble, *Coliform Treatment Technique.*

b. Key issues raised. The majority of the commenters supported the change from a total coliform non-acute MCL to a treatment technique requirement. However, some commenters disagreed with the change. They stated that the treatment technique construct will not work for small NCWSs since they typically do not treat their water, have

no certified operator, and have limited or no distribution system. They noted that since systems with limited or no distribution system do not have the extensive network of piping and service connections and other elements that comprise a typical distribution system, the treatment technique construct, which the commenters considered as focusing on the distribution system, will not work. These commenters suggested that for systems with limited or no distribution system, the focus should be on the source, and therefore, the requirements of the GWR should be sufficient. They suggested that the total coliform MCL should be retained for these systems because the treatment technique requirements will be too complicated for these systems to comply with, resulting in more non-compliance, more burden on the State, and likely less public health protection.

EPA disagrees that the treatment technique construct will not work for small NCWSs. The requirement to assess the system after a trigger consists of looking at all of the elements that might have affected the quality of the distributed water, including not only the distribution system but also the source and the treatment process. Although some small systems have limited or no distribution system, they can still have parts of their system (e.g., building plumbing, or buried piping at a campground) that are vulnerable to contamination, such as that introduced by a cross-connection or infiltration. In addition, relying only on the corrective action provisions of the GWR will leave out those systems not covered by the GWR, or in cases of positive results, systems where corrective action under the GWR is not immediately required by the State. For example, total coliform-positive repeat samples do not trigger any action under the GWR, even if those samples are also triggered source water samples. Also, a State may require additional source samples instead of a corrective action after the first fecal indicator positive sample (see 40 CFR 141.402(a)(3)). In addition, some small NCWSs with limited or no distribution system use surface water. Finally, the GWR provisions are focused on the source water. Since contamination is intermittent and can be from a location other than the source water, the assessment and corrective action provisions in the RTCR will help address other types of defects.

EPA understands that there will be implementation challenges during the first few years of the rule implementation, especially for small PWSs. However, as systems with limited or no distribution system are simple systems, the assessments should also be relatively simple. There is nothing in the RTCR that prohibits the States from conducting assessments that integrate the requirements of the GWR and RTCR where appropriate (see section III.E of this preamble, *Coliform Treatment Technique,* for a discussion of the coliform treatment technique). EPA encourages States to make any necessary modifications to their regulations to make the most efficient use of limited State resources and to better integrate these rules for systems with little-to-no distribution system, provided that the revisions satisfy the primacy requirements for both the GWR and the RTCR. Also, EPA plans to develop guidance manuals specifically for small systems to help them comply with the RTCR. EPA is also working to update the Safe Drinking Water Information System (SDWIS) to include the requirements of the RTCR and have SDWIS ready in advance of the compliance date for the rule.

As discussed earlier, EPA believes that the treatment technique requirements are more protective of public health because they require a system to take preventive actions to address problems. This is a change from just issuing a PN and conducting additional monitoring under the 1989 TCR to proactively doing an assessment to determine the cause of the possible contamination under the RTCR and performing corrective action where needed.

C. Monitoring

1. Requirements

a. Requirements that apply to all PWSs. As with the 1989 TCR, the RTCR requires all PWSs to collect and test samples for total coliforms and *E. coli* according to a sample siting plan and schedule specific to the system. PWSs must collect the samples at regular intervals throughout the month, except systems that use only ground water and serve 4,900 or fewer people may collect all required samples on a single day if they are taken from different sites.

Under the RTCR, all PWSs are still required to take repeat samples within 24 hours of learning of any routine monitoring sample that is total coliform-positive. PWSs must comply with the repeat monitoring requirements and *E. coli* analytical requirement, discussed in detail in section III.D of this preamble, *Repeat Samples.* All samples taken for RTCR compliance (routine and repeat) may occur at a customer's premises, dedicated sampling station, or other designated compliance sampling location.

EPA notes that a system must still take the required minimum number of samples even if it has had an *E. coli* MCL violation or has exceeded the coliform treatment triggers before the end of the monitoring compliance period. For example, if a system has an *E. coli* MCL violation after taking 10 of the 40 required routine monthly samples, the system must continue routine total coliform monitoring, analyze any total coliform-positive samples for *E. coli,* and take one round of repeat samples following any total coliform-positive routine sample.

Under the RTCR, systems' sample siting plans must include routine and repeat sample sites and any sampling points necessary to meet the Ground Water Rule (GWR) requirements. As with the 1989 TCR, the sample siting plan is subject to State review and revision.

The repeat sample sites may be alternative monitoring locations that the PWS is proposing to use instead of the repeat sample locations that are within five connections upstream and downstream of the original sampling location that tested total coliform-positive. The PWS must demonstrate to the State's satisfaction that the alternative monitoring locations are representative of a pathway for contamination into the distribution system (for example, near a storage tank), and that the sample siting plan remains representative of the water quality in the distribution system. Systems may elect to specify either alternative fixed locations or criteria for selecting their repeat sampling locations on a situational basis in a standard operating procedure (SOP), which is part of the sample siting plan. The State may determine that monitoring at the entry point to the distribution system (especially for undisinfected ground water systems) is effective to differentiate between potential source water and distribution problems. The use of alternative monitoring locations or an SOP does not require prior State approval but systems are required to submit to their primacy agencies their proposed alternative locations. States can modify and revise these locations or the SOP as needed. Additional discussion about the alternative monitoring locations can be found in section III.D of this preamble, *Repeat Samples.*

Monitoring locations that serve both as a repeat sampling location and a triggered source water monitoring location for the GWR (i.e., locations for dual purpose sampling) must also be included in the sample siting plan. These locations need to be approved by

the State before the PWS can use them. For more discussion on the dual purpose sampling, see section III.D of this preamble, *Repeat Samples.*

Under the RTCR, PWSs may take more than the minimum required number of routine samples and must include the results in calculating whether the total coliform treatment technique trigger for conducting an assessment has been exceeded, but only if the samples are taken in accordance with the sample siting plan and are representative of water throughout the distribution system (see section III.E of this preamble, *Coliform Treatment Technique,* for a discussion on the coliform treatment technique requirements).

Under the RTCR, EPA is not making substantive changes to the requirements of the TCR for (1) special purpose samples, and (2) invalidation of total coliform samples.

New systems that begin operation on or after the compliance date of the RTCR must comply with the routine monitoring frequency established by the RTCR for their system size and type beginning in their first month of operation.

The following are the monitoring requirements for different categories of systems.

b. Ground water NCWSs serving ≤ 1,000 people. i. Routine monitoring. The RTCR requires ground water NCWS serving 1,000 or fewer people to routinely monitor each quarter for total coliforms and *E. coli* except that systems can transition into RTCR at their 1989 TCR monitoring frequency as discussed in further detail in the next section, and there are provisions under which the monitoring frequency may be reduced or increased. Seasonal systems under this category must routinely monitor every month that they are in operation (see section III.C.1.f of this preamble, *Seasonal systems,* for additional discussion on seasonal system requirements).

ii. Transition to the RTCR. The RTCR requires all ground water NCWSs serving 1,000 or fewer people, including seasonal systems, to continue with their 1989 TCR monitoring schedules as of the compliance date of the RTCR, unless or until any of the conditions for increased monitoring discussed later in this section are triggered on or after the compliance date, or unless otherwise directed by the State as a result of the special monitoring evaluation conducted under a sanitary survey or at any other time the State believes that the sampling the system is conducting may not be adequate. In addition, systems on annual monitoring, including seasonal systems, must have an initial annual site visit by the State within one year of the compliance date and an annual site visit each calendar year thereafter to remain on annual monitoring. Systems may substitute a voluntary Level 2 assessment by a party approved by the State for the annual site visit in any given year. The periodic sanitary survey may be used to meet the requirement for an annual site visit for the year in which the sanitary survey was completed.

After the compliance date of the final RTCR, during each sanitary survey the State must perform a special monitoring evaluation to review the status of the water system, including the distribution system, to determine whether the system is on an appropriate RTCR monitoring schedule and modify the monitoring schedule as necessary. States must evaluate system factors such as the pertinent water quality and compliance history, the establishment and maintenance of contamination barriers, and other appropriate protections, and validate the appropriateness of the water system's existing RTCR monitoring schedule and modify as necessary. For seasonal systems on quarterly or annual monitoring, this evaluation must also include review of the approved sample siting plan, which designates the time period(s) for monitoring based on site-specific considerations (such as during periods of highest demand or highest vulnerability to contamination). The system must collect compliance samples during these designated time periods.

iii. Reduced monitoring. The State has the discretion to reduce the monitoring frequency for well-operated ground water NCWSs from the quarterly routine monitoring to no less than annual monitoring, if the water system can demonstrate that it meets the criteria for reduced monitoring provided in this section.

To be eligible to qualify for and remain on annual monitoring after the compliance date, a ground water NCWS serving 1,000 or fewer people must meet all of the following criteria:

- The system must have a clean compliance history (no MCL violations or monitoring violations under the 1989 TCR and/or RTCR, no Level 1 or Level 2 trigger exceedances or treatment technique violations under the RTCR) for a minimum of 12 months. (For a more detailed discussion on Level 1 and Level 2 triggers, see section III.E of this preamble, *Coliform Treatment Technique*);
- The most recent sanitary survey shows the system is free of sanitary defects, has a protected water source and meets approved construction standards; and
- An initial site visit by the State within the last 12 months to qualify for reduced annual monitoring, and recurring annual site visits to stay on reduced annual monitoring; and correction of all identified sanitary defects. A voluntary Level 2 assessment by a party approved by the State may be substituted for the State annual site visit in any given year.

iv. Increased monitoring. Ground water NCWS serving 1,000 or fewer people on quarterly or annual monitoring must begin monthly monitoring the month after any of the following events occurs:

- The system triggers a Level 2 assessment or two Level 1 assessments in a rolling 12 month period;
- The system has an *E. coli* MCL violation;
- The system has a coliform treatment technique violation (for example, if the system fails to conduct a Level 1 assessment or correct for sanitary defects if required to do so);
- The system on quarterly monitoring has two RTCR monitoring violations; or
- The system has one RTCR monitoring violation and triggers a Level 1 assessment in a rolling 12-month period.

EPA added the last condition by which a ground water NCWS serving ≤ 1,000 people can be triggered into increased monitoring to improve the internal consistency of these triggers, given that these NCWSs monitor less frequently in general, and given the added flexibility for States to elect not to count monitoring violations at TNCWS toward triggers to increased monitoring as described in the next paragraph. Since either two Level 1 assessments or two RTCR monitoring violations in a rolling 12-month period triggers increased monitoring, EPA believes it is appropriate for one of each of these events to also trigger increased monitoring for these NCWSs. See section III.E.1 of this preamble, *Coliform treatment technique triggers,* for a discussion of coliform treatment technique triggers.

EPA also added flexibility to allow States to elect to not count TNCWS monitoring violations in determining whether the trigger for increased monitoring has been exceeded, but only if the missed sample is collected no later than the end of the next monitoring period. The system must collect the make-up sample in a different week than the routine sample for the next monitoring period and should collect the sample as soon as possible during the next monitoring period. This

provision applies only for routine samples. The TNCWS would still incur a monitoring violation and must follow the other requirements associated with such violation (e.g., public notification and reporting). This provision is added in response to comments received by EPA. See section III.C.2.b of this preamble, *Ground water NCWSs serving ≤ 1,000 people,* for additional discussion of this provision.

Ground water NCWS serving 1,000 or fewer people on annual monitoring must begin quarterly monitoring the month after the following event occurs:

• The system on annual monitoring has one RTCR monitoring violation.

This is a change from the proposed rule requirement where the event would have triggered the system to go to monthly monitoring instead of quarterly monitoring. This change is further discussed in section III.C.2.b of this preamble, *Ground water NCWSs serving ≤ 1,000 people*.

The system must continue monthly or quarterly monitoring until the requirements in this section for returning to quarterly or annual monitoring are met.

v. Requirements for returning to quarterly monitoring. To be eligible to return from increased monthly monitoring to quarterly monitoring, ground water NCWSs serving 1,000 or fewer people must meet all of the following criteria:

• Within the last 12 months, the system must have a completed sanitary survey or a site visit by the State or a voluntary Level 2 assessment by a party approved by the State. The system is free of sanitary defects, and has a protected water source; and

• The system has a clean RTCR compliance history (no *E. coli* MCL violations, Level 1 or 2 triggers, coliform treatment technique violations or monitoring violations) for a minimum of 12 months.

For TNCWSs, the State may elect not to count monitoring violations towards the requirement of a clean compliance history (as presented in the last bullet) if the missed sample is collected no later than the end of the next monitoring period. This applies only for routine samples. The TNCWS would still incur a monitoring violation and must follow the other requirements associated with such violation (e.g., public notification and reporting). See section III.C.2.b of this preamble, *Ground water NCWSs serving ≤ 1,000 people,* for additional discussion about this provision.

vi. Requirements for returning to reduced annual monitoring. To be eligible to return from increased monthly monitoring to reduced annual monitoring, the system must meet the criteria to return to routine quarterly monitoring plus the following criteria:

• An annual site visit (recurring) by the State and correction of all identified sanitary defects. An annual voluntary Level 2 assessment may be substituted for the State annual site visit in any given year; and

• The system must have in place or adopt one or more additional enhancements to the water system barriers to contamination as approved by the State. These measures could include but are not limited to the following:

—Cross connection control, as approved by the State.

—An operator certified by an appropriate State certification program, which may include regular visits by a circuit rider certified by an appropriate State certification program.

—Continuous disinfection entering the distribution system and a residual in the distribution system in accordance with criteria specified by the State.

—Maintenance of at least a 4-log inactivation or removal of viruses each day of the month based on daily monitoring as specified in the GWR (with allowance for a 4-hour exception).

—Other equivalent enhancements to water system barriers to contamination as approved by the State.

vii. Additional routine monitoring. All systems collecting samples on a quarterly or annual frequency must conduct additional routine monitoring following a single total coliform-positive sample (with or without a Level 1 trigger event). The additional routine monitoring consists of three samples in the month following the total coliform-positive sample at routine monitoring locations identified in the sample siting plan. This is a change from the 1989 TCR additional routine monitoring requirement of taking a total of five samples the month following a total coliform-positive sample for systems that take four or fewer samples per month. Consistent with the 1989 TCR, the State may waive the additional routine monitoring requirement if:

• The State, or an agent approved by the State, performs a site visit before the end of the next month the system provides water to the public. Although a sanitary survey need not be performed, the site visit must be sufficiently detailed to allow the State to determine whether additional monitoring and/or any corrective action is needed. The State cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the State to perform sanitary surveys or RTCR assessments.

• The State has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case, the State must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the State official who recommends such a decision, and make this document available to the EPA and public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem.

• The State may not waive the requirement to collect three additional routine samples the next month in which the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. If the State determines that the system has corrected the contamination problem before the system takes the set of repeat samples required in § 141.858, and all repeat samples were total coliform-negative, the State may waive the requirement for additional routine monitoring the next month.

All additional routine samples are included in determining compliance with the MCL and coliform treatment technique requirements.

c. Ground water CWSs serving ≤ 1,000 people. i. Routine monitoring. The RTCR requires ground water CWSs serving 1,000 or fewer people to routinely monitor at least once each month for total coliforms and *E. coli* except that systems can transition into RTCR at their 1989 TCR monitoring frequency as discussed in further detail in the next section, and there are provisions under which the sampling frequency may be reduced by the State.

The State may reduce the monitoring frequency for ground water CWS from the monthly routine monitoring to quarterly reduced monitoring if the water system can demonstrate that it meets the criteria for reduced monitoring provided later in this section.

ii. Transition to the RTCR. All ground water CWSs serving 1,000 or fewer people continue with their 1989 TCR monitoring schedules unless or until any of the increased monitoring requirements in this section occur or as directed by the State.

After the compliance date of the final RTCR, the State must determine

whether the system is on an appropriate monitoring schedule by performing a special monitoring evaluation during each sanitary survey to review the status of the PWS, including the distribution system. The first such evaluation must be conducted during the first scheduled sanitary survey after the effective date of the rule; a system may remain on its 1989 TCR monitoring schedule until this time unless it is triggered into more frequent monitoring. After its first evaluation, the State may allow the system to remain on its 1989 TCR monitoring schedule as long as the system meets the conditions for doing so. The State must evaluate system factors such as the pertinent water quality and compliance history, the establishment and maintenance of barriers to contamination, and other appropriate protections to validate the water system's existing monitoring schedule or require more frequent monitoring.

iii. Reduced monitoring. The State has the flexibility to reduce the monitoring frequency for well-operated ground water CWS from the monthly routine monitoring to no less than quarterly monitoring if the water system can demonstrate that it meets the criteria for reduced monitoring provided in this section.

To be eligible to change from monthly to quarterly reduced monitoring after the compliance date, ground water CWSs serving 1,000 or fewer people must be in compliance with any State-certified operator provisions and meet each of the following criteria:

- The system must have a clean compliance history (no MCL violations or monitoring violations under the TCR and/or RTCR, no Level 1 or Level 2 trigger exceedances or treatment technique violations under the RTCR) for a minimum of 12 months;
- The most recent sanitary survey shows the system is free of sanitary defects (or has an approved plan and schedule to correct them and is in compliance with the plan and the schedule), has a protected water source, and meets approved construction standards; and
- The system must meet at least one of the following criteria:

—An annual site visit by the State or an annual voluntary Level 2 assessment by a party approved by the State or meeting criteria established by the State and correction of all identified sanitary defects (or an approved plan and schedule to correct them and is in compliance with the plan and schedule).
—A cross connection control program, as approved by the State.
—Continuous disinfection entering the distribution system and a residual in the distribution system in accordance with criteria specified by the State.
—Demonstration of maintenance of at least a 4-log inactivation or removal of viruses each day of the month based on daily monitoring as specified in the GWR (with allowance for a 4-hour exception) (USEPA 2006c, 71 FR 65574, November 8, 2006).
—Other equivalent enhancements to water system barriers to contamination as approved by the State.

iv. Requirements for returning to monthly monitoring. When a system on quarterly monitoring experiences any of the following events the system must begin monthly monitoring the month after the event occurs:

- System triggers a Level 2 assessment or two Level 1 assessments in a rolling 12-month period.
- System has an *E. coli* MCL violation.
- System has a coliform treatment technique violation (e.g., fails to conduct a Level 1 or Level 2 assessment or to correct for a sanitary defect if required to do so).
- System has two routine RTCR monitoring violations in a rolling 12-month period.

The system must continue monthly monitoring until all the reduced monitoring requirements discussed previously in this section are met. A system that loses its certified operator must also return to monthly monitoring the month following the loss.

v. Additional routine monitoring. Ground water CWSs serving ≤ 1,000 people collecting samples on a quarterly frequency must conduct additional routine monitoring following a single total coliform-positive sample (with or without a Level 1 trigger event), similar to the additional monitoring requirements for ground water NCWS serving ≤ 1,000 people. See section III.C.1.b.vii of this preamble, *Additional routine monitoring,* for a discussion of the additional routine monitoring requirements.

d. Subpart H systems serving ≤ 1,000 people. The monitoring requirements for subpart H systems of this part (PWSs supplied by a surface water source or by a ground water under the direct influence of surface water (GWUDI) source) serving 1,000 or fewer people remain the same as under the 1989 TCR (see § 141.856). These systems are not eligible for reduced monitoring. In addition, the rule requires all seasonal systems, on and after the compliance date of the final RTCR, to demonstrate completion of a State-approved start-up procedure (see section III.C.1.f of this preamble, *Seasonal systems,* for additional discussion on seasonal system requirements).

e. PWSs serving > 1,000 people. The monitoring requirements for PWSs serving more than 1,000 people remain the same as under the 1989 TCR (see § 141.857), with the exception of the applicable revisions to the repeat sampling locations provided in § 141.858 and to the additional routine monitoring provisions. Systems on monthly monitoring are not required to take additional routine samples the month following a total coliform-positive sample, as recommended by the advisory committee (see section III.A.3.b.ii(g) of the preamble to the proposed RTCR, *Additional routine monitoring,* for an explanation of this change from the 1989 TCR). Consistent with the 1989 TCR, systems serving > 1,000 people are not eligible for reduced monitoring. In addition, the rule requires all seasonal systems, on and after the compliance date of the final RTCR, to demonstrate completion of a State-approved start-up procedure (see section III.C.1.f of this preamble, *Seasonal systems,* for additional discussion on seasonal system requirements).

f. Seasonal systems. Since seasonal systems are a subset of NCWSs, they are subject to the requirements of the particular NCWS size category they fall under (e.g., seasonal systems using ground water and serving ≤ 1,000 people are subject to the requirements of ground water NCWS serving ≤ 1,000 people, or seasonal systems using surface water and serving ≤ 1,000 people are subject to the requirements of subpart H systems serving ≤ 1,000 people, and so on), unless otherwise noted. The RTCR is promulgating requirements specific to seasonal systems to mitigate the risk associated with the unique characteristics of this type of systems (see section III.A.4 of this preamble, *Seasonal systems,* for additional discussion about seasonal systems). One of the provisions is the requirement that all seasonal systems must demonstrate completion of a State-approved start-up procedure prior to serving water to the public on and after the compliance date of the final RTCR each time they start up the system. The start-up procedure may include a requirement for a start-up sample prior to serving water to the public.

Under the RTCR, all seasonal systems are required to take at least one routine sample per month for total coliforms and *E. coli* during the months that they are in operation, unless the sampling

frequency has been reduced by the State under the RTCR. Seasonal systems serving > 1,000 people have the same monitoring frequency as other PWSs serving > 1,000 people (see § 141.857 of the RTCR) and it cannot be reduced. However, seasonal systems serving ≤ 1,000 people that are not on monthly monitoring by the compliance date of the RTCR may continue with their existing 1989 TCR monitoring frequency afterwards, unless or until any of the conditions for increased monitoring discussed previously in section III.C.1.b.iv of this preamble, *Increased monitoring,* are triggered on or after the compliance date, or as directed by the State. To continue on their existing 1989 TCR monitoring frequency, seasonal systems on less than monthly monitoring at the compliance date of the RTCR must have an approved sample siting plan that designates the time period for monitoring based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). The system must collect compliance samples during this time period. Seasonal systems on annual monitoring frequency are required to have a recurring annual site visit by the State (or an annual voluntary Level 2 assessment by a party approved by the State) to remain on annual monitoring.

Only seasonal systems using ground water and serving ≤ 1,000 people are eligible for reduced monitoring. To be newly eligible for reduced monitoring after the compliance date, they must meet the following criteria:

- The system must have an approved sample siting plan that designates the time period for monitoring based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). The system must collect compliance samples during this time period; and
- To be eligible for reduced quarterly monitoring, the system must also meet all the reduced monitoring criteria discussed in section III.C.1.b.v of this preamble, *Requirements for returning to quarterly monitoring,* and provided in § 141.854(g) of the RTCR.
- To be eligible for reduced annual monitoring, the system must also meet all the reduced monitoring criteria discussed in section III.C.1.b.vi of this preamble, *Requirements for returning to reduced annual monitoring,* and provided in § 141.854(h) of the RTCR.

The State may exempt any seasonal system from some or all of the requirements for seasonal systems (e.g., performing start-up procedures) if the entire distribution system remains pressurized during the entire period that the system is not operating. However, systems that monitor less frequently than monthly must still monitor during the time period designated in their approved sample siting plan.

g. Consecutive systems. EPA did not identify any issues regarding consecutive systems in the RTCR. Consecutive systems must monitor for total coliforms at a frequency based on the population served by the consecutive system and the source water type of the wholesale system. In instances where it is justified to treat two or more distribution systems as a single system for monitoring purposes, 40 CFR 141.29 allows the State to modify the monitoring requirements for the combined distribution system. Any modifications to the monitoring requirements must be approved by EPA. The State may not, however, modify the compliance requirements. The RTCR is not modifying the provisions of 40 CFR 141.29. When conducting assessment and corrective action under the RTCR, wholesalers and consecutive systems should cooperate as directed by the State and conduct assessment and corrective action based on the location of the positive sample results, the potential pathways of distribution system contamination, and the sanitary defects identified.

2. Key Issues Raised

a. Sample siting plans. The majority of the comments EPA received supported the proposal that sample siting plans be subject to State review and revision instead of requiring State approval. The advisory committee recommended that States review and revise sample siting plans consistent with current practice and that the State develops and implements a process to ensure the adequacy of sample siting plans. EPA also received comments that requiring State approval of sample siting plans will be an additional burden to the States. Considering these comments and the recommendation of the advisory committee, EPA, therefore, is not changing the requirement regarding State review and revision of the sample siting plan in most instances. There are, however, instances where it is necessary for the State to review and approve elements of the sample siting plan, and other instances where the need for State approval is left to State discretion. For example, seasonal systems on less than monthly monitoring must have an approved sample siting plan that designates the time period for collecting the sample(s) as discussed previously in section III.C.1.f of this preamble, *Seasonal systems.* On the other hand, for systems that want to establish repeat sampling locations other than the within-five-connections-upstream-and-downstream of the total coliform-positive sample, the system must submit the siting plan for review and the State may modify the sampling locations as needed, but State approval is not required by the RTCR, as discussed in section III.D of this preamble, *Repeat Samples.*

EPA received comment that supported the use of dedicated sampling locations. Although not specifically addressed this practice is already in use by some States and systems under the 1989 TCR. As discussed in the proposed RTCR, EPA is specifically allowing the use of dedicated sampling stations for the following reasons:

- To reduce potential contamination of the sampling taps. Utilities will have more control to prevent contamination of the sampling tap by preventing its use by unauthorized persons and allowing no routine use of the tap except for sampling.
- To facilitate access to sampling taps. Currently systems may be constrained by where they sample, e.g., only at public buildings or in certain individual customer's house.
- To improve sampling representation of the distribution system. Allowing dedicated sampling taps in areas where systems have not been able to gain access will facilitate better sampling representation of the distribution system.

b. Ground water NCWSs serving ≤ 1,000 people. EPA received comments regarding the monitoring requirements for small ground water NCWSs. Many of the commenters agreed with the requirements proposed while some commenters suggested that systems should not be allowed to monitor less than monthly.

The advisory committee recommended that the routine monitoring frequency for ground water NCWSs serving 1,000 or fewer people remain at quarterly monitoring as provided in the 1989 TCR. EPA believes that quarterly monitoring carried out in conjunction with the assessment and corrective action requirements would maintain or improve public health protection without increasing sampling costs over the 1989 TCR requirements. The advisory committee also recognized that current sampling costs are not insignificant for small systems, and wanted to allow reduced monitoring for well-performing systems under the more specific and rigorous criteria described previously in sections III.C.1.b.iii, *Reduced monitoring,* and III.C.1.c.iii, *Reduced monitoring,* of this preamble. To continue to provide adequate health

protection, systems on reduced monitoring must adhere to criteria that ensure that barriers are in place and are effective. Furthermore, systems with problems that may indicate poor system integrity, maintenance, or operations, or systems that fail to monitor, are triggered into more frequent monitoring. This approach leverages the limited resources of small ground water NCWSs and of States, so that well-operated systems can minimize their costs and States can focus their resources on systems needing the greatest attention, such as systems with problems or vulnerabilities.

EPA requested comment in the proposed rule on whether to require NTNCWSs to comply with the CWS requirements (as they are in other rules such as disinfection byproduct (DBP) rules) since NTNCWSs serve the same people over time and include populations that may be at greater risk (e.g., schools, hospitals, daycare centers).

EPA received comments both in agreement and disagreement with this approach. Those who disagreed stated that such requirement would result in disproportionate impact on NTNCWS, since these systems are small systems with limited resources. One commenter said that the 1989 TCR has been in effect for decades now and there have been no adverse health effect impacts by not having NTNCWSs comply with CWS requirements.

Considering the comments EPA received, the Agency is not requiring NTNCWSs to comply with CWS requirements under the RTCR. However, EPA recommends that States consider the population served at NTNCWSs, especially those that serve sensitive subpopulations such as schools, hospitals, and daycare centers, when they decide on an appropriate monitoring frequency. EPA is aware that some States are already doing so and suggests that other States consider the same.

EPA received comments that the criteria for returning to reduced monitoring are overly strict, including a suggestion that the requirement to have an additional barrier enhancement to return to annual monitoring is too burdensome and costly. Some commenters stated that systems that are triggered into increased monitoring will be unlikely to return to reduced monitoring. Another commenter suggested that a system should be able to return to reduced monitoring sooner than 12 months.

EPA continues to believe that for a system to be able to monitor only once a year, it should be able to demonstrate that it has the ability to continually deliver safe water by ensuring that barriers are in place to protect against contamination. A system that has been triggered into increased monitoring has failed in some way to demonstrate that it has those barriers in place. The requirements to return to reduced monitoring are intended to show that the system has made the long-term commitment and provided the necessary additional barriers to eliminate the vulnerability to contamination that triggered the increased monitoring in the first place. EPA believes that the requirements for returning to reduced monitoring are not impossible to meet but require an appropriate level of effort over at least 12 months to show the commitment and ability to deliver safe water.

EPA received comments regarding monitoring violations as a trigger for increased monitoring and as part of the criteria for returning to reduced monitoring. EPA heard from States with large numbers of NCWSs that including monitoring violations as a trigger for increased monitoring and as part of the criteria for reduced monitoring will make the RTCR difficult to implement in their States. NCWSs, especially TNCWSs, pose unique challenges to rule compliance as they typically do not have the resources that CWSs have and providing water is not their primary business. Commenters suggested that triggering a NCWS into increased monitoring because of just one or two missed samples is not appropriate and will burden the State with compliance and enforcement tracking. They indicated that this will shift limited State resources away from oversight activities for CWSs that serve large populations to compliance and enforcement activities for NCWSs that serve small populations, resulting in decreases in public health protection. The commenters also concluded that once a system is triggered into increased monitoring, it would not be able to qualify for reduced monitoring because it would not be able to meet the requirements for clean compliance history (e.g., no monitoring violations).

EPA recognizes the burden on States that may result from implementing the increased and reduced monitoring provisions of the RTCR. EPA is therefore providing States the flexibility to not count monitoring violations towards eligibility for remaining on quarterly monitoring or for returning to quarterly monitoring as long as a make-up sample is collected by the end of the next monitoring period. This flexibility only applies to TNCWSs and only for routine samples. The State cannot use this flexibility to qualify a system for annual monitoring. When exercising the flexibility about whether to count a monitoring violation towards eligibility for reduced monitoring, the State may find it appropriate to also consider the system's history of monitoring violations. The TNCWSs would still incur a monitoring violation and must comply with the other associated requirements after such violation (e.g., public notification and reporting).

In the proposed rule, a NCWS on annual monitoring with one RTCR monitoring violation is triggered into monthly monitoring. Some commenters expressed concern that many systems on annual monitoring will be triggered to monthly monitoring because of just one missed sample. The commenters stated that this was unreasonable considering that these systems typically do not have the resources that CWSs have, such as a certified operator. These systems typically experience frequent staff shortages or turnover that result in missed samples. Having these systems do monthly monitoring would require significant tracking and enforcement activities on the part of the State.

To address this concern, EPA has changed the consequence of having one RTCR monitoring violation for systems on annual monitoring. Instead of having to go to monthly monitoring, the system now moves to quarterly monitoring. EPA also believes that the annual site visit by the State, and the fact that some States conduct and/or pay for the annual monitoring, reduces the likelihood that systems on annual monitoring will miss samples and be triggered to increase to quarterly monitoring, so that PWS and State resource needs are not likely to significantly increase because of this requirement. EPA is not changing the consequence of exceeding the other triggers for increased monitoring; systems that experienced any of the other events in section III.C.1.b.iv of this preamble, *Increased monitoring,* will need to monitor monthly instead of quarterly. Systems can go back to annual monitoring by meeting the criteria for reduced monitoring.

EPA requested comment on whether daily chlorine residual measurements should be one of the criteria for reduced monitoring. EPA received comments that said that it should not be a criterion. Some commenters expressed concern that one missed measurement might be a basis for being bumped to increased monitoring. One commenter suggested giving the State the discretion to either allow or not allow it as a criterion. Section 141.854(h)(2)(iii) of the RTCR specifies that one of the

enhancements to water system barriers to contamination is continuous disinfection entering the distribution system and a residual in the distribution system in accordance with criteria specified by the State. States are given the discretion to decide how they want to implement this criterion based on site-specific considerations. States may want to require daily measurement of chlorine residual to demonstrate continuous disinfection.

One commenter expressed concern that a reduction in the number of additional routine samples (i.e., from five to three) reduces the likelihood of detecting both total coliforms and *E. coli.* The advisory committee recommended that it is appropriate to drop from five to three samples the following month to reduce monitoring costs while still maintaining a substantial likelihood of identifying a problem if a problem persists. EPA and the advisory committee recognized that a reduction in the number of samples taken could also mean a reduction in the number of positive samples found. However, EPA and the advisory committee concluded that the new assessment and corrective action provisions of the RTCR lead to a rule that is more protective of public health and to improvement in water quality despite the reductions in the number of samples taken. The Final RTCR EA occurrence modeling results support this conclusion, as they predict that more *E. coli* MCL violations will be prevented and total coliform and *E. coli*-positive hit rates will decrease when assessment and corrective action occur. See chapter 6 of the Final RTCR EA (USEPA 2012a) for more details.

c. Seasonal systems. EPA received comments that disagreed with the routine monthly monitoring frequency for seasonal systems. The commenters suggested that requiring a start-up procedure is the essential element and having seasonal systems monitor quarterly like all other NCWSs should be adequate. Other commenters agreed with monthly monitoring.

As discussed in section III.A.4 of this preamble, *Seasonal systems,* seasonal systems are more susceptible to contamination due to changes in the conditions of the source water during the period the system is in operation. Such changes include variable contaminant loading due to increased septic tank or septic field use, the seasonal nature of the demand, and the stress the system may experience. Because of the risk factors, the advisory committee decided that more frequent monitoring is appropriate for these systems, with the possibility of going on reduced monitoring if they meet certain criteria. EPA concurs with the advisory committee assessment and the final rule maintains the proposed routine monthly monitoring frequency, when they are in operation, for seasonal systems.

One commenter said that a regular sampling schedule is more easily achieved and more practical than identifying vulnerable time periods as these periods can vary from year to year. EPA believes that a system that will monitor less frequently than monthly should sample based on site-specific considerations (e.g., during periods of high demand or highest vulnerability of contamination). This increases the probability of detecting a possible contamination; hence, measures can be taken to address the possible contamination before it becomes a public health threat.

One commenter suggested that start-up procedures must include flushing, disinfection, re-flushing to eliminate disinfectant residual, and taking a sample prior to serving water to the public. EPA is not requiring specific practices regarding the start-up procedure. States are given the flexibility to determine what start-up procedures are appropriate for a particular system based on its site-specific considerations and must describe their process for determining start-up procedures in their primacy application. EPA recommends that States require seasonal systems to take a sample as part of the required start-up procedures. Systems must allow sufficient time for completing start-up procedures (including receiving sample results) and notifying the State as required prior to serving water to the public.

D. Repeat Samples

1. Requirements

Under the RTCR, all PWSs must take at least three repeat samples for each routine sample that tested positive for total coliforms. This is a change from the 1989 TCR requirements where systems serving 1,000 or fewer people must collect at least four repeat samples while the rest of the systems must collect three repeat samples.

As discussed in the preamble to the proposed RTCR, EPA believes that sampling again immediately after determining that a sample is positive (i.e., conducting repeat sampling) increases the likelihood of identifying the source and/or nature of the possible contamination. Analyses conducted by EPA indicated that once a total coliform-positive is found, there is a much greater likelihood of finding another total coliform-positive within a short period of time of the initial finding (see page 40939 of the **Federal Register** (FR) notice for the proposed RTCR (USEPA 2010a, 75 FR 40926, July 14, 2010) for more discussion on the analyses done by EPA regarding repeat samples). Repeat sampling (when it is total coliform-positive) can indicate a current pathway for potential external contamination into the distribution system. EPA recommends that States work with PWSs and laboratories to facilitate timely notification through the most expeditious method (e.g., phone, fax, or email) to ensure that repeat samples are taken in a timely manner.

The repeat monitoring requirements of the RTCR are essentially the same as the requirements of the 1989 TCR, except for some new provisions promulgated by the RTCR to provide flexibility to States and PWSs. The following requirements are not changing under the RTCR:

- PWSs must collect the repeat samples within 24-hours of being notified that their routine sample is total coliform-positive.
- The State can extend the 24-hour limit on a case-by-case basis. EPA is providing flexibility to this provision as discussed later in this section.
- The State cannot waive the requirement for a system to collect repeat samples.
- In addition to taking repeat samples, PWSs must test each routine total coliform-positive sample for *E. coli.* They must also test any repeat total coliform-positive sample for *E. coli.* If *E. coli* is present, the system must notify the State the same day it learns of the positive result, or by the end of the next business day if the State office is closed and the State does not have either an after-hours phone line or an alternative notification procedure.
- The State has the discretion to allow the system to forgo *E. coli* testing in cases where the system assumes that the total coliform-positive sample is *E. coli*-positive. If the State allows a system to forgo *E. coli* testing, the system must still notify the State and comply with the *E. coli* MCL requirements specified in § 141.858.
- The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken. Unless different locations are specified in its sample siting plan (this is a new provision of the RTCR and is discussed later in this section), the system must also collect at least one repeat sample at a tap within five service connections upstream, and at least one repeat sample at a tap within five service connections

downstream of the original sampling site. The State may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site if the total coliform-positive sample is at the end of the distribution system, or one service connection away from the end of the distribution system. EPA notes that it is the location of the repeat sample that is waived, not the required number of repeat samples. A PWS still needs to take the required repeat sample(s) elsewhere in the distribution system if it is unable to do so upstream or downstream of the original sampling site.

- Systems must collect all repeat samples on the same day. The State may allow systems with a single service connection to collect the required set of repeat samples over a three-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 milliliters (ml).
- Systems must collect an additional set of repeat samples for each total coliform-positive repeat sample. As with the original set of repeat samples, the system must collect the additional repeat samples within 24 hours of being notified of the positive result, unless the State extends the time limit. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or, as the RTCR is adding, the system determines that the coliform treatment technique trigger has been exceeded and notifies the State. After a trigger (see section III.E, of this preamble, *Coliform Treatment Technique*) is reached, the system is required to conduct only one round of repeat monitoring after each total coliform-positive or *E. coli*-positive routine sample. If a trigger is reached as a result of a repeat sample being total coliform- or *E. coli*-positive, no further repeat monitoring related to that sample is necessary.
- A subsequent routine sample, which is within five service connections of the initial routine sample and is collected after an initial routine sample but before the system learns the initial routine sample is total coliform-positive, may count as a repeat sample instead.
- A ground water system with a single well serving 1,000 or fewer people may still use a repeat sample collected from a ground water source to meet both the repeat monitoring requirements of the RTCR and the triggered source monitoring requirements of the GWR (i.e., a dual purpose sample). Modifications to this provision under the RTCR are discussed later in this section.

As mentioned previously, the RTCR adds some new provisions to the repeat monitoring requirements to provide flexibility to the States and PWSs. One of these changes is the additional flexibility provided to States regarding the waiver or the extension of the 24-hour limit for a PWS to collect repeat samples. States are given the option to describe in their primacy application the criteria they will use to waive or extend the 24-hour limit instead of making the decisions on a case-by-case basis. This is discussed further in section V of this preamble, *State Implementation.*

Another change is the use of alternative monitoring locations. As discussed in section III.C of this preamble, *Monitoring,* the PWS may propose alternative repeat monitoring locations that are expected to better characterize or identify pathways of contamination into the distribution system. Systems may elect to specify either alternative fixed locations or criteria for selecting their repeat sampling locations on a situational basis in a standard operating procedure (SOP), which is part of the sample siting plan. By allowing systems to specify criteria for selecting their repeat sampling locations in their SOP instead of setting fixed repeat sampling locations, systems can provide a more flexible and more protective response. The system can focus the repeat samples at locations that will best verify and determine the extent of potential contamination of the distribution system based on specific situations. For discussion on additional requirements for alternative monitoring locations, see section III.C of this preamble, *Monitoring.*

There are also some modifications to the dual purpose sampling allowed under the GWR and 1989 TCR. Ground water systems required to conduct triggered source monitoring under the GWR must take ground water source samples in addition to the repeat samples required by the RTCR. However, a ground water system serving 1,000 or fewer people may use a repeat sample collected from a ground water source to meet both the repeat monitoring requirements of the RTCR and the source water monitoring requirements of the GWR (i.e., a dual purpose sample), but only if the State approves the use of a single sample to meet both rule requirements and the use of *E. coli* as a fecal indicator for source water monitoring. If the sample is *E. coli*-positive, the system violates the *E. coli* MCL under the RTCR and must also comply with the GWR requirements following a fecal indicator-positive sample. These provisions are consistent with the GWR.

If a system with a limited number of monitoring locations (such as a system with only one service connection or a campground with only one tap) takes more than one repeat sample at the triggered source water monitoring location, the system may reduce the number of additional source water samples by the number of repeat samples taken at that location that were not *E. coli*-positive. For example, if a system takes two dual purpose samples and one is *E. coli*-positive and the other is *E. coli*-negative, the system has an *E. coli* MCL violation under the RTCR and is required to take four additional source water samples, rather than five, under the GWR (see 40 CFR 141.402(a)(3)). If the system takes more than one of these repeat samples at the triggered source water monitoring location and has more than one repeat sample that is *E. coli*-positive at the triggered source water monitoring location, then the system would have both an *E. coli* MCL violation under the RTCR and a second fecal indicator-positive source sample under the GWR. The system would then need to also comply with the GWR treatment technique requirements under 40 CFR 141.403.

Results of all routine and repeat samples not invalidated by the State must be used to determine whether the coliform treatment technique trigger has been exceeded (see section III.E of this preamble, *Coliform Treatment Technique,* for a discussion of the coliform treatment technique triggers).

2. Key Issues Raised

A majority of the commenters supported the change from four to three repeat samples for systems serving 1,000 or fewer people. However, one commenter stated that decreasing the number of repeat samples would also lessen the likelihood of detecting total coliforms and *E. coli.* EPA explained the analysis that EPA has done to support the reduction in the number of repeat samples in the preamble to the proposed RTCR. In that analysis, using the Six-Year Review 2 data (USEPA 2010c), EPA showed that if the number of required repeats were reduced from four to three, there would still be almost as many (approximately 94 percent) situations leading to an assessment being triggered for the system. See section III.A.4 of the preamble to the proposed RTCR, *Repeat Samples,* for a detailed discussion of EPA's analysis on the reduction of the number of repeat

samples. Although dropping the required number of repeat samples from four to three means that some fraction of triggered assessments may be missed, the other provisions of the RTCR compensate for that change and, taken as a whole, the provisions of the RTCR provide for greater protection of public health. One such provision includes enhanced consequences for monitoring violations. For example, systems that do not take all of their repeat samples under the RTCR are triggered to conduct a Level 1 assessment. This permits an increase in public health protection over the 1989 TCR because PWSs are required to assess their systems when lack of required monitoring creates a situation where the PWS does not properly know whether it is vulnerable to contamination. Moreover, because of the substantial cost of this potential consequence, systems would be more likely to take all of their required repeat samples in the first place (see section III.E of this preamble, *Coliform Treatment Technique,* for additional discussion on the coliform treatment technique triggers).

EPA also received comments generally supporting the use of alternative sites for repeat monitoring since they provide more flexibility in determining the locations of the repeat samples, allowing for better protection of public health on a site-specific basis, subject to State review. One commenter disagreed, saying that repeat samples should be near the original positive sample site so that they can provide the necessary information to confirm the original positive sample. A few commenters are against having within-five-connections-upstream-and-downstream locations from the original positive sample as the default locations for repeat monitoring. They suggested that these default locations should be eliminated altogether and that all PWSs be allowed to take the other two repeat samples at alternative locations.

EPA believes that not all systems will use the option of taking repeat samples at alternative locations. Some PWSs, especially small NCWSs, may not avail themselves of this option for reasons of simplicity and lack of resources and expertise. They may elect to stick with the set repeat monitoring locations of five connections upstream and downstream of the original total coliform-positive sample, as it will be less burdensome on them than locating alternative sites and demonstrating that the alternative sites are more effective. Hence, EPA is maintaining within-five-connections-upstream-and-downstream locations as the default repeat sampling locations.

While the prescribed locations may work for some systems, other systems may find them too limiting. Taking repeat samples at the prescribed locations of within five-connections-upstream-and-downstream can be difficult for some systems to implement within the required 24 hours for a repeat sample because of issues such as access to the site. Therefore, EPA is allowing PWSs to propose alternative repeat monitoring locations, either as fixed locations or as criteria in an SOP, to facilitate the identification of the source and extent of any problem. EPA believes that both the within-five-connections-upstream-and-downstream repeat sampling locations and the locations as identified by an SOP can be used by the operator to better understand the extent and duration of potential pathways of contamination into the distribution system with the appropriate amount of State supervision.

EPA requested comment on whether systems should be required to obtain prior State approval for using repeat monitoring sites other than the within-five-connections-upstream-and-downstream locations of the original routine total coliform-positive site. Most of the commenters were against requiring prior State approval for the use of alternative repeat monitoring locations. They suggested that it is more appropriate to include these sites (or the criteria to choose sites) in the SOP or in the sample siting plan, which is then subject to State review and revision. Some commenters also stated that requiring pre-approval for each individual instance of using alternative sites is not practical.

EPA agrees that obtaining prior State approval to use alternative repeat monitoring locations is not necessary since there is no reduction in monitoring and EPA expects the SOP to be used only by large systems with the technical resources to justify alternative monitoring sites. Although State approval is not required, EPA requires PWSs that are intending to use this option to submit their proposed alternative sampling sites (as part of an SOP or the sample siting plan) to the State. The PWS must be able to demonstrate to the State that the alternative monitoring sites are appropriate to help characterize the extent of the possible contamination. The State is given the discretion to review and revise the alternative monitoring locations consistent with their practice regarding sample siting plans. EPA does not require that the State formally acknowledge and approve the alternative monitoring locations. The alternative monitoring locations are considered appropriate unless the State disapproves or modifies them, which results in the requirement being self-implementing.

EPA received general support for allowing samples taken at the ground water source to serve both as a triggered source sample under the GWR and as one of the repeat samples under the RTCR (i.e., as dual purpose samples). Some States said that this practice is already being done in their States and therefore should continue under the RTCR. Most commenters supported the provision with the understanding that the practice would be subject to State approval. One commenter, however, disagreed with the provision and thought the PWS would not be collecting a sufficient number of repeat samples to represent the water quality in the distribution system if one of the repeat samples is taken at the source water. Another commenter suggested making the option available for ground water systems of all sizes, as it will help reduce labor and analytical costs, and will provide a clearer picture as to the location and cause of the total coliform-positive sample.

The preamble to the proposed RTCR discussed the drawbacks to allowing dual purpose samples i.e., a reduction in the number of repeats in the distribution system. By requiring State approval of the use of dual purpose sampling, the RTCR ensures that this flexibility will only be allowed where the State has determined it is appropriate. EPA believes that PWSs with limited or no distribution systems are the best candidates for approval since there is little to no chance of contamination from the distribution system except from cross connection. On the other hand, EPA believes that dual purpose samples may not be appropriate for systems with extensive distribution systems because the reduction in monitoring (i.e., one less repeat sample in a distribution system that extends far from the source water sample site) may not provide public health protection equivalent to taking separate samples.

EPA requested comment on whether the use of dual purpose samples should be allowed by simply including it in the sample siting plan, without prior State approval. As stated earlier, most of the comments supported allowing dual purpose sampling with the understanding that it will be approved by the State. Some commenters, on the other hand, said that it should be allowed without prior State approval. One commenter said that the State may not be able to review and approve the sample siting plan until the next

sanitary survey, which maybe as long as five years after the RTCR implementation. One commenter said that States should only be required to say that dual purpose sampling is not allowed for specific systems. Another commenter suggested allowing States to explain their process for approval in their primacy application, rather than each situation being handled on a case-by-case basis, thereby reducing administrative burden.

As discussed earlier, EPA believes that requiring State approval for allowing dual purpose sampling limits the practice only to systems that can avail themselves of it without compromising public health protection. State approval is required because this constitutes a reduction in monitoring (no separate triggered source water samples), relative to requiring separate samples for compliance with the two rules. EPA believes this reduction in monitoring is appropriate only if the State determines that the dual purpose sample provides public health protection equivalent to that provided by separate repeat and source water samples.

As part of the special primacy requirements for the RTCR in § 142.16(q), States adopting the reduced monitoring provisions of the RTCR, including dual purpose sampling, must describe how they will do so in their primacy application package. States must include their approval process for dual purpose sampling in their application. This gives States the flexibility to determine how and when they want to grant approval, i.e., whether on a case-by-case basis (whenever a total coliform-positive occurs) or on a pre-approved basis (i.e., the system has prior State approval to take a dual purpose sample whenever it is triggered to do source water monitoring).

E. Coliform Treatment Technique

1. Coliform Treatment Technique Triggers

a. Requirements. The non-acute MCL violation for total coliforms under the 1989 TCR is replaced under the RTCR by a coliform treatment technique involving monitoring for total coliforms and assessment and corrective action when triggered. EPA is establishing an assessment process in the RTCR to strengthen public health protection. Under the 1989 TCR, a system is not required to perform an assessment following a monthly/non-acute MCL violation or an acute MCL violation. Under the RTCR treatment technique framework, the presence of total coliforms is used as an indicator of a potential pathway of contamination into the distribution system. As discussed in section III.B of this preamble, *Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique,* the RTCR eliminates the associated MCLG and MCL for total coliforms. The RTCR specifies two levels of treatment technique triggers, Level 1 and Level 2, and their corresponding levels of response. The degree and depth to which a PWS must examine its system and monitoring and operational practices, i.e., the difference between a Level 1 or Level 2 assessment, depends on the degree of potential pathway for contamination. A Level 2 assessment requires a more in-depth and comprehensive review of the PWS compared to a Level 1. A discussion of the levels of assessments is found later in section III.E.2 of this preamble, *Assessment.*

The system has exceeded the trigger immediately once any of the following conditions have been met.

Level 1 treatment technique triggers

- For systems taking 40 or more samples per month, the PWS exceeds 5.0 percent total coliform-positive samples for the month; or
- For systems taking fewer than 40 samples per month, the PWS has two or more total coliform-positive samples in the same month; or
- The PWS fails to take every required repeat sample after any single routine total coliform-positive sample.

The first two treatment technique triggers were the conditions that define a non-acute MCL violation under the 1989 TCR. The third trigger provides incentive for systems to take their repeat samples to ensure that they are assessing the extent of the total coliform contamination; if they do not do so by repeat sampling, they must conduct an assessment instead to ensure there are no pathways to contamination (sanitary defects). Repeat monitoring is critical in identifying the extent, source, and characteristics of fecal contamination in a timely manner. EPA's analysis, as discussed in the preamble to the proposed RTCR (see section III.A.4 of the preamble to the proposed RTCR, *Repeat samples),* shows that the average percentage of repeat samples that are positive is much higher than that of routine samples, demonstrating that when operators are required to take a second look at their systems following the positive routine sample, they find, on average, a higher rate of coliform presence than during routine sampling. In other words, the high repeat total coliform positive rate indicates the persistence of total coliforms at such locations in the distribution system. Since under the RTCR there is no additional routine monitoring for systems that monitor at least monthly and the number of additional routine monitoring and repeat monitoring samples for the smallest systems that are not on monthly monitoring is decreased, the need to conduct repeat monitoring is more crucial than ever in providing immediate and useful information needed to protect public health.

Level 2 treatment technique triggers:

- The PWS has an *E. coli* MCL violation (see section III.F of this preamble, *Violations,* for a description of what constitutes an *E. coli* MCL violation); or
- The PWS has a second Level 1 treatment technique trigger within a rolling 12-month period, unless the initial Level 1 treatment technique trigger was based on exceeding the allowable number of total coliform-positive samples, the State has determined a likely reason for the total coliform-positive samples that caused the initial Level 1 treatment technique trigger, and the State establishes that the system has fully corrected the problem; or
- For PWSs with approved reduced annual monitoring, the system has a Level 1 treatment technique trigger in two consecutive years.

b. Key issues raised. EPA received comments that disagreed with the inclusion of the third Level 1 treatment technique trigger, i.e., failing to take every required repeat sample after any single routine total coliform-positive sample triggers a Level 1 assessment. Some of the commenters suggested that this does not pose a public health concern and should remain a monitoring violation because if a system does not conduct the required repeat monitoring, then it is doubtful that it will conduct the assessment. One commenter was concerned that a system might opt to conduct the assessment instead of taking the repeat samples and just indicate in the assessment form that no sanitary defect was found or the cause of the total coliform-positive sample could not be identified. The system then avoids the possibility of the repeat samples being total coliform- or *E. coli*-positive. They commented that since the Level 1 assessment is done by the system, doing the assessment will also be cheaper than taking the repeat samples.

EPA disagrees that the PWS will avoid taking repeat samples because of economic reasons. EPA's analysis indicates that a Level 1 assessment costs about four times as much as taking three repeat samples (see Exhibits 3–12 and

4–7 of the *Technology and Cost Document for the Final Revised Total Coliform Rule* (USEPA 2012b)). States also must review the assessment form submitted by the PWS. If the assessment and/or corrective action is/are not acceptable to the State, the State can require the PWS to redo the assessment and submit a revised assessment form. EPA also expects that in situations where the cause of the total coliform- or *E. coli*-positive result cannot be identified, the PWS will arrive at this conclusion only after due diligence on its part (i.e., the system adheres to proper procedures and standards set by the State in conducting the assessment). The State may require the PWS to provide supporting documentation and analyses to back-up its finding. Because of the cost and the effort involved in conducting a Level 1 assessment, EPA expects that systems will want to ensure that assessments are conducted only when potential problems may exist rather than for failure to take repeat samples.

One commenter suggested that EPA clarify that collecting samples outside the 24-hour required time is not a Level 1 trigger as there are instances when the repeat samples cannot be collected within 24 hours of the routine total coliform-positive sample. EPA notes that there is a provision in the RTCR, § 141.858(a)(1), that allows the State to extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. In such cases when the State allows the system to collect the repeat samples beyond the 24 hours, the system does not trigger a Level 1 assessment.

One commenter suggested that EPA include an additional provision that an assessment need not be triggered if the total coliform-positive occurred when there are representative levels of disinfectant residual in the distribution system, stating that historical total coliform-positive results occurred with normal levels of chlorine residuals in the distribution system and did not cause any waterborne disease. EPA disagrees that there is no public health risk in this situation. The fact that total coliforms can be detected even in the presence of a disinfectant residual is an indication that there might be a bigger, hidden problem that needs further investigation. An assessment is warranted to determine if there exists a potential pathway of contamination into the distribution system and corrective action is warranted if a sanitary defect is identified.

EPA received comments to eliminate the Level 2 treatment technique trigger where a second Level 1 assessment is triggered within a rolling 12-month period, or for systems on annual monitoring, where two Level 1 assessments in two consecutive years trigger a Level 2 assessment. Some of the commenters thought that many small systems will be triggered to conduct a Level 2 assessment multiple times. EPA believes that although the conditions (i.e., a second Level 1 trigger) that lead to the Level 2 trigger do not necessarily pose an immediate acute public health threat, it may still pose a potential serious health impact because of the persistence of the contamination and the failure of the system to address it. EPA believes that a Level 2 assessment is warranted in this case because a more in-depth examination of the system is needed to determine the cause of the persistent occurrences of total coliforms. EPA also notes that, ideally, a well-performed Level 1 assessment and appropriate corrective action will prevent most systems from developing conditions that lead to a Level 2 assessment.

2. Assessment

a. Requirements. There are two levels of assessment based on the associated treatment technique trigger: Level 1 assessment for a Level 1 treatment technique trigger and Level 2 assessment for a Level 2 treatment technique trigger. At a minimum, both Level 1 and 2 assessments must include review and identification of the following elements:

- Atypical events that may affect distributed water quality or indicate that distributed water quality was impaired;
- Changes in distribution system maintenance and operation that may affect distributed water quality, including water storage;
- Source and treatment considerations that bear on distributed water quality, where appropriate;
- Existing water quality monitoring data; and
- Inadequacies in sample sites, sampling protocol, and sample processing.

The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The PWS must complete the assessment as soon as practical after the PWS learns it has exceeded a treatment technique trigger. Failure to conduct a triggered assessment is a treatment technique violation. See section III.F.1.b of this preamble, *Coliform treatment technique violation.*

Level 1 Assessment

A Level 1 assessment must be conducted when a PWS exceeds one or more of the Level 1 treatment technique triggers specified previously. Under the rule, this self-assessment consists of a basic examination of the source water, treatment, distribution system and relevant operational practices. The PWS should look at conditions that could have occurred prior to and caused the total coliform-positive sample. Example conditions include treatment process interruptions, loss of pressure, maintenance and operation activities, recent operational changes, etc. In addition, the PWS should check the conditions of the following elements: sample sites, distribution system, storage tanks, source water, etc.

Level 2 Assessment

A Level 2 assessment must be conducted when a PWS exceeds one or more of the Level 2 treatment technique triggers specified previously. It is a more comprehensive examination of the system and its monitoring and operational practices than the Level 1 assessment. The level of effort and resources committed to undertaking a Level 2 assessment is commensurate with the more comprehensive investigation and review of available information, and engages additional parties and expertise relative to the Level 1 assessment. Level 2 assessments must be conducted by a party approved by the State: the State itself, a third party, or the PWS where the system has staff or management with the required certification or qualifications specified by the State. If the PWS or a third party conducts the Level 2 assessment, the PWS or third party must follow the State requirements for conducting the Level 2 assessment. The PWS must also comply with any expedited actions or additional actions required by the State in the case of an *E. coli* MCL violation.

Assessment Forms

The PWS must submit the completed assessment form for either a Level 1 or Level 2 assessment to the State for review within 30 days after the PWS learns that it has exceeded the trigger. Failure to submit the completed assessment form after the PWS properly conducts the assessment is a reporting violation (see section III.F.1.d of this preamble, *Reporting violation*). If the State determines that the assessment is insufficient, the State will consult with the PWS. If the State requires revisions after consultation, the PWS must submit

a revised assessment to the State on an agreed-upon schedule not to exceed 30 days from the date of the initial consultation.

The completed assessment form must include assessments conducted, all sanitary defects found (or a statement that no sanitary defects were identified), corrective actions completed, and a proposed timetable for any corrective actions not already completed. Upon completion and submission of the assessment form by the PWS to the State, the State must determine if the system has identified the likely cause(s) for the Level 1 or Level 2 treatment technique trigger and, if so, establish that the system has corrected the problem(s). Whether or not the system has identified any sanitary defects or a likely cause for the trigger, the State may determine whether or not the assessment is sufficient, and if it is not, the State must discuss its concerns with the system. The State may require revisions to the assessment after the consultation.

b. Key issues raised. The RTCR requires assessments to identify whether potential pathways of contamination into the distribution system exist after monitoring results indicate the system has exceeded a trigger. However, some commenters disagreed that requiring assessments will result in better public health protection. For one, they stated that assessments are already occurring under the 1989 TCR; hence, there is no need to formally require them. Second, assessments conducted by small systems will not likely be adequate as these systems usually do not have the resources and the capability to conduct a proper assessment. The States will then have to perform the assessments themselves (even the Level 1 assessments), thus adding to State burden. Third, assessments will reduce follow-up sampling and will allow a PWS to ''guess assess'' the cause of the positive sample.

EPA agrees that there already is some level of assessment and corrective action being performed voluntarily by proactive systems, and accounted for this fact in the economic analyses for the final RTCR (see chapter 7.4.5 of the RTCR EA (USEPA 2012a), *Assessments*). However, not all systems are proactive in addressing the probable cause(s) of the positive samples. Under the 1989 TCR, when a system has an MCL violation and any subsequent sampling did not detect total coliforms, the problem may persist despite the subsequent negative samples due to the intermittent nature of microbial contamination and may remain unaddressed. By requiring PWSs to assess their systems when they are triggered to do so, the RTCR aims to build and strengthen the capability of PWSs in ensuring that their systems maintain their integrity and that barriers are in place and are effective. These actions will better protect public health than the additional monitoring with no assessment and corrective action that is allowed under the 1989 TCR.

EPA acknowledges that small systems, especially small NCWSs may not have the knowledge and the resources that other systems, like CWSs, have. However, most small NCWSs are simple systems that often consist of just the source water and a limited distribution system. EPA anticipates then that the level of effort and expertise needed to conduct a Level 1 assessment at these systems will not be considerable. At a minimum, the Level 1 assessment should be conducted or managed by a responsible party of the PWS. While EPA does not expect the Level 1 assessor to be an expert in the requirements of SDWA, the assessor should be someone familiar enough with the system to answer the questions in the Level 1 assessment form or to gather correct information from others who work for the system.

To help in the implementation of the assessment, a PWS may conduct a Level 1 assessment while it consults with the State by phone. This is in lieu of having the State physically perform the assessment when the PWS needs assistance. Generally, the PWS would still need to fill-out the assessment form and submit it to the State. The State would still need to review the form but the process will not take as much effort as previously anticipated since the State would already be familiar with that particular assessment. It is also permissible that the State fill out the form while the PWS consults with the State by phone when doing the assessment. The State may also want to set up alternative methods for the PWS to submit the assessment form, such as via an online submission or email. The State should document its process in the primacy application.

EPA disagrees that the assessment requirements will reduce follow-up sampling. PWSs are still required to take repeat samples following a routine total coliform-positive sample. PWSs on quarterly or annual monitoring must conduct additional routine monitoring the month following the total coliform-positive sample. In addition, nothing in the treatment technique requirements precludes a PWS from taking additional compliance samples or special purpose samples such as those taken to determine whether disinfection practices are sufficient following pipe replacement or repairs (see § 141.853(b) of the RTCR).

EPA disagrees that PWSs conducting the assessment will ''guess assess'' the cause of the positive samples. Conducting an assessment is a methodical process that requires a PWS to evaluate the different elements of its operation and distribution system (§ 141.859(b)(2) of the RTCR specifies the minimum elements that an assessment must have, keeping in mind that some of the elements may not be applicable to some PWSs like small NCWSs). The RTCR requires that an assessment form be completed. The assessment form should help and guide the PWS in conducting the assessment by laying out the different elements the PWS must look into. EPA provides examples of assessment forms that States and PWSs can use to help them in conducting the assessment (these examples are given in Appendix X of the AIP (USEPA 2008c) and in Appendix A of the *Proposed Revised Total Coliform Rule Assessments and Corrective Actions Guidance Manual—Draft* (USEPA 2010d)). EPA also acknowledges that an assessment will not always identify sanitary defects or find a reason or cause for the presence of total coliforms and/or *E. coli.* In such cases, the PWS must document that fact in the completed assessment form. This, however, is not ''guess assessing'' as EPA expects that only PWSs that adhere to proper procedures and standards set by the State are eligible to arrive at this determination. It is then the responsibility of the State to determine if the assessment was acceptable.

Some commenters suggested that for systems with limited distribution systems that have a first Level 1 trigger, the Level 1 assessment should be delayed and the focus of the evaluation should be on the source water, and the Level 1 assessment should only be conducted if there is another Level 1 trigger.

The system may conduct an integrated assessment that meets the requirements of all applicable rules, such as the GWR and the RTCR, as long as the assessment is consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system, as required under § 141.859(b)(2) of the RTCR. EPA further notes that source water issues are one of the elements that need to be considered in a Level 1 (or 2) assessment where they may be a contributing factor to a coliform exceedance or other trigger. EPA expects that assessments at PWSs

with limited or no distribution systems will be relatively simple assessments and can be tailored to meet applicable requirements of both the GWR and the RTCR. EPA will address this in the revised *Revised Total Coliform Rule Assessment and Corrective Actions Guidance Manual* that is being developed.

EPA received comments both in support and against having two levels of assessment. The commenters in the second category concluded that both levels of assessment would involve the same effort. There were comments to eliminate the Level 1 assessment and emphasize the Level 2 assessment, as the Level 1 assessment will not lead to any meaningful evaluation and will only take up the State's resources. EPA disagrees that there is no need for two levels of assessment. The RTCR requires two levels of assessment to recognize that a higher level of effort to diagnose a problem should be applied to situations of greater potential public health concern such as repeated Level 1 triggers or an *E. coli* MCL violation. A Level 1 assessment is not as comprehensive as Level 2 assessment. This however, does not negate the importance of a Level 1 assessment. Triggers that lead to a Level 1 assessment may indicate the possibility of a breach of the barriers in place. It is important that PWSs ensure that these barriers remain intact by performing the assessment.

EPA received comments that the qualifications of assessors are not clear in the rule. The commenters suggested including the qualifications in the rule or referencing the qualifications described in the *Proposed RTCR Assessment and Corrective Actions Guidance Manual—Draft* (USEPA 2010d). Some commenters concluded that the Level 2 assessment will require a whole new certification program for assessors. Others concluded that the States will end up doing the Level 2 assessment because of what is expected and required of a Level 2 assessment. On the other hand, one commenter suggested that a system operator should be certified to perform an assessment of their own system. Another suggested that States be allowed to set mechanisms in place to ensure that a Level 2 assessment is performed more comprehensively than a Level 1 assessment.

EPA does not require that a separate certification program be established to determine who can perform a Level 2 assessment. Instead of being prescriptive on who can conduct a Level 2 assessment, EPA is allowing the State to determine its criteria and process for approval of Level 2 assessors and to determine who is appropriate to conduct the assessment given the State's knowledge of the complexity of the system and the knowledge and policies of the State. Although the rule allows that certified operators may perform a Level 2 assessment if approved by the State, EPA recommends that States consider whether having the assessment done by someone from outside the system can provide a fresh perspective. Qualified certified operators can be allowed to conduct assessments at other systems.

EPA requested comments on how to ensure that a Level 2 assessment is more comprehensive than a Level 1 assessment (e.g., by possibly including asset management and capacity development). EPA asked in the proposed rule whether EPA should provide more detail in guidance or rule language, on the elements and differences between a Level 1 and Level 2 assessment. A majority of the commenters were against the inclusion of asset management and capacity development in the Level 2 assessment. EPA received comments stating that the proposed rule language regarding the two levels of assessment was adequate and that additional discussion about the differences between the two should instead be addressed in guidance. One commenter, on the other hand, said that there was no difference in the scope between the two assessments based on the way the proposed rule language was written.

EPA defined in § 141.2 both a Level 1 assessment and a Level 2 assessment to provide a better distinction between the two levels of assessment and facilitate the implementation of the RTCR. See section III.A.1 of this preamble, *Assessment,* for the definitions of a Level 1 and Level 2 assessment. EPA is also requiring States to describe in their primacy application how they will ensure that a Level 2 assessment is more comprehensive than a Level 1 assessment; thus, giving the States more flexibility in implementing the rule. EPA released the *Proposed Revised Total Coliform Rule Assessments and Corrective Actions Guidance Manual—Draft* (USEPA 2010d) in August 2010 to help stakeholders understand the difference between the two levels of assessment. EPA will revise this guidance manual based on the comments received and release it soon after the final RTCR is published in the **Federal Register**.

EPA received comments to allow the extension of the assessment period beyond 30 days. A commenter suggested that intermediate deadlines for a Level 2 assessment triggered by the presence of *E. coli* be included because of the acute nature of the threat.

EPA expects that the PWS will conduct an assessment as soon as practical after the PWS receives notice or becomes aware that the system has exceeded a trigger. EPA imposes a 30-day limit because the possible occurrence of contamination, as indicated by the conditions that trigger the assessment, must be addressed immediately. The system has 30 days from the time it learns of exceeding the trigger to conduct the assessment and complete the corrective action. EPA believes that the 30-day period is sufficient time for problem identification and potential remediation of the problem in conjunction with the follow-up assessment in most cases. The system can work out a schedule with the State to complete the corrective action if more time is needed. It is very important, however, that the assessment is conducted as soon as possible within those 30 days. In the case of an *E. coli* MCL violation, the system must comply with any expedited actions or additional actions required by the State (see § 141.859(b)(4) of the RTCR). EPA also encourages PWSs to submit their completed assessment forms as soon as possible and not wait until the end of the 30-days to do so.

3. Corrective Action

a. Requirements. Under the RTCR, PWSs are required to correct sanitary defects found through either a Level 1 or Level 2 assessment. Systems should ideally be able to correct any sanitary defects found in the assessment within 30 days and report that correction on the assessment form. This is especially important when *E. coli* has been detected in samples collected from the distribution system, indicating that a potential health hazard exists. However, EPA recognizes that correcting sanitary defects within 30 days may not always be possible due to the extent and cost of the corrective action, and that some systems therefore may not be able to fix sanitary defects before submitting the completed assessment form within the 30-day interval. When the correction of sanitary defects is not completed by the time the PWS submits the completed assessment form to the State, EPA encourages the State and PWS to work together to determine the appropriate schedule for corrective actions (which may include additional or more detailed assessment or engineering studies) to be completed as soon as possible. The schedule, which is approved by the State, must include when the corrective action will be completed and any

necessary milestones and temporary public health protection measures. The PWS must comply with this schedule and notify the State when each scheduled corrective action is completed.

At any time during the assessment or corrective action phase, either the PWS or the State may request a consultation with the other entity to discuss and determine the appropriate actions to be taken. The system may consult with the State on all relevant steps that the system is considering to complete the corrective action, including the method of accomplishment, an appropriate timeframe, and other relevant information. EPA is not requiring this to be a mandatory consultation to provide ease of implementation for States. In many cases, consultation may not be necessary because the type of corrective action for the sanitary defect will be clear and can be implemented right away (e.g., replacement of a missing screen).

b. Key issues raised. EPA received comments that not all sanitary defects should have to be corrected unless it can be determined the defect directly correlates to the trigger or if the defect is otherwise regulated. Similarly, commenters suggested that EPA clarify that any requirement to correct sanitary defects found during the assessment be limited only to issues that are within the system's control. In contrast, one commenter encouraged EPA to provide authority to States to require broader corrective actions beyond fixing specific sanitary defects (e.g., requiring development and implementation of a storage tank inspection and maintenance plan).

EPA acknowledges that it may or may not be possible to conclusively link the total coliform-*E. coli*-positive sample to a given sanitary defect due to the complexity of the distribution system configuration and transport of contaminants throughout the system. That being the case, the PWS must still correct all sanitary defects found through the assessment even if the defect cannot be proven to be the likely cause of the positive sample, to prevent the defect from providing a pathway for future contamination. The RTCR takes a more preventive approach to protect public health by requiring that systems perform an assessment of their system when their monitoring results indicate a potential pathway of contamination into the distribution system, or a breach in the barriers that are in place, and correct all identified sanitary defects, regardless of whether the defect is directly related to the positive sample or not. This is because EPA believes that correcting only sanitary defects that are correlated to the positive sample is not sufficiently protective of public health. Uncorrected sanitary defects may provide a pathway for future incidences of contamination.

The RTCR requires that sanitary defects be corrected but does not mandate how the defects are to be corrected. States and PWSs may have other authorities under local ordinances and State laws that they may use to address the problem. For example, in cases where the location of the sanitary defect is outside the normal control of the PWS (e.g., cross connection occurring on private property), community water systems that are part of the local government may have some authority to address the problem under the public health code if the issue is affecting the water in the distribution system (AWWA 2010) or through other local ordinances such as plumbing codes. EPA encourages States and PWSs to work together to determine the best course of action when correcting sanitary defects.

Some commenters said that it is unclear how a water utility should demonstrate that it has corrected a sanitary defect and how the primacy agency would take enforcement action on any defects identified by the system. One commenter suggested that EPA clarify whether a sanitary defect would be considered corrected if subsequent samples are total coliform-negative. EPA notes that because of the intermittent nature of microbial contamination, it may not be adequate to just rely on follow-up samples to verify that the problem has been corrected or has gone away. Depending on the nature of the sanitary defect, States may require additional measures to ensure that the integrity of the distribution system has been restored (e.g., pressure monitoring, follow-up inspection of tanks, etc.). States have discretion on how to determine that defects have been corrected (e.g., site visits, sanitary surveys, etc.). Failure to correct identified sanitary defects is a treatment technique violation and States are expected to use their legal authority to take enforcement action to return the system to compliance.

F. Violations

1. Requirements

EPA is establishing the definition of the following violations—MCL violation, treatment technique violation, monitoring violation, and reporting violation—consistent with the proposed RTCR. Each type of violation requires public notice, the level of which depends on the severity of the violation (see section III.G of this preamble, *Providing Notification and Information to the Public,* for information on public notification), and may trigger a system on reduced monitoring to increase its monitoring frequency (see section III.C of this preamble, *Monitoring,* for information on monitoring frequency). In addition to these violations, systems are required to comply with all the requirements of the RTCR, e.g., to use an approved analytic method to test for total coliforms and *E. coli,* to monitor according to a sample siting plan, etc. EPA also would like to clarify that exceeding a trigger and being required to conduct an assessment is not a violation by itself; as described later in this section, a violation occurs when a system exceeds the trigger but does not complete the required assessment and corrective action in response.

a. E. coli MCL violation. A system incurs an *E. coli* MCL violation if any of the following occurs:

- A routine sample is total coliform-positive and one of its associated repeat samples is *E. coli*-positive.
- A routine sample is *E. coli*-positive and one of its associated repeat samples is total coliform-positive.
- A system fails to take all required repeat samples following a routine sample that is positive for *E. coli.*
- A system fails to test for *E. coli* when any repeat sample tests positive for total coliforms.

b. Coliform treatment technique violation. A system incurs a coliform treatment technique violation when any of the following occurs:

- A system fails to conduct a required assessment within 30 days of notification of the system exceeding the trigger (see section III.E of this preamble, *Coliform Treatment Technique,* for conditions under which monitoring results trigger a required assessment).
- A system fails to correct any sanitary defect found through either a Level 1 or 2 assessment within 30 days (see also section III.E of this preamble, *Coliform Treatment Technique*) or in accordance with State-derived schedule.
- A seasonal system fails to complete a State-approved start-up procedure prior to serving water to the public. This is further discussed later on in the *Key issues raised* part of this section.

There is no treatment technique violation associated solely with a system exceeding one or more action triggers (Level 1 or Level 2 triggers).

c. Monitoring violation. A system incurs a monitoring violation when any of the following occurs:

• A system fails to take every required routine or additional routine sample in a compliance period.

• A system fails to test for *E. coli* following a routine sample that is total coliform-positive.

d. Reporting violation. A system incurs a reporting violation when any of the following occurs:

• A system fails to timely submit a monitoring report or a correctly completed assessment form after it properly monitors or conducts an assessment by the required deadlines. The PWS is responsible for reporting this information to the State regardless of any arrangement with a laboratory.

• A system fails to timely notify the State following an *E. coli*-positive sample. See section III.H.1.a of this preamble, *Reporting,* for reporting requirements in the case of an *E. coli*-positive sample.

• A seasonal system fails to submit certification of completion of State-approved start-up procedure. This is further discussed in the *Key issues raised* part of this section.

2. Key Issues Raised

EPA received comments that supported the proposed definition of the violations. Others offered suggestions to ease implementation burden. For example, one commenter recommended that only one violation be generated for each compliance situation (i.e., if an MCL violation is determined, then neither treatment technique, nor monitoring, nor reporting violation can be generated; if a treatment technique violation is determined, then neither monitoring nor reporting violation can be generated). However, EPA believes that it is important to track each of these situations individually so that the State can be aware of the system's progress resolving situations and complying with all rule requirements. Each situation is also accompanied by public notification requirements so that consumers can be aware of problems at the water system and the progress and efforts to correct them. EPA believes it is important to continue to notify the public of each situation.

Some commenters were uncertain about when failure to take all repeat samples triggers the associated Tier 1 PN (i.e., when the 24-hour clock starts). Some questioned how the State will know when the failure to collect these repeats has occurred in such a way to assure timely Tier 1 PN when the sample results do not need to be reported until the 10th day of the month following the month in which the samples were collected. EPA believes that State programs have been designed to address timely response to follow-up requirements such as the need to take repeat samples, through education, compliance assistance, and tracking and enforcement programs. The time limit is established to assure that systems act promptly to investigate positive samples. Some States require direct electronic reporting of results, which provides for more timely notification, and EPA encourages such practice. In the situations where it is not possible for the system to take the repeat samples within 24 hours, States have the discretion to waive the requirement (see section III.D of this preamble, *Repeat Samples*).

Other commenters suggested adding to the list of violations. EPA received comment that there should be a violation when a seasonal system fails to perform the start-up procedure. EPA agrees and is designating such failure as a treatment technique violation. EPA is also requiring seasonal systems to certify that they have completed the start-up procedure and submit this certification to the State. Failure to do so is a reporting violation. EPA believes that performing start-up procedures is very important to mitigate the possible risks resulting from the seasonal system being shutdown, depressurized, or drained. Designating such failure as a violation will compel seasonal systems to make sure that they take the necessary steps to mitigate public health risks before serving water to the public.

Other commenters, on the other hand, suggested deleting the MCL violation resulting from failure to take all required repeat samples following a routine *E. coli*-positive sample. One commenter suggested that instead of an MCL violation, this should be considered a sanitary defect that requires corrective action. EPA considers *E. coli* as an indicator of a potential pathway of fecal contamination that should be taken seriously. A system needs to follow up with repeat samples to characterize the extent and source of such contamination. Failure to take the required repeat samples following an initial *E. coli*-positive sample is not protective of public health and is a serious violation. Making such failure an *E. coli* violation prevents a system from incurring only a monitoring violation when there is an indication of fecal contamination.

Some commenters do not agree with the treatment technique violation because they do not agree that the treatment technique requirements of the RTCR are appropriate. For a discussion on the treatment technique, see section III.E of this preamble, *Coliform Treatment Technique.* One commenter asked for clarification on whether failure to submit the assessment form within 30 days is a treatment technique violation. As stated previously, this is a reporting violation, not a treatment technique violation, if the assessment has in fact been completed and the only failure was in submitting the required form. A treatment technique violation occurs when a potential pathway of contamination into the distribution system is unexplored and/or uncorrected. A system that neglects to perform the prescribed assessment or corrective action within schedule is in violation of the treatment technique requirement.

Commenters also supported EPA's proposal of separating the combined monitoring and reporting violation under the 1989 TCR into two separate violations. One commenter noted that it has been difficult to determine the significance of a violation when two types of violations—monitoring and reporting—are captured and reported under only one heading. It is, therefore, difficult to develop performance measures and ensure data quality when the two violations are combined.

G. Providing Notification and Information to the Public

1. Requirements

EPA is promulgating changes to the public notification (PN) requirements contained in 40 CFR part 141 subpart Q to correspond to the violation provisions of the RTCR (see section III.F of this preamble, *Violations*). EPA is requiring a Tier 1 PN for an *E. coli* MCL violation, Tier 2 PN for a treatment technique violation for failure to conduct assessments or corrective actions, and a Tier 3 PN for a monitoring violation or a reporting violation.

Tier 1 PN is required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, such as could occur with exposure to fecal pathogens. Tier 1 PN is required as soon as possible but no later than 24 hours after the system learns of the violation. An *E. coli* MCL violation indicates possible exposure to pathogens in drinking water that can possibly result in serious, acute health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms and possible greater health risks for infants, young children, the elderly, and people with severely compromised immune systems.

In the 1989 TCR, if a system has an acute MCL violation, which is based on

the presence of fecal coliforms or *E. coli,* or the system's failure to test for fecal coliforms or *E. coli* following a total coliform-positive repeat sample, the system is required to publish Tier 1 PN. Under the RTCR, a system is required to publish Tier 1 PN when it has an *E. coli* MCL violation. (See section III.F of this preamble, *Violations,* for a discussion of MCL violations.) In addition, the system will continue to be required to notify the State after learning of an *E. coli*-positive sample, as required under the 1989 TCR. As mentioned earlier in section III.B of this preamble, *Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique,* EPA is eliminating the MCL for fecal coliforms. Under the RTCR, the standard health effects language, which is required to be included in all public notification actions, is modified to delete the reference to the fecal coliform MCL and fecal coliforms. The language for a non-acute violation under the 1989 TCR is modified to apply to a violation of the assessments and corrective action requirements of the coliform treatment technique.

Tier 2 PN is required for all NPDWR violations and situations with potential to have serious adverse effects on human health not requiring Tier 1 PN. The system must provide public notice as soon as practical, but no later than 30 days after the system learns of the violation. A treatment technique violation under the RTCR meets these criteria because it is an indication that the public water system failed to protect public health when the system failed to conduct an assessment or complete corrective action following identification of sanitary defects. Sanitary defects indicate that a pathway may exist in the distribution system that has potential to cause public health concern.

In the 1989 TCR, a system is required to publish a Tier 2 PN when the system has a non-acute MCL violation, which is based on total coliform presence. Under the RTCR, a system is required to publish a Tier 2 PN if the system violates the coliform treatment technique requirements. Also, EPA is modifying the standard health effects language for coliform to emphasize the assessment and corrective action requirements of the RTCR.

Tier 3 PN is required for all other NPDWR violations and situations not included in Tier 1 or Tier 2. The existing Tier 3 PN requires a system to provide public notice no later than one year after the system learns of the violation or situation or begins operating under a variance or exemption. Monitoring and reporting violations have historically been designated as Tier 3 PN unless an immediate public health concern has been identified (e.g., failure to monitor for *E. coli* after a total coliform-positive sample requires a Tier 1 notification.) Where no such immediate public health concern has been identified, EPA believes that a public notice given at least annually for monitoring and reporting violations fulfills the public's right-to-know about these violations.

In the 1989 TCR, a system is required to publish a Tier 3 PN when the system has a monitoring and reporting violation. In the RTCR, monitoring violations are considered distinct from reporting violations. Both types of violations require Tier 3 PN.

Consumer confidence report (CCR) requirements are also modified. Health effects language for the CCR for total coliforms and *E. coli,* which is identical to the health effects language required for PN, is updated in the same way as described for PN. In addition, the RTCR removes the CCR requirements for the inclusion of total numbers of positive samples, or highest monthly percentage of positive samples for total coliforms as well as total number of positive samples for fecal coliforms. These provisions are replaced by requirements to include the number of Level 1 and Level 2 assessments required and completed, the number of corrective actions required and completed, and the total number of positive samples for *E. coli.* A system that fails to complete all the required assessments or correct all identified sanitary defects has a treatment technique violation and must identify it in the CCR as: (1) Failure to conduct all of the required assessment(s); and/or (2) failure to correct all identified sanitary defects. A system that has an MCL violation must also include the condition that resulted in the MCL violation (see section III.B.1 of this preamble, *MCLG and MCL,* and § 141.860(a) of the RTCR). Unchanged and consistent with the provisions under the 1989 TCR, a CWS may provide Tier 3 PN using the annual CCR.

CCR requirements are updated to reflect the advisory committee's recommendations that total coliforms be used as an indicator to start an evaluation process that, where necessary, will require the PWS to correct sanitary defects. EPA believes it is most appropriate to inform the public about actions taken, in the form of assessments and corrective actions, since failure to conduct these activities lead to treatment technique violations under the RTCR. Because the RTCR no longer includes the total coliform MCL but now includes a trigger, EPA believes that systems no longer need to report the number of total coliform-positive samples via the CCR, since that could cause confusion or inappropriate changes in behavior among consumers. In addition, the CCR requirements will also reflect the removal of fecal coliform.

2. Key Issues Raised

In general, EPA received comments in support of the PN requirements of the RTCR. The commenters stated that the changes are consistent with the intent and recommendations of the TCRDSAC. However, there were a few commenters who disagreed on certain aspects of the requirements. These comments are discussed in detail in the following paragraphs.

EPA requested comment on whether the elimination of the PN associated with the presence of total coliforms (i.e., the Tier 2 PN associated with the non-acute MCL violation under the 1989 TCR) will result in a loss of information to consumers. Although the majority of the commenters said that it would not result in a loss of information, some commenters said that it would. One commenter said that the PN associated with the presence of total coliforms has been an effective tool to motivate PWSs to take corrective actions; to eliminate such PN and replace it with a PN associated with treatment technique violations is not ''equal to or better'' public health protection. One commenter believed that if the non-acute PN requirement is eliminated, then NCWSs would not have the tool to communicate to the public the possible health risk as these PWSs are not required to send out a CCR.

As EPA discussed in section III.B of this preamble, *Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique,* the presence of total coliforms is not, by itself, a public health threat. EPA agrees with comments received that suggest that the Tier 2 PN for a non-acute MCL violation under the 1989 TCR is sometimes unnecessarily alarming as it attributes greater public health significance to the presence of total coliforms than is warranted. EPA believes the removal of the Tier 2 PN for a non-acute MCL violation will help prevent public confusion.

EPA received comments that under the 1989 TCR some States require a Tier 1 PN when a NCWS has a non-acute MCL violation. EPA would like to note that the 1989 TCR requires a Tier 2 PN for a non-acute MCL violation, not a Tier 1 PN. Some States using their own authority have chosen to elevate the PN

level to Tier 1 for a non-acute MCL in some or all cases. In certain circumstances, some States use this elevated PN in association with other follow-up actions involving agreements with other State and local agencies, to provide a more comprehensive and immediate response to potential public health threats, or to make the most efficient use of their existing authorities to protect public health. It is not EPA's intent to take this discretion away from the States, or to undermine these cooperative agreements with other State and local agencies. If a State deems that a given situation calls for a more elevated level of PN, or requires a more immediate action to ensure that public health is protected, then they can do so under their own discretion and authority. For example, the Level 2 assessment requirements in § 141.859(b)(4) allow States to require expedited actions or additional actions to ensure that public health is protected.

EPA notes that NCWSs are required, like CWSs, to publish a PN, either a Tier 1, Tier 2, or Tier 3, depending on the violation. Even if they are not required to issue a CCR, NCWS must provide PN in other forms or methods consistent with the requirements of 40 CFR 141.153. States can also direct the PWS to perform additional public health measures (e.g., boil water orders, elevated PNs, etc.) as allowed under SDWA and the authority granted to them by their own legislation similar to EPA's authority under section 1431 of SDWA.

EPA requested comment on whether to require special notice to the public of sanitary defects similar to the special notice requirements for significant deficiencies under the GWR. Most commenters were against including such provision. They stated that it would cause confusion and unnecessary alarm to customers. Several commenters noted that it is not appropriate for sanitary defects under the RTCR to have similar notice requirements as that of significant deficiencies under the GWR. The special notice requirement for significant deficiencies under the GWR only applies to NCWSs since they are not required to send out a CCR. EPA agrees that no special notice of sanitary defects is necessary and is not including such provision in the RTCR.

EPA received comments suggesting modifications to the standard PN and CCR health effects language regarding total coliforms and the treatment technique violations included in the proposed RTCR. EPA has modified the standard health effects language found in Subpart O and Subpart Q of part 141 to make the language consistent with the use of total coliforms in the RTCR as an indicator of a potential pathway through which a contamination can enter the distribution system.

H. Reporting and Recordkeeping

1. Requirements

a. Reporting. In addition to the existing general reporting requirements provided in 40 CFR 141.31, the RTCR requires a PWS to:

- Notify the State no later than the end of the next business day after it learns of an *E. coli*-positive sample.
- Report an *E. coli* MCL violation to the State no later than the end of the next business day after learning of the violation. The PWS must also notify the public in accordance with 40 CFR part 141 subpart Q.
- Report a treatment technique violation to the State no later than the end of the next business day after it learns of the violation. The PWS must also notify the public in accordance with 40 CFR part 141 subpart Q.
- Report monitoring violations to the State within ten days after the system discovers the violation, and notify the public in accordance with 40 CFR part 141 subpart Q.
- Submit completed assessment form to the State within 30 days after determination that the coliform treatment technique trigger has been exceeded.
- Notify the State when each scheduled corrective action is completed for corrections not completed by the time of the submission of the assessment form.
- A seasonal system must certify that it has completed a State-approved start-up procedure prior to serving water to the public.

EPA is adding the submission of the assessment form and the certification of completion of start-up procedure to the reporting requirements under § 141.861 of the RTCR for better clarity and ease of tracking compliance. In the proposed rule, the submission of the assessment form is found only in § 141.859, *Coliform treatment technique requirements for protection against potential fecal contamination.* The inclusion of the submission of the assessment form in § 141.861 does not impose additional requirements beyond those that are imposed by the treatment technique requirements (see section III.E of this preamble, *Coliform Treatment Technique,* for discussion on the treatment technique requirements). Failure to submit the assessment form or the certification is a reporting violation as discussed in section III.F.1.d of this preamble, *Reporting violation.*

b. Recordkeeping. EPA is maintaining the requirements regarding the retention of sample results and records of decisions related to monitoring schedules found in 40 CFR 141.33, and including provisions that address the new requirements of the RTCR pertaining to reduced and increased monitoring, treatment technique, etc. In addition, systems are required to maintain on file for State review the assessment form or other available summary documentation of the sanitary defects and corrective actions taken. Systems are required to maintain these documents for a period not less than five years after completion of the assessment or corrective action. Since systems have to maintain these files no less than five years, which is the maximum period allowed between sanitary surveys (i.e., five years; see 40 CFR 142.16(b)(3) and 40 CFR 142.16(o)(2)), States have the opportunity to review these files during sanitary surveys and/or annual visits. The five-year period is also consistent with the recordkeeping requirements for microbiological analyses under 40 CFR 141.33(a).

The system must also maintain a record of any repeat sample taken that meets State criteria for an extension of the 24-hour period for collecting repeat samples.

2. Key Issues Raised

EPA received comments that support the reporting and recordkeeping requirements proposed by EPA. Most commenters said that the timeframes are appropriate and are consistent with EPA's practice regarding reporting and recordkeeping requirements in other regulations under SDWA. One commenter, however, said that EPA should standardize the recordkeeping requirements in all its rules, including the RTCR, for a period equal to the compliance cycle (i.e., nine years). The commenter adds that by standardization and being consistent with the compliance cycle, all monitoring and compliance records including corrective actions will be easily maintained, tracked, and available for State's inspections without the confusion of varying recordkeeping durations with different regulations. However, EPA's suite of drinking water regulations addresses different kinds of contaminants with different inherent characteristics, occurrence, and health effects. Because of these differences, monitoring of these contaminants occurs at different frequencies; hence, different reporting and recordkeeping requirements. The reporting and recordkeeping requirements specific to a

drinking water regulation are therefore meant to support the implementation of that regulation. If possible, EPA makes every effort to ensure consistency of requirements across the drinking water regulations.

I. Analytical Methods

1. AIP-Related Method Issues

a. Evaluation of currently approved methods. The AIP recommended that the Agency conduct a reevaluation of all the approved methods to ensure continued approval was warranted. In the proposed rule, the Agency identified the Environmental Technology Verification (ETV) program as the preferred mechanism for conducting such an evaluation and solicited comments on the approach.

Key issues raised. While several commenters expressed support for a method reevaluation study conducted through the ETV program, some commenters expressed concern regarding the use of this program. One commenter stated that the reevaluation study should meet criteria established by EPA, not an EPA-contractor, who would receive financial benefit from the method manufacturers for conducting the testing. This commenter further expressed concern with using the ETV program because ''the intent of the ETV program was never to certify, approve, guarantee, or warrantee analytical technologies.'' This commenter also suggested that the ETV program does not have the resources to develop the protocol for the method re-evaluation study.

A second commenter expressed concern that the ETV program was established to facilitate incorporation of commercially-ready test kits into the market, which differs from the task of determining what are appropriate performance criteria for SDWA compliance methods. This commenter also expressed concern that the ETV program has not generated rigorous enough product evaluations adequate to support approval of alternative analytical procedures.

Lastly, this commenter also suggested that the ETV studies do not have the same level of independence in protocol development as other third party studies, stating that in ETV studies, reviewers modify the protocol at the beginning of each study, and that for the recent verification study, there was not a clear discussion between the study organizers and the technical review panel regarding development of the final test protocol.

EPA will take the comments concerning the ETV program into consideration as the Agency develops a final approach to the reevaluation of methods. EPA notes that ETV work is accomplished through cooperative agreements between EPA and private non-profit testing and evaluation organizations. ETV partners verify performance claims but do not endorse, certify or approve technologies. EPA has the regulatory authority and the responsibility to approve/disapprove methods and typically does so based on a review of method performance data generated by third party laboratories. Testing under the ETV program is typically paid for by participating vendors.

ETV expert panels typically include representatives from industry, academia, EPA, and other stakeholders and collaborators. The rigor of an ETV study is determined by the objectives of the study and the resources available. If such a study is conducted, EPA, by virtue of participation in the expert panel, would ensure that the study is rigorous enough to meet the Agency's needs.

EPA held a series of three open technical webinars in fall 2010. Participants recommended the development of a coliform strain library. The Water Research Foundation has funded a project to accomplish this task and the Agency will be monitoring the progress of that work as it considers the appropriate course of action.

b. Review of the ATP protocol. The AIP recommended that the Agency engage stakeholders in a technical dialogue in its review of the Alternate Test Procedure (ATP) microbiological protocol. The proposed rule described how EPA could use the study plan development from the aforementioned method reevaluation study as a starting point for discussions with stakeholders regarding the basis for evaluating new methods. The proposed rule also explained that the study plan, along with ''lessons learned'' from the reevaluation study, could be used as a model for a revised ATP protocol.

Key issues raised. One commenter suggested that the protocol used in the method reevaluation study should be used as the revised ATP protocol. EPA intends to consider this recommendation as it decides how to move forward on revising the microbial test protocol.

c. Approval of ''24-hour'' methods. The AIP recommended that EPA consider the approval of analytical methods that allow more timely (e.g., on the order of 24 hours) results. As expressed in the rule proposal, EPA has concern that the more rapid ''24-hour'' methods may not have the same recovery rates, especially for stressed or injured organisms, as the historic methods that allow for longer incubation times.

Key issues raised. One commenter suggested that the Agency withdraw approval for the older approved methods that can require longer times to obtain results. EPA intends to consider this recommendation as it decides how to move forward.

d. Elimination of fecal coliforms. As explained in the rule proposal, EPA plans to eliminate all provisions for fecal coliform monitoring under this regulation. No comments were received on this issue. As such, all provisions relating to fecal coliforms are removed in this final rule.

e. Request for comment on other AIP-related method issues. i. Expedited results notification process. The proposed rule requested comment on whether the RTCR should include provisions to ensure a more expedited notification process. The RTCR could, for example, include language requiring that PWSs arrange to be notified of a positive result by their laboratory within 24 hours.

Key issues raised. The Agency received many comments regarding this element of the proposed rule. Many commenters expressed support for this provision, with some States reporting that this provision is an existing component of their State regulations. Several commenters expressed that given the widespread availability of electronic communication it would be easy for a laboratory to notify the public water system quickly of the results of the sample analyses.

Many comments expressed concern over the ability of the States to enforce such a provision. Additionally, several commenters noted that this provision would hold the water system accountable for the actions of the laboratory, which the public water system does not have immediate control over.

EPA believes that the public is well served by timely reporting of results but recognizes some of the challenges associated with addressing this via regulation. Accordingly, the Agency intends to use guidance documents associated with this regulation to address this issue. Through the guidance documents, the Agency expects to urge public water systems to establish language in their contract with the laboratories requiring that the water system be notified by the laboratory within 24 hours of any positive results.

Additionally, the Agency plans to encourage the certified laboratory community to ensure that laboratories

are aware of the importance of timely notification of any positive results to their clients.

ii. Taking repeat samples within 24 hours. During the Advisory Committee meetings, the factors impacting the timeframe between a coliform detection and the collection of the repeat sample were discussed. It was noted that in some cases, repeat samples are not collected for several days after notification of a coliform detection. EPA requested comment in the proposed rule whether the RTCR should require repeat samples be taken within 24 hours of a total coliform-positive with no (or limited) exceptions.

Key issues raised. While some commenters expressed support for such a provision in the final rule, most commenters noted that the final RTCR should retain flexibility around this requirement, as allowed in the 1989 TCR.

Several commenters noted that including such a provision in the final RTCR would create a hardship on systems, with many mentioning that weekend sample collection is a challenge for many small systems. Concern was expressed that this provision in the final rule would result in more monitoring violations but not necessarily change repeat sample collection practice.

Based on consideration of the concerns expressed, EPA is not changing the provision that States may extend the 24-hour limit if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. See sections III.D of this preamble, *Repeat Samples,* for additional discussion.

2. Other Method Issues

a. Holding time. In the proposed rule, EPA clarified the language defining when the sample holding time ends. The 1989 TCR states ''the time from sample collection to initiation of analysis may not exceed 30 hours,'' and this language was clarified in the proposed rule to state ''The time from sample collection to initiation of test medium incubation may not exceed 30 hours.''

Key issues raised. Two comments were received on this rule provision, with one commenter explaining that some water systems have a difficult time meeting the 30-hour hold time, and this provision may further impact their ability to meet the holding time. The second commenter stated that the number of coliforms does not likely change in ''a 30 minute window'' and that this provision will not improve public health.

As explained in the proposed rule, EPA recognizes that this provision may slightly decrease the amount of time that a water system has to get the sample to the lab, by approximately 30 minutes or less. EPA believes the impact of this provision is minimal, as a well managed laboratory will be able to recognize a sample that is received near the end of the holding time and make this sample a priority for analysis.

The inclusion of this provision in the final rule serves to ensure consistency in the analyses of the compliance samples on a national basis and will have a minimal impact on water systems. As such, the provision is included in the final rule.

b. Dechlorinating agent. The proposed rule included a provision that would require the use of a dechlorinating agent when samples of chlorinated water are collected.

Key issues raised. The Agency did not receive any adverse comment to this provision of the proposed regulation. Accordingly, this provision has been included in the final rule. EPA notes that the wording of this provision in the final rule differs slightly from that included in the proposed rule. The wording was changed to clarify that the use of a dechlorinating agent is applicable to water systems that use any type of chlorination (including chloramines) to disinfect their drinking water supplies. The proposed rule did not include language that was specific enough to ensure that this point was clear.

c. Filtration funnels. In the proposed rule, EPA added a footnote to the methods table that clarifies that the funnels used in the membrane filtration procedure should be sterilized by autoclaving, not by using ultraviolet (UV) light. The addition of this provision to the rule makes the rule requirements consistent with what is recommended by the Agency in the *Manual for the Certification of Laboratories Analyzing Drinking Water* (EPA 815–R–05–004, 5th Edition, 2005).

Key issues raised. The Agency only received one comment on this provision, requesting clarification that would allow the use of disposable filtration units that are purchased pre-sterilized by the manufacturer. EPA believes that these units can be appropriate for use in drinking water sample analyses, and therefore has modified the provision to reflect usage of such units. The provision now reads as follows:

All filtration series must begin with membrane filtration equipment that has been sterilized by autoclaving. Exposure of filtration equipment to UV light is not adequate to ensure sterilization. Subsequent to the initial autoclaving, exposure of the filtration equipment to UV light may be used to sanitize the funnels between filtrations within a filtration series. Alternatively, disposable membrane filtration equipment that is pre-sterilized by the manufacturer (i.e., disposable funnel units) may be used.

d. Analytical methods table changes. The proposed rule reflected many modifications to the table of analytical methods to clarify which methods were approved for use under this regulation.

No comments were received on the following changes to the methods table. Accordingly these modifications have been incorporated into the final rule.

- The table is organized by methodology.
- *E. coli* methods are included in the analytical methods table.
- The 18th and 19th editions *of Standard Methods for the Examination of Water and Wastewater* are no longer approved and are not included in the final rule.
- The references to Standard Methods 9221A and 9222A are removed.
- The reference to Standard Methods 9221B is changed to 9221B.1, B.2.
- The reference to Standard Methods 9221D is changed to 9221D.1, D.2.
- The citation for MI agar is changed to EPA Method 1604.
- The table clarifies that Standard Methods 9221 F.1 and 9222 G.1*c*(1), and 9222 G.1*c*(2) may be used for *E. coli* analysis.
- The table clarifies the correct formulation for *E. coli* medium with 4-methylumbelliferyl-Beta-D-glucuronide (EC–MUG) broth, when used in conjunction with Standard Methods 9222G.1*c*(2), through the addition of the following footnote: The following changes must be made to the EC broth with MUG (EC–MUG) formulation: Potassium dihydrogen phosphate, KH2PO4 must be 1.5g and 4-methylumbelliferyl-Beta-D-glucuronide must be 0.05 g.
- The table reflects the approval of a modified Colitag method for the simultaneous detection of *E. coli* and other total coliforms.

The proposed rule also contained a provision to allow the use of Standard Methods 9221D in an enumerative format, specifically, in the multiple tube format as described in Standard Methods 9221B.

Key issues raised. One comment was received, stating that the use of Standard Methods 9221D in an enumerative (multiple tube) format should be evaluated through an Alternate Test Procedure (ATP) study or be added to the proposed method reevaluation study. Given that this

method is a part of Standard Methods 9221, entitled ''Multiple-Tube Fermentation Technique for Members of the Coliform Group,'' the Agency believes it is appropriate for this method to be used in an enumerative, multiple tube format. Additionally, as explained in the proposed rule, there have been publications demonstrating that this method is effective in a multiple tube format.

Since use of this method in a multiple-tube format does not change the formulation of the medium, nor the volume of sample analyzed, the Agency has determined that an ATP evaluation is not necessary. Therefore, the provision is included in the final rule.

e. Holding temperature. In the proposed rule, the Agency requested comment as to whether the RTCR should require the samples to be held at 10 degrees Celsius (C) or less during transit.

Key issues raised. Several commenters expressed support for this provision stating that it would improve the integrity of the data collected under this rule. However, many commenters expressed concern that the addition of this provision would cause a hardship, especially to small systems, as it would increase the cost of the sample shipment. Additionally, concern was expressed that this provision would increase the number of ''failure to monitor'' violations, thereby imposing an enforcement burden on the States.

Based on further consideration of the potential additional burden on both the PWSs and the States, EPA has determined that the provision in the 1989 TCR will stay as is: ''Systems are encouraged but not required to hold samples below 10 deg. C during transit.''

Finally, in this final rule, there have been some further changes to the analytical methods table to improve its clarity. Such changes include the addition of the approved online versions of Standard Methods in the analytical methods table and correction of some clerical errors.

J. Systems Under EPA Direct Implementation

Systems falling under direct oversight of EPA (e.g., Tribal systems, PWSs in Wyoming, and PWSs in States that have not yet obtained primacy for the RTCR) where EPA acts as the State, must comply with decisions made by EPA for implementation of the RTCR. Under § 142.16(q), to obtain primacy for the RTCR, States/Tribes are required to demonstrate how they intend to implement the various requirements of the rule; States/Tribes may do so in a manner that maximizes the efficiency of the rule for the States/Tribes and the PWSs while maintaining or increasing the effectiveness of the rule to protect public health. EPA has the same responsibilities when the Agency acts as the State in directly implementing the RTCR. In the proposed RTCR, EPA requested comment on whether to make this explicit in the final RTCR. All commenters who responded to this request for comment were in support of such action. EPA already has such authority or flexibility in direct implementation situations, both in the 1989 TCR and in all other NPDWRs, but solicited comment and has added this provision to the final rule for the sake of clarity in situations where EPA directly implements the RTCR.

K. Compliance Date

Consistent with SDWA section 1412(b)(10), States and PWSs are given three years after the promulgation of the RTCR to prepare for compliance with the rule. PWSs must begin compliance with the requirements of the RTCR on April 1, 2016, a compliance effective date that is just over three years from promulgation and coincides with quarterly monitoring schedules applicable to many water systems. EPA believes that capital improvements generally are not necessary to ensure compliance with the RTCR. However, a State may allow individual systems up to two additional years to comply with the RTCR if the State determines that additional time is necessary for capital improvements, in accordance with SDWA section 1412(b)(10).

IV. Other Elements of the Revised Total Coliform Rule

A. Best Available Technology

1. Requirements

EPA is making three modifications to the 1989 TCR provisions regarding the best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* under the RTCR. EPA has re-designated these provisions from 40 CFR 141.63(d) to 141.63(e) and is making the following modifications.

- ''Coliforms'' in 40 CFR 141.63(d)(1) under the 1989 TCR is replaced with ''fecal contaminants'' in 40 CFR 141.63(e)(1).
- ''Cross connection control'' is added to the list of proper maintenance practices for the distribution system in 40 CFR 141.63(e)(3) (formerly 40 CFR 141.63(d)(3)).
- Subparts P, T, and W (filtration and/or disinfection of surface water), and subpart S (disinfection of ground water), are added in 40 CFR 141.63(e)(4) (formerly 40 CFR 141.63(d)(4)).

The Agency is listing the same technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* as provided in § 141.63(e), for small PWSs serving 10,000 or fewer people, as required by SDWA section 1412(b)(4)(E)(ii).

2. Key Issues Raised

EPA received comments that supported the modifications to the list of best available technologies (BATs). The Agency also received comments suggesting the addition of other items to the list, such as the optional barriers that may qualify systems for reduced monitoring, unidirectional flushing, storage tank inspection, maintenance, and cleaning, and re-pressurization. EPA heard from a few commenters who are against the inclusion of cross connection control in the list of BATs. They stated that it is not appropriate to do so because EPA has not defined cross connection control, and risks associated with cross connection and backflow are being addressed in the research efforts of the Research and Information Collection Partnership (see *http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/regulation_revisions_tcrdsac.cfm#ricp* for additional information about the Partnership); hence, they concluded it is premature to include it in the RTCR.

The methods for achieving compliance listed in 40 CFR 141.63(e) represent the technology, treatment technique, and other means which EPA finds to be feasible for purposes of meeting the MCL for *E. coli,* in accordance with section 1412(b)(4)(E) of SDWA. The RTCR however, is not imposing additional requirements (e.g., disinfection, filtration, etc.) beyond those already addressed by other microbial drinking water regulations such as the Ground Water Rule and the Surface Water Treatment Rules; nor is it imposing specific requirements regarding the use of the other methods such as main flushing programs, cross connection control, etc. PWSs are given the discretion to use the methods in 40 CFR 141.63(e) (if they are not already required to do so), or other methods of their choice (provided they are acceptable to the State), as they see fit for their own systems.

EPA believes that the inclusion of cross connection control to the list of BATs is appropriate given the public health risk associated with unprotected cross connection. Several States already require that PWSs implement a cross connection control program. As

discussed in the previous paragraph, the inclusion of cross connection control in 40 CFR 141.63(e) does not impose specific requirements on PWSs to implement a cross connection control program. Rather, it acknowledges that cross connection control can be one of the tools PWSs can use to comply with the *E. coli* MCL.

B. Variances and Exemptions

1. Requirements

EPA is not allowing variances or exemptions to the *E. coli* MCL in § 141.4(a). EPA believes that water that exceeds the MCL for *E. coli* poses an unreasonable risk to public health. Therefore, EPA is not allowing any variances or exemptions to the *E. coli* MCL. EPA is also eliminating the variance provisions in § 141.4(b) under the 1989 TCR that allow systems to demonstrate to the State that the violation of the monthly/non-acute total coliform MCL is due to biofilm and not fecal or pathogenic contamination. This change also results in a parallel change in § 142.63(b). Since the MCL for total coliforms is eliminated and replaced by a treatment technique, the variance for the presence of biofilms is no longer applicable and allowed under SDWA. Instead, the presence of biofilm is addressed through the assessment and corrective action requirements of the RTCR.

EPA is adding a note to the provision in § 141.4(a) to clarify that small system variances or exemptions for treatment technique requirements in this rule and other rules that control microbial contaminants may not be granted under SDWA section 1415(e)(6)(B) and § 142.304(a). This action reflects the statutory provision within EPA's regulations and adds no new requirements or limitations to any of these rules.

2. Key Issues Raised

Most commenters support these changes. However, EPA also received comment that supported the retention of the variance for the presence of biofilms. The commenter said that the retention of the biofilm variance would require PWSs to have a biofilm control program in place that will require ongoing assessment and research to determine and address the cause of the biofilms, thereby providing valuable information. Some commenters suggested that if the biofilm variance is removed, EPA should make it clear that the finding of biofilms as the cause of the positive sample during an assessment is not a sanitary defect which requires correction.

As discussed previously in section IV.B.1 of this preamble, *Requirements,* EPA is not allowing variances to the *E. coli* MCL because EPA believes that water which exceeds the MCL for *E. coli* poses an unreasonable risk to public health. Furthermore, retention of the variance for total coliforms is not allowed under SDWA because the MCL for total coliforms is eliminated and replaced by a treatment technique. EPA believes that additional research and information collection will be valuable to learning about the magnitude of the risks from biofilms. However, research available to date indicates that biofilms can harbor pathogens and result in accumulation of contaminants (Brown and Barker 1999; Szewzyk *et al.* 2000; Berry *et al.* 2006; Långmark *et al.* 2007), and considering it a sanitary defect is warranted in some cases. Also, persistent biofilms that cause continued total coliform presence compromises the value of total coliforms as an indicator of potential pathways of contamination. If biofilm is determined to be the cause of the total coliform-positive samples that triggered an assessment, the PWS is encouraged to work with the State to determine the right course of action to address the biofilms. Under the RTCR, States have the discretion to determine if the completed assessment and corrective action are adequate. The State can use this discretion in addressing instances of biofilm presence and determining the extent of biofilm problems in the distribution system and the need to address them. When a system has an ongoing biofilm problem that continues to cause total coliform-positive samples, the system and the State can continue to take action until the biofilm problem is resolved.

C. Revisions to Other NPDWRs as a Result of the RTCR

EPA recognizes that there are linkages among monitoring requirements between the 1989 TCR and other NPDWRs. For instance, under the Surface Water Treatment Rule (SWTR) (USEPA 1989b, 54 FR 27486, June 29, 1989) and the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) (USEPA 1998a, 63 FR 69389, December 16, 1998), the residual disinfectant monitoring must be conducted at the same time and location at which total coliform samples are taken, as required. Under the SWTR, high measurements of turbidity in an unfiltered subpart H system (i.e., a system using surface water or ground water under the influence of surface water) trigger additional total coliform samples; and compliance with the total coliform MCL under the 1989 TCR is one of the criteria for a PWS to avoid filtration. Under the GWR, 1989 TCR distribution system monitoring results determine whether a system is required to conduct source water monitoring.

For the criteria for avoiding filtration in the SWTR (§ 141.71(b)(5)), the Agency is clarifying that unfiltered systems must continue to meet the *E. coli* MCL promulgated with the final RTCR at § 141.63(c) in order to remain unfiltered. The changes to § 141.71(b)(5) provides for replacement of the (acute) total coliform MCL at § 141.63(b) with the *E. coli* MCL at § 141.63(c) at the compliance date of the RTCR. Although the name of the MCL has changed, the determination of the *E. coli* MCL remains basically the same as that for the (acute) total coliform MCL in § 141.63(c), with the only changes being those that were made to address the advisory committee recommendations and the public comments.

After considering other possible linkages between the RTCR and the SWTR, GWR, Stage 1 DBPR, Stage 2 DBPR (USEPA 2006e, 71 FR 388, January 4, 2006), and Airline Drinking Water Rule (USEPA 2009), EPA has concluded that the only other necessary revision to these NPDWRs is to update the references to the 1989 TCR at 40 CFR 141.21, which is superseded by 40 CFR part 141 subpart Y beginning April 1, 2016. The monitoring requirements themselves are not changing as a result of the RTCR. Residual disinfectant samples must still be taken at the same time and location at which total coliform samples are taken under the RTCR. High measurements of turbidity under the SWTR would still result in additional total coliform samples. Results of total coliform monitoring under the RTCR would still be a trigger for the GWR. Although there are changes to the dual-purpose sampling requirement (i.e., one sample to satisfy both the repeat monitoring requirement of the RTCR and the triggered source water monitoring requirement of the GWR), these changes are addressed in the RTCR and not in the GWR (see section III.D of this preamble, *Repeat Samples,* for further discussion on dual-purpose sampling). Comments received on dual-purpose sampling are also discussed in section III.D of this preamble, *Repeat Samples*.

EPA also received comments regarding the relationship between source water evaluations under the GWR and assessments under RTCR; those comments are addressed in section III.E.2 of this preamble, *Assessment*.

The RTCR is also not changing the existing sanitary survey requirements

established under the IESWTR and the GWR. However, the RTCR is adding the special monitoring evaluation that States must conduct at systems serving 1,000 or fewer people during the sanitary survey. These evaluations are not expected to significantly increase the burden to conduct sanitary surveys because of the relatively simple nature of these systems and their monitoring requirements.

EPA did not receive any other substantial comments regarding the relationships between RTCR and other NPDWRs.

EPA recognizes that there are sections of part 141 that will no longer be applicable after the RTCR compliance effective date. EPA intends to review and update these sections in the future.

D. Storage Facility Inspection

In the proposed RTCR, EPA discussed the potential public health implications associated with poorly maintained storage facilities (such as those associated with significant sediment accumulation inside the tank and the presence of breaches). EPA requested comment and supporting information regarding the current status of storage tanks and their inspection as implemented by individual States and PWSs. Some of the information EPA requested comment on included the state and condition of tanks that have been cleaned and inspected, costs of storage tank inspection and cleaning, the frequency of inspection and cleaning, and how public health can be better protected. Based on the comments and information that EPA received, the Agency is considering the need for inspection requirements for finished water storage facilities that would help mitigate potential public health risks if PWSs do not inspect their storage facilities as recommended by industry guidance (e.g., American Water Works Association (AWWA) Manual 42). EPA plans to provide further information on the results of its consideration of this issue in a future notice.

V. State Implementation

SDWA establishes requirements that States or eligible Indian Tribes must meet to assume and maintain primary enforcement responsibility (primacy) to implement national primary drinking water regulations. This section describes the requirements that States must meet to maintain primacy under the RTCR, including adoption of drinking water regulations that are no less stringent than the RTCR and meeting recordkeeping and reporting requirements. This section also provides an update on the Safe Drinking Water Information System (SDWIS) revisions that EPA is developing to facilitate the implementation of RTCR.

A. Primacy

1. Requirements

States are required to adopt or maintain requirements that are at least as stringent as all of the sections of 41 CFR part 141that are revised or added by the RTCR. SDWA provides two years after promulgation of the RTCR (plus up to two more years if the Administrator approves) for the State to adopt their regulations. States may adopt more stringent requirements (e.g., requiring all systems to conduct routine monthly monitoring). Many States have used this authority in the past to improve public health protection and/or simplify implementation.

EPA grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. States that have primacy (including interim primacy) for every existing NPDWR already in effect may obtain interim primacy for the RTCR, beginning on the date that the State submits the application for this rule to EPA, or the effective date of its revised regulations, whichever is later. A State that wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule.

EPA regulations at 40 CFR part 142 contain the program implementation requirements for States to obtain primacy for the public water supply supervision program as authorized under SDWA section 1413. In addition to adopting rule requirements that are at least as stringent as the requirements of the RTCR, and basic primacy requirements specified in 40 CFR part 142, States are required to adopt special primacy provisions pertaining to each specific regulation where State implementation of the rule involves activities beyond general primacy provisions. States must include these regulation-specific provisions in their application for approval of any program revision. States must also continue to meet all other conditions of primacy for all other rules in 40 CFR part 142.

The RTCR provides States with flexibility to implement the requirements of the rule in a manner that maximizes the efficiency of the rule for the States and water systems while increasing the effectiveness of the rule to protect public health. To ensure an effective and enforceable program under the RTCR, the State primacy application for RTCR must include a description of how the State will meet the following special primacy provisions contained in the RTCR at 40 CFR part 142:

- Baseline and Reduced Monitoring Provisions—The State primacy application must indicate what baseline and reduced monitoring provisions of the RTCR the State will adopt and describe how the State will implement the RTCR in these areas so that EPA can be assured that implementation plans meet the minimum requirements of the rule.
- Sample Siting Plans—States must describe the frequency and process used to review and revise sample siting plans in accordance with 40 CFR part 141, subpart Y to determine adequacy.
- Reduced Monitoring Criteria—The primacy application must indicate whether the State will adopt the reduced monitoring provisions of the RTCR (e.g., reduced monitoring provisions for ground water systems serving 1,000 or fewer people, including provisions on dual purpose sampling). If the State adopts the reduced monitoring provisions, it must describe the specific types or categories of water systems that will be covered by reduced monitoring and whether the State will use all or a reduced set of the optional criteria. For each of the reduced monitoring criteria, both mandatory and optional, the State must describe how the criteria will be evaluated to determine when systems qualify.
- Assessments and Corrective Actions—States must describe their process to implement the new assessment and corrective action phase of the rule. The description must include how the State will ensure that Level 2 assessments are more comprehensive than Level 1 assessments, examples of sanitary defects, examples of assessment forms or formats, and methods that systems may use to consult with the State on appropriate corrective actions.
- Invalidation of routine and repeat samples collected under the RTCR—States must describe their criteria and process to invalidate total coliform-positive and *E. coli*-positive samples under the RTCR. This includes criteria to determine if a sample was improperly processed by the laboratory, reflects a domestic or other non-distribution system plumbing problem or reflects circumstances or conditions that do not reflect water quality in the distribution system.
- Approval of individuals allowed to conduct RTCR Level 2 assessments—States must describe their criteria and process for approval of individuals allowed to conduct RTCR Level 2 assessments.

• Special monitoring evaluation—States must describe how they will perform special monitoring evaluations during sanitary surveys for ground water systems serving 1,000 or fewer people to determine whether systems are on an appropriate monitoring schedule.

• Seasonal systems—States must describe how they will identify seasonal systems, how they will determine when systems on less than monthly monitoring must monitor, and what will be the seasonal system start-up provisions.

• Additional criteria for reduced monitoring—States must describe how they will require systems on reduced monitoring to demonstrate, where appropriate:

—Continuous disinfection entering the distribution system and a residual in the distribution system.
—Cross connection control.
—Other enhancements to water system barriers.

• Criteria for extending the 24-hour period for collecting repeat samples—If the State elects to use a set of criteria in lieu of case-by-case decisions, they must describe the criteria they will use to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample, or to extend the 24-hour limit for collection of samples following invalidation. If the State elects to use only case-by-case waivers, the State does not need to develop and submit criteria.

2. Key Issues Raised

Commenters generally supported the inclusion of these activities in the primacy application and emphasized the importance of the flexibility and discretion that this approach provides for States to build on existing authorities of the 1989 TCR and focus on systems with the greatest need. They suggested that EPA allow States as much flexibility and discretion as possible to design their approach to implementing the RTCR, including how to address seasonal water systems, qualifications of assessors, the content of sample siting plans, and compliance with multiple rules (e.g., coordination between 1989 TCR/RTCR and GWR compliance), and how to consider multiple Level 1 assessments where the cause of the first Level 1 assessment has been identified and corrected. However, some commenters suggested removal of some of the special primacy requirements, such as those regarding seasonal system startup procedures and how the States will review sample siting plans, implement the assessment and corrective action phase, and determine who is approved to conduct Level 2 assessments. EPA is maintaining these primacy requirements in the RTCR because they provide the States with the flexibility to design their programs to fit their own needs without prescriptive, one-size-fits-all requirements. Describing how the State will accomplish them in the primacy application assures that consumers nationwide are receiving adequate and comparable public health protection under the rule.

EPA also requested comment on whether it is appropriate to have States describe their criteria for waiving or extending the 24-hour limit to collect repeat samples as a special primacy condition, or instead have States keep records of decisions to waive and/or extend the 24-hour limit. The majority of the commenters supported the former option as it reduces paperwork burden and adds flexibility to the implementation of the RTCR. EPA concurs and added the waiver or extension of the 24-hour limit to the special primacy requirements as an option for States that would rather describe their criteria for waiving or extending the 24-hour limit in their primacy application, instead of having to make the decision on a case-by-case basis. States that elect to use only case-by-case waivers do not need to develop and submit criteria.

B. State Recordkeeping and Reporting and SDWIS

1. Recordkeeping

The current regulations in 40 CFR 142.14 require States with primacy to keep records, including: analytical results to determine compliance with MCLs, maximum residual disinfectant levels (MRDLs), and treatment technique requirements; PWS inventories; State approvals; enforcement actions; and the issuance of variances and exemptions. Consistent with the recordkeeping requirements of the current regulations, the RTCR requires States to keep records and supporting information for each of the following decisions or activities for five years:

• Any case-by-case decision to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample, or to extend the 24-hour limit for collection of samples following invalidation.

• Any decision to allow a system to waive the requirement for three routine samples the month following a total coliform-positive sample. The record of the waiver decision must contain all the items listed in §§ 141.854(j) and 141.855(f) of the RTCR.

• Any decision to invalidate a total coliform-positive sample. If the State decides to invalidate a total coliform-positive sample as provided in § 141.853(c)(1) of the RTCR, the record of the decision must contain all the items listed in that paragraph.

Also, consistent with the recordkeeping requirements of the current regulations, under the RTCR States must retain records of each of the following decisions in such a manner that each system's current status may be determined at any time:

• Any decision to reduce the total coliform monitoring frequency for a community water system serving 1,000 or fewer people to less than once per month, as provided in § 141.855(d) of the RTCR; and what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

• Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving 1,000 or fewer people to less than once per quarter, as provided in § 141.854(e) of the RTCR, and what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

• Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving more than 1,000 persons during any month the system serves 1,000 or fewer people, as provided in § 141.857(d) of the RTCR. A copy of the reduced monitoring frequency must be provided to the system.

• Any decision to waive the 24-hour limit for taking a total coliform sample for a public water system that uses surface water, or ground water under the direct influence of surface water, and that does not practice filtration in accordance with part 141, subparts H, P, T, and W, and that measures a source water turbidity level exceeding 1 nephelometric turbidity unit (NTU) near the first service connection.

• Any decision to allow a public water system to forgo *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is *E. coli*-positive.

The RTCR also adds the following new recordkeeping requirement:

• States must keep records and supporting information regarding completed and approved RTCR assessments, including reports from the system that corrective action has been completed, for five years.

2. Reporting

EPA currently requires at 40 CFR 142.15 that States report to EPA information such as violations, variance and exemption status, and enforcement actions. The RTCR requires States to develop and maintain a list of public water systems that the State is allowing to monitor less frequently than once per month for community water systems or less frequently than once per quarter for non-community water systems, including the compliance date (the date that reduced monitoring was approved) of the reduced monitoring requirement for each system.

3. SDWIS

EPA has begun to plan and develop the next version of SDWIS, SDWIS Next Gen, which will provide improved capabilities to update the system when there are new rule requirements and that enables more efficient data sharing among systems, laboratories, States, and EPA. EPA has established a governance structure to allow States to provide input on SDWIS Next Gen and begin identifying and prioritizing necessary system functions. Developing the portions of the system that are needed for implementing RTCR is a high priority. EPA remains committed to completing revisions to SDWIS that will facilitate implementation of RTCR and to completing them well in advance of the effective date of the rule.

4. Key Issues Raised

Many commenters emphasized the importance of developing revisions to SDWIS sufficiently in advance of the effective date of the rule to allow for efficient, effective, and consistent implementation, tracking, recordkeeping, and reporting. As indicated above, EPA has already begun planning and development of SDWIS Next Gen to incorporate changes necessary to implement RTCR. EPA plans to complete the revisions necessary to implement RTCR well in advance of the RTCR effective date. Commenters also noted the advisory committee recommendation to develop metrics for evaluating the effectiveness of RTCR. Identifying metrics and incorporating them into SDWIS Next Gen will be part of the process completed by the governance structure with the input of stakeholders.

Some commenters objected to the requirement for States to maintain lists of systems on reduced monitoring and information on decisions on sample invalidations and waivers of time limits. EPA notes that these requirements also existed under the 1989 TCR and are not new under the RTCR. These requirements, and the requirements to maintain other information such as regarding assessments and review of seasonal system startup procedures, will be considered in the design of SDWIS Next Gen and incorporated to the extent possible to help States efficiently manage their implementation requirements.

Commenters also expressed the need for guidance to help States implement rule requirements regarding annual site visits for systems on annual monitoring, review of system RTCR monitoring frequency during sanitary surveys, review of seasonal system startup procedures, and identification of qualified assessors for Level 2 assessments. EPA plans to work with States to develop the necessary changes in implementation guidance well before the effective date of the RTCR.

VI. Economic Analysis (Health Risk Reduction and Cost Analysis)

This section summarizes the economic analysis (EA) for the final RTCR. The EA is an assessment of the benefits, both health and non-health-related, and costs to the regulated community of the final regulation, along with those of regulatory alternatives that the Agency considered. EPA developed the EA for the RTCR to meet the requirement of SDWA section 1412(b)(3)(C) for a Health Risk Reduction and Cost Analysis (HRRCA), as well as the requirements of Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review, under which EPA must estimate the costs and benefits of the rule. The full EA for the final RTCR (RTCR EA) (USEPA 2012a) includes additional details and discussion on the topics presented throughout this section of the preamble. It is available in the docket (Docket ID No. EPA–HQ–OW–2008–0878) and is also published on the government's Web site at *http://www.regulations.gov*.

SDWA section 1412(b)(3)(C) requires that the HRRCA for a NPDWR take into account the following seven elements: (1) Quantifiable and nonquantifiable health risk reduction benefits; (2) quantifiable and nonquantifiable health risk reduction benefits from reductions in co-occurring contaminants; (3) quantifiable and nonquantifiable costs that are likely to occur solely as a result of compliance; (4) incremental costs and benefits of rule options; (5) effects of the contaminant on the general population and sensitive subpopulations including infants, children, pregnant women, elderly, and individuals with a history of serious illness; (6) any increased health risks that may occur as a result of compliance, including risks associated with co-occurring contaminants; and (7) other relevant factors such as uncertainties in the analysis and factors with respect to the degree and nature of risk. A summary of these elements is provided in this section of the preamble, and a complete discussion can be found in the RTCR EA.

Both benefit and cost measures are adjusted using social discounting. In social discounting, future values of a rule's or policy's effects are multiplied by discount factors. The discount factors reflect both the amount of time between the present and the point at which these events occur and the degree to which current consumption is more highly valued than future consumption (USEPA 2000a). This process allows comparison of cost and benefit streams that are variable over a given time period. EPA uses social discount rates of both three percent and seven percent to calculate present values from the stream of benefits and costs and also to annualize the present value estimates. Historically, the use of three percent is based on after tax rates of return to consumers on relatively risk-free financial instruments, while seven percent is an estimate of average economy-wide before-tax rate of return to incremental private investment generally. For further information, see USEPA 2000a and OMB 1996.

The time frame used for both benefit and cost comparisons in this rule is 25 years. This time interval accounts for rule implementation activities occurring soon after promulgation (e.g., States adopting the criteria of the regulation) and the time for different types of compliance actions (e.g., assessments and corrective actions) to be realized up through the 25th year following rule promulgation. In the RTCR EA, EPA also presents the undiscounted stream of benefits and costs over the 25-year time frame in constant 2007 dollars (2007$).

The benefits described in this section are discussed qualitatively, and reductions in occurrence of total coliforms and *E. coli* and in Level 2 assessments are used as indicators of positive benefits. EPA was unable to quantify health benefits for the RTCR because there are insufficient data reporting the co-occurrence in a single sample of fecal indicator *E. coli* and pathogenic organisms. In addition, the available fecal indicator *E. coli* data from the Six-Year Review 2 dataset (USEPA 2012a) described in this preamble were limited to presence-

absence data because the 1989 TCR requires only the reporting of presence or absence of fecal indicator *E. coli* using EPA-approved standard methods. However, as discussed in chapter 6 of the RTCR EA, even though health benefits could not be directly quantified, the potential benefits from the RTCR include avoidance of a full range of health effects from the consumption of fecally contaminated drinking water, including the following: acute and chronic illness, endemic and epidemic disease, waterborne disease outbreaks, and death. Since fecal contamination may contain waterborne pathogens including bacteria, viruses, and parasitic protozoa, in general, a reduction in fecal contamination should reduce the risk from all of these contaminants.

The net costs of the rule stem mostly from the new assessment and corrective action requirements as well as the revised monitoring provisions described earlier in this preamble. The costs discussed in this section are presented as annualized present values in constant 2007$.

This section of the preamble includes elements as follows: (A) Regulatory Options Considered, (B) Major Sources of Data and Information Used in Supporting Analyses, (C) Occurrence and Predictive Modeling, (D) Baseline Profiles, (E) Anticipated Benefits of the RTCR, (F) Anticipated Costs of the RTCR, (G) Potential Impact of the RTCR on Households, (H) Incremental Costs and Benefits, (I) Benefits from Simultaneous Reduction of Co-occurring Contaminants, (J) Change in Risk from Other Contaminants, (K) Effects of Fecal Contamination and/or Waterborne Pathogens on the General Population and Sensitive Subpopulations, (L) Uncertainties in the Benefit and Cost Estimates for the RTCR, (M) Benefit Cost Determination for the RTCR, (N) Comments Received in Response to EPA's Requests for Comment, and (O) Other Comments Received by EPA.

A. Regulatory Options Considered

EPA evaluated the following three regulatory options as part of this revised rule: (1) The 1989 TCR option, (2) the RTCR option (today's final rule), and (3) an Alternative option. EPA discusses the three regulatory options briefly in this preamble and in greater detail in chapter 3 of the RTCR EA.

First, the 1989 TCR option reflects EPA's understanding of how the 1989 TCR is currently being implemented. That is, the 1989 TCR option is assumed to include ''status quo'' PWS and State implementation practices. Next, the RTCR option is based on the provisions of this final rule as described in detail in section III of this preamble, *Requirements of the Revised Total Coliform Rule.* Third, the Alternative option parallels the RTCR in most ways but includes variations of some of the provisions that were discussed by the advisory committee before they reached consensus on the recommendations in their AIP, which served as the basis for the proposed and final rules.

The Alternative option differs from the RTCR option in two ways. First, under the Alternative option, at the compliance date all PWSs are required to sample monthly for an initial period until they meet the eligibility criteria for reduced monitoring. EPA assumes that eligibility for reduced monitoring is determined during the next sanitary survey following the RTCR compliance date. This more stringent approach differs from the RTCR option that allows PWSs to continue to monitor at their current frequencies (with an additional annual site visit or voluntary Level 2 assessment requirement for PWSs wishing to remain on annual monitoring) until they are triggered into an increased sampling frequency. Second, under the Alternative option, no PWSs are allowed to reduce monitoring to an annual basis. EPA defined the Alternative option this way and included it in the RTCR EA to assess the relative impacts of a more stringent rule and to better understand the balance between costs and public health protection. EPA wishes to emphasize that it is not adopting the Alternative Option, but is providing cost and benefit information on it as a point of comparison with the final rule as promulgated.

To understand the relative impacts of the options, EPA gathered available data and information to develop and provide input into an occurrence and predictive model. EPA estimated both baseline conditions and changes to these conditions anticipated to occur over time as a result of these revised rule options. The analysis is described in more detail in the RTCR EA.

B. Major Sources of Data and Information Used in Supporting Analyses

This section of the preamble briefly discusses the data sources that EPA used in its supporting analyses for the RTCR. For a more detailed discussion, see chapter 4 of the RTCR EA.

1. Safe Drinking Water Information System Federal Version Data

Safe Drinking Water Information System Federal Version (SDWIS/FED) is EPA's national regulatory compliance database for the drinking water program and is the main source of PWS inventory and violation data for the RTCR baseline. SDWIS/FED contains information on each of the approximately 155,000 active PWSs as reported by primacy agencies, EPA Regions, and EPA headquarters personnel. SDWIS/FED includes records of MCL violations and monitoring and reporting violations (both routine and repeat and minor and major). It does not include sample results. It also contains information to characterize the US inventory of PWSs including system name and location, retail population served, source water type (ground water (GW), surface water (SW), or ground water under the direct influence of surface water (GWUDI)), disinfection status, and PWS type (community water system (CWS), transient non-community water system (TNCWS), and non-transient non-community water system (NTNCWS)).

To create the PWS and population baseline, EPA used the fourth quarter of SDWIS/FED 2007 (USEPA 2007b), which was the most current PWS inventory data available when EPA began developing the RTCR EA. These data represent all current, active PWSs and the population served by these systems.

EPA also used the MCL violation data from SDWIS/FED to validate model predictions for systems serving 4,100 or fewer people and to predict *E. coli* (or ''acute,'' under the 1989 TCR) MCL violations (1989 TCR, RTCR, and Alternative option), total coliform (non-acute or monthly) MCL violations (1989 TCR), and Level 1 and Level 2 assessment triggers (RTCR and Alternative option) for systems serving more than 4,100 people.

2. Six-Year Review 2 Data

Through an Information Collection Request (ICR) (USEPA 2006b), States voluntarily submitted electronically available 1989 TCR monitoring data [1] (sample results) that were collected between January 1998 and December 2005. EPA requested the 1989 TCR monitoring results with the intent of conducting analyses and developing models to assess the potential impacts of changes to the 1989 TCR. EPA received data from 46 States, Tribes, and territories. A Data Quality Report (USEPA 2010c) describes how the 1989 TCR monitoring data were obtained, evaluated, and modified where

[1] This refers to results of monitoring conducted pursuant to the 1989 TCR, not results from the year 1989.

necessary to make the database internally consistent and usable for analysis. Exhibit 2.1 in the Data Quality Report provides a complete list of States or territories that submitted data and a description of the use of these data.

In this EA, EPA included data from 37 primacy agencies (35 States and 2 Tribes). Records included data for:

- PWS information (system type, population served, source water type)
- Sample type (routine, repeat, special purpose)
- Analytical result
- Sampling location—entry point, distribution system and, for repeat samples, original location, downstream, upstream, and other
- Analytical method
- Disinfectant residual data collected at TCR monitoring sites

As discussed in greater detail in section 4.2.2.1 of the RTCR EA, EPA used 2005 data exclusively in the analyses supporting the RTCR because the 2005 data set was the most complete year of data among the Six-Year Review 2 data. The 2005 data was also the most recent data available suggesting that it may be the most representative of present conditions.

The Six-Year Review 2 data also informed EPA's assumptions regarding the proportions of ground water systems serving 1,000 or fewer people that sample monthly, quarterly, or annually.

3. Other Information Sources

Additional data and information sources included the Economic Analysis for the Ground Water Rule (GWR EA) (USEPA 2006a), the *Technology and Cost Document for the Revised Total Coliform Rule* (RTCR T&C document) (USEPA 2012b), the US Census data, and the knowledge and experience of stakeholders representing industry, States, small systems, and the public.

The GWR EA provided occurrence information on *E. coli* in the source water of ground water PWSs for modeling the triggered monitoring component of GWR and informed the assumptions on the distribution of corrective actions taken in response to the presence of *E. coli* in the source water. As discussed in section VI.C of this preamble, *Occurrence and Predictive Modeling,* the model developed for this economic analysis considers the effect of GWR both before and during implementation of the RTCR. The RTCR T&C document included estimates of unit costs for the major components of the RTCR that were obtained from the advisory committee technical workgroup and vendors, including labor, monitoring, assessments, and corrective actions.

US Census data were used to estimate population per household and to characterize sensitive subpopulations. Lastly, knowledge and experience from stakeholders helped to inform the assumptions that were made for the analysis.

A more detailed discussion of these data sources and how EPA used them are included in the RTCR EA.

C. Occurrence and Predictive Modeling

EPA used the data to develop an occurrence and predictive model for PWSs serving 4,100 or fewer people based primarily on the 2005 Six-Year Review 2 data. The model predicts changes in total coliform and *E. coli* occurrence, Level 1 and Level 2 assessments (based on simulated monitoring results), corrective actions, and violations over time. EPA developed another simpler predictive model for PWSs serving more than 4,100 people that predicts Level 1 and Level 2 assessments (based on 2005 violation data from SDWIS/FED), corrective actions, and violations over time, but not total coliform and *E. coli* occurrence. EPA modeled systems serving more than 4,100 people separately because the Six-Year Review 2 data for larger PWSs were not as robust as the data for the smaller systems. In addition, while the RTCR includes new monitoring requirements for PWSs serving 4,100 people or fewer, monitoring requirements for systems serving greater than 4,100 people remain essentially unchanged from the 1989 TCR. This section briefly discusses the structures of each of the two models and how they used available data, information, and assumptions to make predictions over time resulting from the regulatory options.

Chapter 5 of the RTCR EA includes a more detailed description of the occurrence and predictive model used for PWSs serving 4,100 or fewer people, and the other simpler predictive model used for PWSs serving greater than 4,100 people.

1. Model Used for PWSs Serving ≤ 4,100 People

The occurrence and predictive model used for PWSs serving 4,100 or fewer people has two components. The first component of the model characterized how the presence or positive rates of total coliform and *E. coli* detections vary across the population of small (serving 4,100 or fewer people) public water systems in the US. These rates vary by the type of sample (routine or repeat), by analyte (total coliforms or *E. coli*), and by system type (CWS, NCWS, or TNCWS) and size. The second component of the model used the total coliform and *E. coli* occurrence distributions to simulate a set of nationally-representative systems within the context of the three regulatory options (1989 TCR, RTCR, and Alternative) to predict changes in total coliform and *E. coli* occurrence, triggers, assessments, corrective actions over time, and violations.

The model assumed that the national occurrence of total coliforms and *E. coli* has reached a steady state in recent years under the 1989 TCR. It assumed that cycles of normal deterioration and repair/replacement are occurring at the individual system level, but the numbers of violations at the national level have remained relatively unchanged. This assumption is based on evaluation of SDWIS/FED violation data. Exhibit VI–1 presents the number of PWSs with violations from 2001–2007 under the 1989 TCR which shows that national violation rates have remained relatively steady over recent years. The RTCR will affect this steady state, likely resulting in a reduction of the underlying occurrence and associated violations.

EXHIBIT VI–1—NUMBER OF PWSS WITH VIOLATIONS BY SYSTEM TYPE (2001–2007)

PWS Type	Year						
	2001	2002	2003	2004	2005	2006	2007
Acute MCL Violations							
CWS	143	144	185	171	151	171	171
NTNCWS	51	53	70	58	65	68	45
TNCWS	261	278	322	351	349	361	295

EXHIBIT VI–1—NUMBER OF PWSS WITH VIOLATIONS BY SYSTEM TYPE (2001–2007)—Continued

PWS Type	Year						
	2001	2002	2003	2004	2005	2006	2007
All	455	475	577	580	565	600	511
Non-Acute MCL Violations							
CWS	2,074	2,110	2,204	2,314	2,196	2,095	1,996
NTNCWS	601	679	725	750	753	735	655
TNCWS	2,707	2,934	3,036	3,132	3,039	3,244	3,209
All	5,382	5,723	5,965	6,196	5,988	6,074	5,860

Note: PWSs counts are of systems that had at least one violation during the year.
Source: SDWIS/FED annual data for period ending 3rd quarter 2001–2007. OH, US territories, Tribal PWS data excluded.

Before the RTCR goes into effect, GWR implementation begins and is also expected to affect the steady state. To estimate the effects that GWR implementation is expected to have on present steady state conditions, EPA used the occurrence and predictive model to simulate five years of implementation of the 1989 TCR with the GWR, which became effective in December 2009. EPA assumed these five years to account for the approximately two years before the expected promulgation date of the final RTCR and an additional three years after that until the RTCR effective date. The assumptions made to account for the GWR are described in detail in the in the RTCR EA and summarized in Exhibit VI–2.

EXHIBIT VI–2—SUMMARY OF MAJOR ASSUMPTIONS FOR SIMULATING GWR IMPLEMENTATION

GWR provision	Modeling approach/assumption
Triggered Monitoring: Ground water systems not providing 4-log treatment for viruses that have total coliform-positive samples under the 1989 TCR are required to take source water samples and test for a fecal indicator. If the sample is positive, they must take an additional 5 source water samples (unless the State requires corrective action). If any of these is positive, they must conduct corrective action.	Current model used same probabilities used in GWR EA (USEPA 2006a) to predict whether source water samples will be *E. coli*-positive. Ground water systems required to conduct corrective action due to monitoring results will either install disinfection or implement a non-disinfecting corrective action as described in the RTCR EA. Ground water systems installing disinfection will draw from the probability distributions for total coliforms and *E. coli* for disinfected systems for the remainder of analysis. Ground water systems implementing a nondisinfecting corrective action will experience no positive samples for the remainder of the year plus two additional years and will experience a 75[1] percent reduction in occurrence for five additional years.
Sanitary Surveys: GWR includes Federal sanitary survey requirements for all ground water systems, and requires States to perform regular comprehensive sanitary surveys including eight critical elements.	Model did not explicitly simulate sanitary surveys or their results. Rather, it assumed that the new sanitary survey provisions will result in 10 percent[2] reduced occurrence of total coliforms universally for entire analysis.
Compliance Monitoring: Ground water systems that provide 4-log treatment for viruses must demonstrate that they are providing this level of treatment by conducting compliance monitoring.	Model did not explicitly simulate compliance monitoring. Rather, it assumed that the provision will result in 10 percent[3] reduced occurrence of total coliforms for those ground water systems that are conducting compliance monitoring once assumed 4-log treatment for viruses begins.

[1 2 3] Assumption reflects EPA best professional judgment.
Source: RTCR EA (USEPA 2012a) as informed by GWR EA (USEPA 2006a).

Actual reductions in occurrence from the implementation of GWR requirements may differ from what is presented here. However, based on assumptions used in this model, the analysis of how the RTCR and Alternative option perform relative to each other are not affected.

In addition to capturing the effect of implementation of GWR requirements with the 1989 TCR for a five-year period of analysis, the model captures an additional 25 years with the 1989 TCR, the RTCR option, and the Alternative option. Along with changes in total coliform and *E. coli* occurrence, the model predicts behavioral changes: the number of Level 1 and Level 2 assessments (and associated Level 1 or Level 2 corrective actions) to be performed, further resulting adjustments to occurrence, and changes in sampling regimens as systems qualify for reduced monitoring requirements. The assumptions used to simulate RTCR implementation are detailed in the RTCR EA and summarized in Exhibit VI–3.

EXHIBIT VI–3—SUMMARY OF MAJOR ASSUMPTIONS FOR SIMULATING RTCR IMPLEMENTATION

RTCR Provision	Modeling Approach/Assumption
Level 1 Assessment	Model simulates sampling and sampling results and determines which PWSs will be triggered to conduct an assessment. Sanitary defects are found in 10 percent[1] of assessments (represents net increase over the 1989 TCR). All sanitary defects are corrected. Model selects from distribution of potential corrective actions as explained in chapter 7 of the RTCR EA (USEPA 2012a). PWSs implementing a corrective action as a result of a Level 1 assessment experience no positive samples for the remainder of the year plus one additional year and will experience 50 percent[2] reduction in occurrence for three additional years.
Level 2 Assessment	Model simulates sampling and sampling results and determines which PWSs will be triggered to conduct an assessment. Sanitary defects will be found in 10 percent[3] of assessments (represents net increase over the 1989 TCR). All sanitary defects are corrected. Model selects from distribution of potential corrective actions as explained in chapter 7 of the RTCR EA (USEPA 2012a). PWSs implementing a corrective action as a result of a Level 2 assessment will experience no positive samples for the remainder of the year plus two additional years and will experience 75 percent[4] reduction in occurrence for five additional years.

[1 3] Assumption based on conversation with State representatives with on-the-ground experience.
[2 4] Assumption reflects EPA best professional judgment.
Note: EPA recognizes that there is a large uncertainty with the assumptions. Sensitivity analyses showed that the fundamental conclusions of the economic analysis do not change over a wide range of assumptions tested.
Source: RTCR EA (USEPA 2012a)

EPA made different assumptions for the effectiveness of assessments and subsequent corrective actions to account for the differences between the two types of assessments. The Level 2 assessment is a more comprehensive investigation that may result in finding more substantial problems than what may be found during a Level 1 assessment, and for that reason the corrective actions that result from a Level 2 assessment were modeled to result in corrective action measures that are generally more expensive and have bigger and longer lasting effects than those of the Level 1 assessments. EPA conducted sensitivity analyses around the key assumptions summarized in Exhibit VI–2 as discussed in section VI.L of this preamble, *Uncertainties in the Benefit and Cost Estimate for the RTCR.*

2. Model Used for PWSs Serving > 4,100 People

For systems serving more than 4,100 people, EPA estimated violation and trigger rates using SDWIS/FED because the Six-Year Review 2 data for PWSs serving more than 4,100 people were not as robust as the Six-Year Review 2 data for systems serving 4,100 or fewer people. EPA did not quantify changes in violation or trigger rates for systems serving more than 4,100 people among the 1989 TCR, RTCR, and Alternative options because of: (1) Limited Six-Year Review 2 data to characterize these systems, (2) the essentially unchanged monitoring requirements across options for these systems, and (3) the level of effort already occurring to implement the 1989 TCR.

D. Baseline Profiles

The estimate of baseline conditions that EPA developed provides a reference point for understanding net impacts of the RTCR.

Compliance with the GWR began in December 2009, and the expected compliance date of the RTCR is approximately six years following commencement of the GWR implementation. The majority of PWSs are ground water systems and these systems are expected to be affected by the GWR. Because GWR implementation prior to the effective date of RTCR is expected to cause changes to ground water systems, the baseline conditions that EPA developed for ground water systems account for the expected effects of the GWR.

For PWSs serving more than 4,100 people, EPA assumed that present conditions, as reflected in 2005 SDWIS/FED data, are an appropriate representation of the conditions that are likely to exist when the RTCR becomes effective. EPA assumed that a steady state exists at the national level.

The number of ground water PWSs that disinfect is expected to change during implementation of the GWR before the expected rule compliance date of the RTCR. Exhibit VI–4 shows the estimated baseline number of the ground water PWSs at the RTCR compliance date.

EXHIBIT VI–4—ESTIMATED BASELINE NUMBER OF GROUND WATER SYSTEMS AND DISINFECTION STATUS AT COMPLIANCE DATE (3 YEARS POST RTCR PROMULGATION)

PWS Size	Number of ground water PWSs (post-GWR)					
	CWS		NTNCWS		TNCWS	
	Disinfecting	Non-disinfecting	Disinfecting	Non-disinfecting	Disinfecting	Non-disinfecting
≤100	6,190	5,748	2,938	5,888	13,753	46,447
101–500	9,311	4,581	2,776	3,837	5,451	13,824
501–1,000	3,512	955	873	845	684	1,279
1,001–4,100	5,422	1,021	547	265	274	343
4,101–33,000	2,798	358	56	14	27	40
33,001–96,000	307	28	2			2
96,001–500,000	62	1				1
500,001–1 M	4					1
>1 M	3					

EXHIBIT VI–4—ESTIMATED BASELINE NUMBER OF GROUND WATER SYSTEMS AND DISINFECTION STATUS AT COMPLIANCE DATE (3 YEARS POST RTCR PROMULGATION)—Continued

PWS Size	Number of ground water PWSs (post-GWR)					
	CWS		NTNCWS		TNCWS	
	Disinfecting	Non-disinfecting	Disinfecting	Non-disinfecting	Disinfecting	Non-disinfecting
Total	27,610	12,691	7,191	10,850	20,189	61,937
Combined Total		40,301		18,041		82,126

Source: RTCR Occurrence and Predictive Model Output as detailed in the RTCR EA (USEPA 2012a)

EPA estimated the numbers of ground water PWSs that monitor monthly, quarterly, and annually under the 1989 TCR based on an analysis of the Six-Year Review 2 data and individual State statutes conducted by EPA and the advisory committee Technical Work Group (TWG). Of the ground water PWSs serving 1,000 or fewer people, EPA estimated that approximately 34,000 monitor monthly, 67,000 monitor quarterly, and 27,000 monitor annually. EPA assumed that the numbers of systems on monthly, quarterly, and annual monitoring remain unchanged at the rule effective date for a continuation of the 1989 TCR. For the RTCR option, EPA assumed that only the percentage of systems that received an annual site visit under the 1989 TCR would continue on annual monitoring under the RTCR; the percentage of systems that would therefore no longer qualify for annual monitoring under the RTCR were assumed to revert to baseline quarterly monitoring. Under the Alternative option, all PWSs, regardless of size or type, start at monthly monitoring at the rule effective date.

The following two tables provide an overview of summary statistics relating to baseline water quality. Exhibit VI–5 shows the percentage of total coliform- and *E. coli*-positive samples based on PWS type and size. The percentages of samples that are total coliform-positive are generally higher in ground water systems than in surface water systems; in smaller systems than in larger systems; and in NCWSs than in CWSs.

EXHIBIT VI–5—TOTAL COLIFORM AND E. COLI PERCENT POSITIVE BY SYSTEM SIZE AND TYPE

PWS Type	Source water	Population served	Total coliform (# samples)	Total coliform (+ samples)	Total coliform (% positive)	*E. coli* (# samples) [1]	*E. coli* (+ samples)	*E. coli* (% positive) [2]
CWS	Ground Water (GW)	≤100	93,105	2,479	2.66	1,172	72	0.08
		101–500	125,490	2,500	1.99	1,639	61	0.05
		501–1,000	48,265	736	1.52	483	20	0.04
		1,001–4,100	110,391	1,176	1.07	732	21	0.02
		4,101–33,000	183,721	877	0.48	458	22	0.01
		33,001–100,000	96,361	214	0.22	44	2	0.00
		>100,000	64,965	289	0.44	34	1	0.00
		Total GW	722,298	8,271	1.15	4,562	199	0.03
	Surface Water (SW)	≤100	6,735	95	1.41	64	6	0.09
		101–500	19,716	227	1.15	159	10	0.05
		501–1,000	12,828	90	0.70	70	7	0.05
		1,001–4,100	55,310	314	0.57	233	17	0.03
		4,101–33,000	175,758	525	0.30	399	41	0.02
		33,001–100,000	112,894	157	0.14	106	5	0.00
		>100,000	112,143	235	0.21	99	2	0.00
		Total SW	495,384	1,643	0.33	1,130	88	0.02
	GW & SW	Total CWS	1,217,682	9,914	0.81	5,692	287	0.02
TNCWS	GW	≤100	163,730	7,820	4.78	5,820	316	0.20
		101–500	52,891	2,418	4.57	1,869	99	0.19
		501–1,000	6,952	299	4.30	217	4	0.06
		>1,000	7,062	143	2.02	85	2	0.03
		Total GW	230,635	10,680	4.63	7,991	421	0.18
	SW	≤100	6,723	150	2.23	141	17	0.25
		101–500	2,854	75	2.63	69	13	0.46
		501–1,000	523	19	3.63	19		0.00
		>1,000	988	6	0.61	37		0.00
		Total SW	11,088	250	2.25	266	30	0.27
	GW & SW	Total TNCWS	241,723	10,930	4.52	8,257	451	0.19
NTNCWS	GW	≤100	46,505	1,476	3.17	1,061	34	0.07
		101–500	33,084	893	2.70	628	19	0.06
		501–1,000	9,531	166	1.74	103	2	0.02
		>1,000	13,138	177	1.35	103	5	0.04
		Total GW	102,258	2,712	2.65	1,895	60	0.06
	SW	≤100	1,668	32	1.92	30	4	0.24
		101–500	2,304	9	0.39	9	2	0.09
		501–1,000	932	6	0.64	5		0.00
		>1,000	1,316	1	0.08	1		0.00
		Total SW	6,220	48	0.77	45	6	0.10
	GW & SW	Total NTNCWS	108,478	2,760	2.54	1,940	66	0.06

[1] Number of samples that were specifically tested for *E. coli*. The denominator of the *E. coli* percent positive calculation includes this number plus the number of total coliform negative samples (number of total coliform samples—number of total coliform-positive samples).

[2] Percent of *E. coli*-positive was calculated as (number of *E. coli*-positive samples)/(number of *E. coli* samples taken) x 100.

Source: Derived using Six-Year Review 2 Data, which was filtered by including a State only if the State's PWSs as a group had submitted at least 50 percent of the expected sample-months of usable data. The *Total Coliform Compliance Monitoring Data Quality and Completion Report* (USEPA 2010b) includes a detailed description of this data cleaning process.

Exhibit VI–6 presents the number of acute and non-acute violations reported by PWSs. The number of violations is also an indicator of baseline water quality prior to implementation of the RTCR. As discussed in detail chapter 5 of the RTCR EA, EPA used these data to estimate the numbers of MCL violations and triggers for PWSs serving more than 4,100 people for the three options. Under the 1989 TCR, larger systems incur a relatively small number of violations annually, while smaller systems incur the majority.

EXHIBIT VI–6—BASELINE NUMBER OF TCR VIOLATIONS BY SYSTEM SIZE AND TYPE (2005)

	Ground water PWSs			Surface Water PWSs			All PWSs Total
	Non-Acute	Acute	Total	Non-Acute	Acute	Total	
CWSs							
<100	905	52	957	16	3	19	976
101–500	809	34	843	50	7	57	900
501–1,000	203	13	216	16	3	19	235
1,001–3,300	272	8	280	55	7	62	342
3,301–10,000	171	8	179	75	3	78	257
10,001–50,000	125	8	133	78	4	82	215
50,001–100,000	11	2	13	5	4	9	22
100,001–1M	1	1	2	4	1	5	7
> 1M							
Total CWSs	2,497	126	2,623	299	32	331	2,954
NTNCWSs							
<100	514	34	548	7	2	9	557
101–500	346	20	366	4		4	370
501–1,000	57	6	63	2		2	65
1,001–3,300	58	4	62				62
3,301–10,000	9	2	11	1		1	12
10,001–50,000	1		1				1
50,001–100,000							
100,001–1M	1		1				1
> 1M							
Total NTNCWSs	985	66	1,051	14	2	16	1,067
TNCWSs							
<100	2,665	278	2,943	19	5	24	2,967
101–500	833	76	909	11	1	12	921
501–1,000	133	11	144	4		4	148
1,001–3,300	58	2	60	1		1	61
3,301–10,000	5		5	1		1	6
10,001–50,000							
50,001–100,000							
100,001–1M							
> 1M							
Total TNCWSs	3,694	367	4,061	36	6	42	4,103
Grand Total	7,176	559	7,735	349	40	389	8,124

Note: The RTCR EA uses violations data for PWSs serving greater than 4,100 people to estimate triggers for these systems. Data for other system sizes is provided for reference.

Source: Acute/Non-Acute Violations from SDWIS/FED annual data for period ending 3rd quarter 2001–2007 (only 2005 data is presented in this exhibit). OH, U.S. territories, Tribal PWS data excluded. See the RTCR EA (USEPA 2012a) for additional details.

E. Anticipated Benefits of the RTCR

In promulgating the RTCR, EPA expects to further reduce the risk of contamination of public drinking water supplies from the current baseline risk under the 1989 TCR. The options considered during development of this rule and analyzed as part of the RTCR EA are designed to achieve this reduction while maintaining public health protection in a cost-effective manner.

This section examines the benefits in terms of trade-offs among compliance with the 1989 TCR option, the RTCR option, and the Alternative option. Because there are insufficient data reporting the co-occurrence in a single sample of fecal indicator *E. coli* and pathogenic organisms and because the available fecal indicator *E. coli* data from the Six-Year Review 2 dataset were limited to presence-absence data, EPA was unable to quantify health benefits for the RTCR. EPA used several methods to qualitatively evaluate the benefits of the RTCR options. The qualitative evaluation uses both the judgment of EPA as informed by the TCRDSAC deliberations as well as quantitative estimates of changes in total coliform occurrence and counts of systems implementing corrective actions. The evaluation characterizes, in relative terms, the reduction in risk for each regulatory scenario as compared to baseline conditions.

Since *E. coli* is an indicator of fecal contamination, EPA assumed that a decrease in *E. coli* occurrence in the

distribution system would be associated with a decrease in fecal contamination in the distribution system. In general, this decrease in fecal contamination should reduce the potential risk to human health for PWS customers. Thus, any reduction in *E. coli* occurrence is considered a benefit of the RTCR. Since fecal contamination may contain waterborne pathogens including bacteria, viruses, and parasitic protozoa, in general, a reduction in fecal contamination should reduce the risk from all of these contaminants.

As presented in Exhibit VI–5, the percentages of samples that are positive for total coliforms and *E. coli* are generally higher for PWSs serving 4,100 or fewer people than those serving more than 4,100 people. PWSs with higher total coliform and *E. coli* occurrence are more likely to be triggered into assessments and corrective action. As discussed previously, the assessments and corrective action lead to a decrease in total coliform and *E. coli* occurrence. Because the PWSs serving 4,100 or fewer people have a higher initial *E. coli* occurrence and are likely triggered into more assessments and corrective actions than larger PWSs, the increase in benefits for these small systems are likely more evident as compared to the larger systems. In particular, model results suggest that customers of small ground water TNCWSs serving 100 or fewer people, which constitute approximately 40 percent of PWSs, experience the most improvement in water quality under the RTCR. That is, the occurrence of *E. coli* is predicted to decrease more for these systems than for other systems types.

1. Relative Risk Analysis

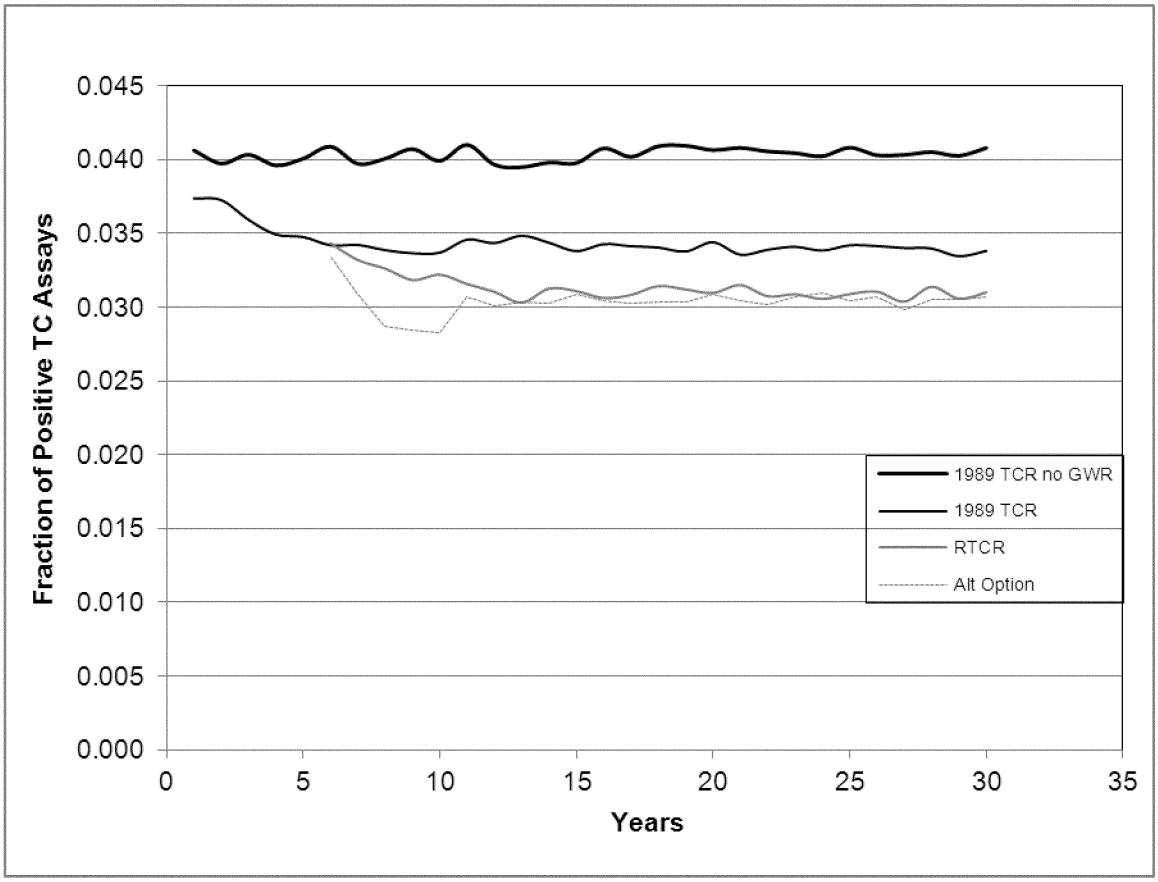
When revising an existing drinking water regulation, one of the main concerns is to ensure that backsliding on water quality and public health protection does not occur. SDWA requires that EPA maintain or improve public health protection for any rule revision. The RTCR is more stringent than the 1989 TCR with regard to protecting public health. The basis for this perspective is provided in this subsection and the following subsections (sections VI.E.2, *Changes in violation rates and corrective actions,* and VI.E.3, *Nonquantifiable benefits*) of this preamble.

Risk reduction for the RTCR is characterized by the activities performed that are presumed to reduce risk of exposing the public to contaminated water. These activities are considered under each rule component presented in Exhibit VI–8.

More frequent monitoring has the potential to decrease the risk of contamination in PWSs based on an enhanced ability to diagnose and mitigate system issues in a more timely fashion. Conversely, less frequent monitoring has the potential to increase risk. Real-time continuous sampling would mitigate the most risk possible based on sampling schedule; however, it would cost prohibitively more than the periodic sampling practiced under the 1989 TCR and included in the RTCR and the Alternative option. EPA's objective in proposing the sampling schedules included in the RTCR and Alternative option was to find an appropriate balance between the factors of risk mitigation and cost management.

Under the RTCR and Alternative option, the reduction in the number of required repeat samples and additional routine samples for some PWSs has the potential to contribute to increased risk for PWS customers (see also section III.C, *Monitoring,* and III.D, *Repeat Samples,* of this preamble for discussions on the additional routine sample and repeat sample provisions respectively). However, this potential increase in risk is expected to be more than offset by potential decreases in risk from increased routine monitoring (see section III.C of this preamble, *Monitoring*) and the addition of the assessments and corrective action provisions (see section III.E of this preamble, *Coliform Treatment Technique*) that find and fix problems indicated by monitoring. Exhibit VI–7 illustrates the predicted reduced frequency at which total coliforms occur subsequent to the implementation of the RTCR and Alternative option. As discussed previously, the RTCR uses total coliform occurrence as an indicator of potential pathways for possible contamination to enter the distribution system (see section III.B of this preamble, *Rule Construct: MCLG and MCL for E. coli and Coliform Treatment Technique*). Exhibit VI–7 illustrates the combined effects on total coliform occurrence resulting from changes in monitoring and the effects of assessments and corrective actions for the different rule options for very small systems. The relative trends indicated in Exhibit VI–7 for TNCWSs also pertain to other PWS categories as illustrated in chapter 5 of the RTCR EA. EPA chose to include the characterization for TNCWSs because they represent the system category of largest influence on the national impacts.

Exhibit VI-7 Ground Water Transient Non-community Water System (Summary of Systems Serving ≤ 4,100) Total Coliform Occurrence



Source: RTCR occurrence model as described in the RTCR EA (USEPA 2012a).

The effect that the elimination of public notification requirements for monthly/non-acute MCL violations has on risk is difficult to predict. Some factors, such as reduction in available public information and possible PWS complacency, lead to a potential increase in risk and other factors, such as less confusion (PN more in line with potential health risks) and PWSs resources used more efficiently, lead to a potential decrease, as discussed in Exhibit VI–8. This change to PN is addressing a key concern expressed by various stakeholders in the advisory committee and during the Six-Year Review 1 comment solicitation process. By eliminating the requirement and replacing it with assessment and corrective action requirements, the Agency expects less public confusion, more effective use of resources, increased transparency, and increased public health protection.

Other rule components are expected to have a negligible effect on risk. However, the overall effect of the RTCR is expected to be a further reduction in risk from the current baseline risk under the 1989 TCR. Chapter 6 of the RTCR EA presents a detailed discussion of the potential influence on health risk for each rule component.

EXHIBIT VI–8—POTENTIAL CHANGES IN RISK UNDER THE RTCR AND ALTERNATIVE OPTION RELATIVE TO THE 1989 TCR

RTCR Component	Factors leading to a potential increase in risk		Factors leading to a potential decrease in risk		Overall predicted change in risk	
	RTCR	Alternative	RTCR	Alternative	RTCR	Alternative
Implementation Activities.	None	None	None	None	No change	No change.

EXHIBIT VI–8—POTENTIAL CHANGES IN RISK UNDER THE RTCR AND ALTERNATIVE OPTION RELATIVE TO THE 1989 TCR—Continued

RTCR Component	Factors leading to a potential increase in risk		Factors leading to a potential decrease in risk		Overall predicted change in risk	
	RTCR	Alternative	RTCR	Alternative	RTCR	Alternative
Routine Monitoring (Including Reduced Monitoring).	None	None	Increased stringency in requirements to qualify for reduced monitoring along with requirement to return to baseline monitoring upon loss of these criteria is expected to result in decreased risk (That is, fewer PWSs will qualify and therefore PWSs will on average monitor more frequently than under the baseline for reduced monitoring).	PWSs all monitor monthly in the first few years of implementation of the RTCR, which is an increase in sampling frequency for systems that monitor quarterly or annually under the 1989 TCR. After the first few years, systems may reduce to quarterly, but none may reduce to annual monitoring, creating a decrease in risk for systems on annual monitoring under the 1989 TCR.	Decrease	Decrease.
Repeat Monitoring	Required repeat samples reduced from 4 to 3 for systems serving <1,000 people.	Same as RTCR option.	None	None	Increase	Increase.
Additional Routine Monitoring.	Additional routine samples are no longer required for PWSs monitoring monthly.. Ground water PWSs serving 1,000 or fewer people reduce additional routine samples from 5 to 3.	Same as RTCR option.	None	None	Increase	Increase.
Annual Site Visits	None (only States currently performing annual site visits are expected to continue).	Annual monitoring is not permitted under the Alternative option, so the protective benefit of the annual site visit is lost.	None	None	No change	Increase.
Assessments	None	None	Mandatory assessments are a new requirement.	Same as RTCR option.	Decrease	Decrease.
Corrective Actions	None	None	Mandatory corrective actions are a new requirement.	Same as RTCR option.	Decrease	Decrease.
Public Notification—Monthly/Non-Acute MCL Violations.	Reduction in available public information. Possible PWS complacency.	Same as RTCR option.	Less confusion (PN more in line with potential health risks). PWSs resources used more efficiently.	Same as RTCR option.	Unknown	Unknown.

EXHIBIT VI–8—POTENTIAL CHANGES IN RISK UNDER THE RTCR AND ALTERNATIVE OPTION RELATIVE TO THE 1989 TCR—Continued

RTCR Component	Factors leading to a potential increase in risk		Factors leading to a potential decrease in risk		Overall predicted change in risk	
	RTCR	Alternative	RTCR	Alternative	RTCR	Alternative
Public Notification—Monitoring and Reporting Violations.	None	None	Increased stringency of PNs motivates PWSs to conduct required sampling.	Same as RTCR option.	Decrease	Decrease.
Overall					Decrease	Decrease.

Notes: Detailed discussion of the rationale for determinations of potential risk for each rule component is presented in chapter 6 (section 6.2) of the RTCR EA (USEPA 2012a). Implementation activities consist of administrative activities by PWSs and States to implement the rule.

Assessment of potential changes in risk for monitoring components is an overall assessment. Potential changes (or static state) of risk for particular system sizes and types differ according to individual regulatory requirements and are discussed in section 6.2 of the RTCR EA. Chapter 3 of the RTCR EA provides a detailed description of the regulatory components for all three regulatory scenarios, and this preamble provides additional discussion of the TCRDSAC process and the rationale underlying the structure of the regulatory options considered.

2. Changes in Violation Rates and Corrective Actions

The quantified portion of the benefits analysis focuses on several measures that contribute to the changes in risk expected under the RTCR. Specifically, EPA modeled the predicted outcomes based on each regulatory option considered—baseline (1989 TCR), the RTCR (final rule), and the Alternative option—in the form of estimates of non-acute violations for the 1989 TCR and assessment triggers for the RTCR and Alternative option; *E. coli* violations; and the number of corrective actions implemented under each option. This section of the preamble includes six graphs (Exhibit VI–9 through Exhibit VI–14) that help to illustrate these endpoints.

Evaluation of each of these endpoints informed EPA's understanding of potential changes to the underlying quality of drinking water. In particular, the number of corrective actions performed has a strong relationship to potential improvements in water quality and public health. For a given rate of total coliform and *E. coli* occurrence, an increase in the number of corrective actions implemented leads to improved water quality. However, a reduction in sampling likely leads to a reduction in total coliform and *E. coli* positives being found, which in turn likely leads to a reduction in assessments and corrective actions being implemented. The number of total coliform and *E. coli* positives that are prevented, missed, or found under each regulatory option considered in comparison to those predicted under the 1989 TCR results in estimates of annual non-acute and acute violations (1989 TCR) and assessment triggers (RTCR and Alternative option). Section 6.4 of the RTCR EA presents a step-wise sensitivity analysis of the competing effects of additional protective activity (e.g., assessments and corrective actions) and decreased additional routine and repeat sampling of the RTCR compared to the 1989 TCR. The conclusions of this sensitivity analysis showed that for all categories of systems, more total coliform and *E. coli* positives are expected to be prevented than missed under the RTCR relative to the 1989 TCR.

For each of the graphs presented in Exhibit VI–9 through Exhibit VI–14, there are two main model drivers that affect the endpoints depicted: the total number of samples taken over time (including routine, additional routine, and repeat samples) and the effect of corrective actions taken. When looking at the comparisons between the 1989 TCR with the RTCR across all PWSs, the overall effect of the total numbers of samples taken is negligible because the total number of samples predicted to be taken throughout the period of analysis is almost the same (approximately 82M samples) under both the 1989 TCR and RTCR. For the Alternative option, the analysis predicts that approximately 88M total samples are taken over the period of analysis. Exhibit VI–18 of this preamble presents estimated total numbers of samples taken over the 25-year period of analysis. Based on the relationships of total samples taken among the 1989 TCR, RTCR, and Alternative option, the best way to interpret the graphs presented in this section is in a step-wise manner.

The first comparison that should be made is between the 1989 TCR option and RTCR. Because similar total numbers of samples are taken under the 1989 TCR and RTCR, the major effect seen in the graphs can be isolated to the effects that implementation of corrective actions has on underlying occurrence and how that occurrence influences the endpoint in question (assessments, *E. coli* MCL violations, and corrective actions). In each graph, this is depicted by a marked reduction in the endpoint under the RTCR compared to the 1989 TCR option and is a reflection of overall better water quality. The second comparison can then be made of the Alternative option against the RTCR. In each graph, the predicted results (assessments, *E. coli* MCL violations, and corrective actions) for the Alternative option are above those for the RTCR and represent an additional benefit over the RTCR. This additional benefit is primarily a function of the additional diagnostic abilities gained through increased monitoring under the Alternative option, and is especially prominent in the early years of the analysis, since all systems are initially required to monitor at least monthly.

More detailed descriptions of each endpoint considered in terms of the evaluation process described previously are provided in this section as they apply to the individual graphs in Exhibit VI–9 through VI–14. Each of the graphs shown in this section is presented first in nondiscounted terms, and then based on a discount rate of three percent to reflect the reduced valuation of potential benefits over time, consistent with the presentation of costs in the section that follows. Graphs of benefits discounted using seven percent discounted rates are presented in Appendix B of the RTCR EA.

Exhibit VI–9 shows the effect (on average across all PWSs) of the RTCR and the Alternative option on the annual number of non-acute violations (1989 TCR) and assessment triggers (RTCR and Alternative option) over time. The estimated reduction of annual assessment triggers (from the 1989 TCR

estimates of non-acute violations) by approximately 1,000 events under the RTCR is a reflection of the improved water quality expected under the RTCR. A similar but smaller reduction in non-acute violations (Level 1 triggers) from the 1989 TCR is seen under the Alternative option. The larger initial estimate of assessment triggers followed by a higher steady state number for the Alternative option than seen under the RTCR reflects the diagnostic abilities provided by increased sampling under the Alternative option. The additional triggers identified by increased sampling under the Alternative option translate into greater potential benefits than under the RTCR.

Exhibit VI–10 shows the effect (on average across all PWSs) of the RTCR and the Alternative option with respect to *E. coli* violations found over the 25-year period of analysis in comparison to the 1989 TCR. The overall reduction in annual *E. coli* violations under the RTCR of more than 100 events is a measure that should correlate more closely with expected benefits (that is, reductions in adverse health outcomes) than non-acute events (as presented in Exhibit VI–9) because *E. coli* violations are a direct result of measurement of fecal contamination in water. A similar but smaller reduction in *E. coli* violations is seen under the Alternative option after steady state is achieved. This is the result of two off-setting effects. The ''true'' number of steady state violations under the Alternative option is lower because there is a greater likelihood that violations will be found and fixed. However, the additional monitoring leads to a higher percentage of violations being detected. This second effect outweighs the first, so that the total number of detected violations in the steady state is higher than for the RTCR, even though the underlying ''true'' number of violations is lower. This lower number of ''true'' violations means that the Alternative option is more protective of public health, even though more violations are detected.

Exhibit VI–11 presents estimates over the 25-year period of analysis of the increase in corrective actions relative to the 1989 TCR (on average across all PWSs) attributable to the RTCR and Alternative option. Performance of these additional corrective actions is expected to result in the most direct benefits under the RTCR. Because only the incremental numbers of corrective actions estimated under the RTCR and Alternative option were modeled, the reference point for comparison to the 1989 TCR is the base (zero) line in the graph. The RTCR EA assumes that corrective actions are already being performed under the 1989 TCR. Baseline corrective actions are taken into account by assuming only a modest incremental increase of 10 percent in implementation of effective corrective actions under both the RTCR and Alternative option.

Exhibit VI–11 indicates that more corrective actions are implemented under the Alternative option than under the RTCR. This is driven, again, by the increased diagnostic power of more sampling and reflects additional potential benefits beyond those gained under the RTCR.

Taken together, Exhibit VI–9 through Exhibit VI–11 indicate that the modeled endpoints for the RTCR and the Alternative option predict positive benefits in comparison to the 1989 TCR; in particular, the Alternative option captures more benefits than the RTCR. Similar to the patterns seen in Exhibits VI–9 through VI–11, for each of the discounted endpoints presented over time in Exhibits VI–12 though VI–14, the graphs show that (on average across all PWSs) the Alternative option provides more benefit than the RTCR, and both provide more benefit than the 1989 TCR. These outcomes are consistent with the qualitative assessment of the benefits summarized in this section of this preamble.

The major difference between the RTCR and the Alternative option is the increased monitoring that is required under the Alternative option. The increased diagnostic ability of the extra samples taken under the Alternative option is seen in the large difference in the endpoint counts through the first several years in Exhibit VI–9 through Exhibit VI–14. Absent this effect, the Alternative option essentially mirrors the RTCR in the exhibits. Even though the predicted results (assessments, *E. coli* MCL violations, and corrective actions) under the Alternative option are greater than the 1989 TCR at first, the trend is due to initially finding more problems through monitoring. The increased monitoring during the first several years under the Alternative option results in a frontloading of benefits at the beginning of the implementation period. The benefits, however, tend to even out over time between the RTCR and Alternative option as eligible systems qualify for less intense (quarterly) monitoring under the Alternative option. However, the Alternative option leads to a greater number of assessments, *E. coli* MCL violations, and corrective actions than the RTCR because all PWSs are required to sample no less than quarterly under the Alternative option while under the RTCR qualifying PWSs are permitted to sample at a minimum of once per year: more monitoring has the potential for more triggered assessments, corrective actions, and/or violations than less monitoring.

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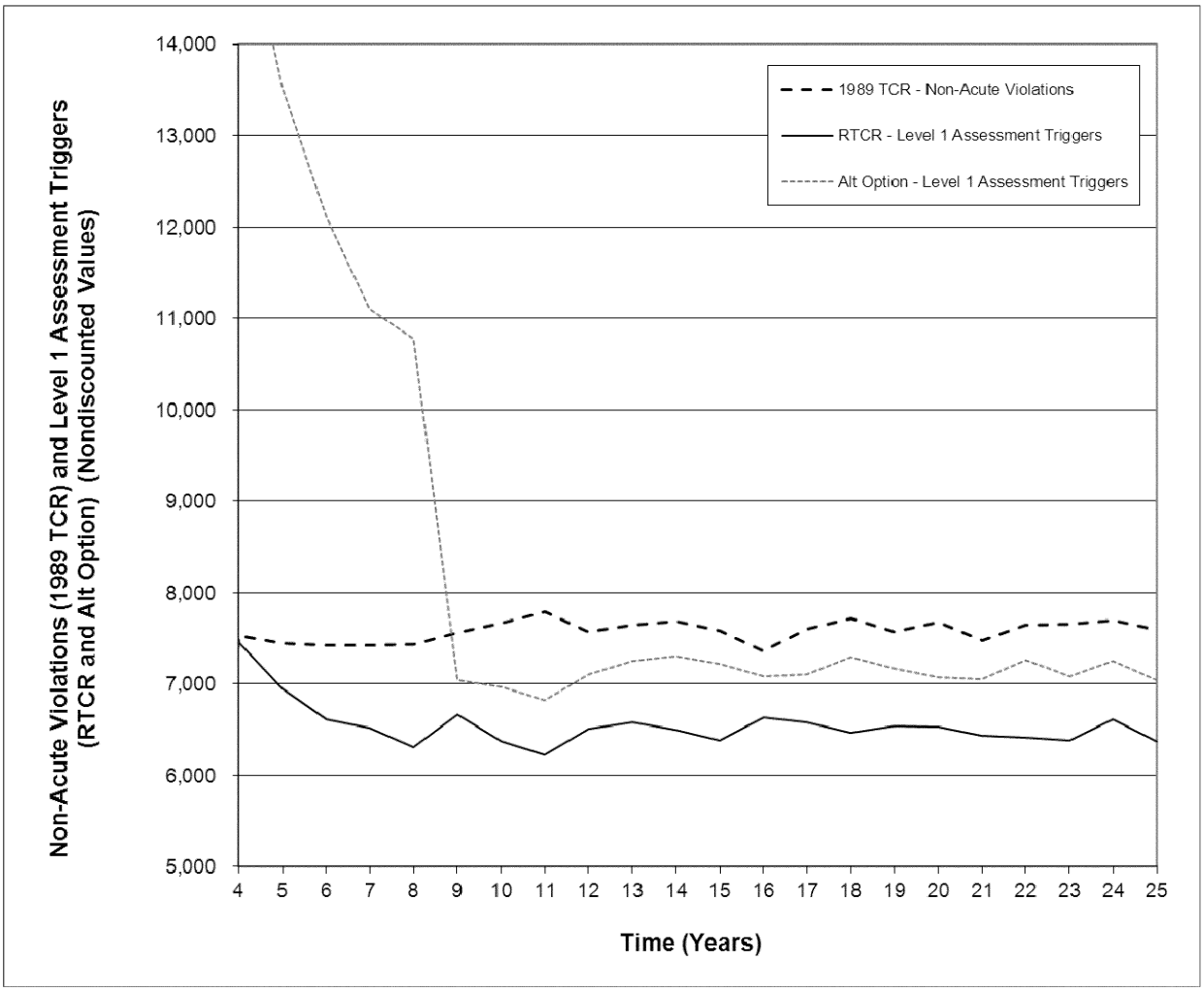
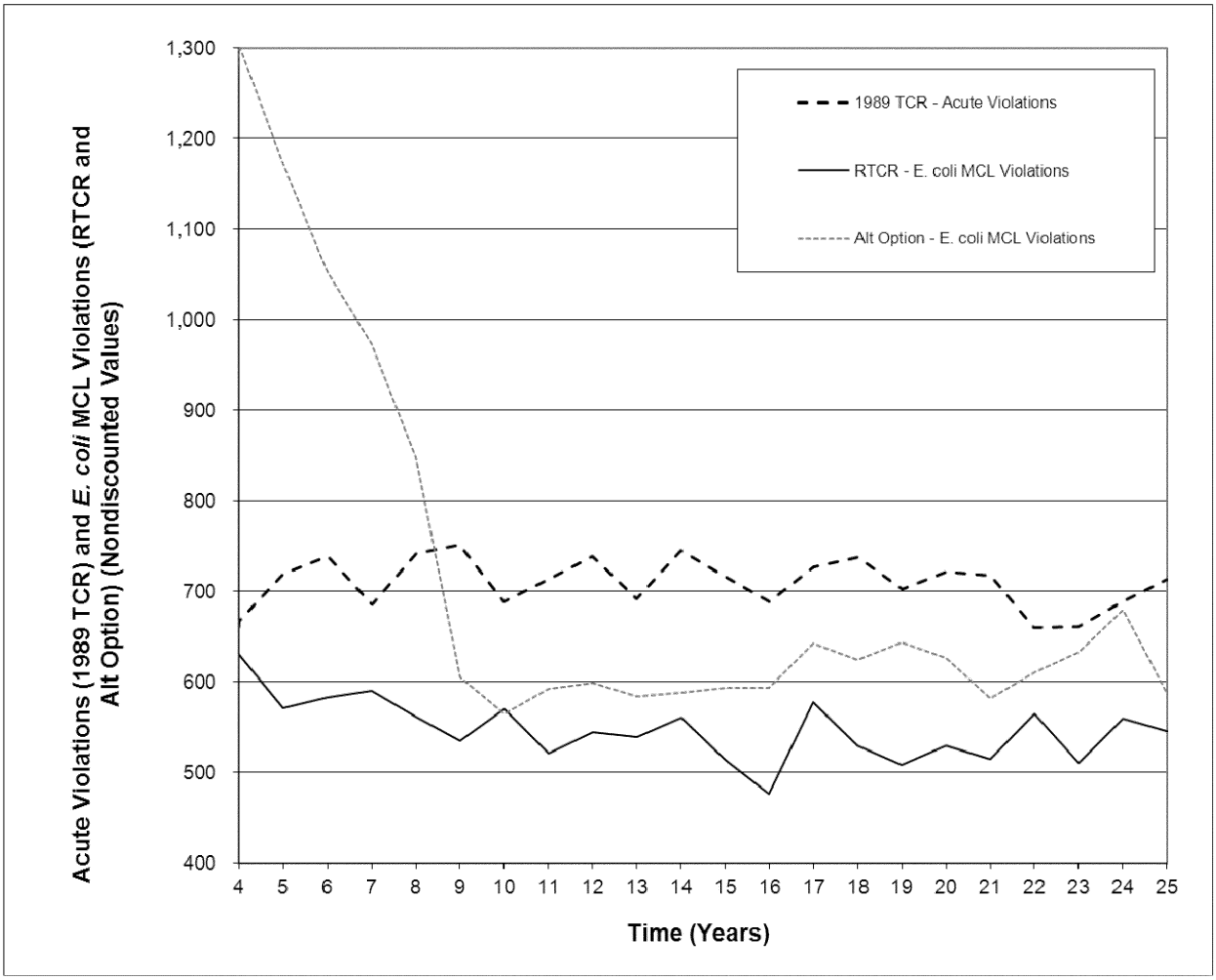
Exhibit VI-9 Estimates of Non-Acute Violations (1989 TCR) and Level 1 Assessment Triggers (RTCR and Alternative Option)



Notes: X-axis begins at Year 4 after rule promulgation, which is the first year of full implementation of the RTCR and Alternative option. The annual rates of non-acute violations (1989 TCR) and Level 1 assessment triggers (RTCR and Alternative option) as predicted by the model reach a steady state beginning in approximately Year 9, by which time PWSs that are expected to meet the criteria for reduced monitoring begin reduced monitoring, and the distribution of PWSs that monitor monthly, quarterly, and annually is assumed to remain relatively constant. Estimates represent the annual number of assessment triggers found by each option and the non-acute violations found under the 1989 TCR.

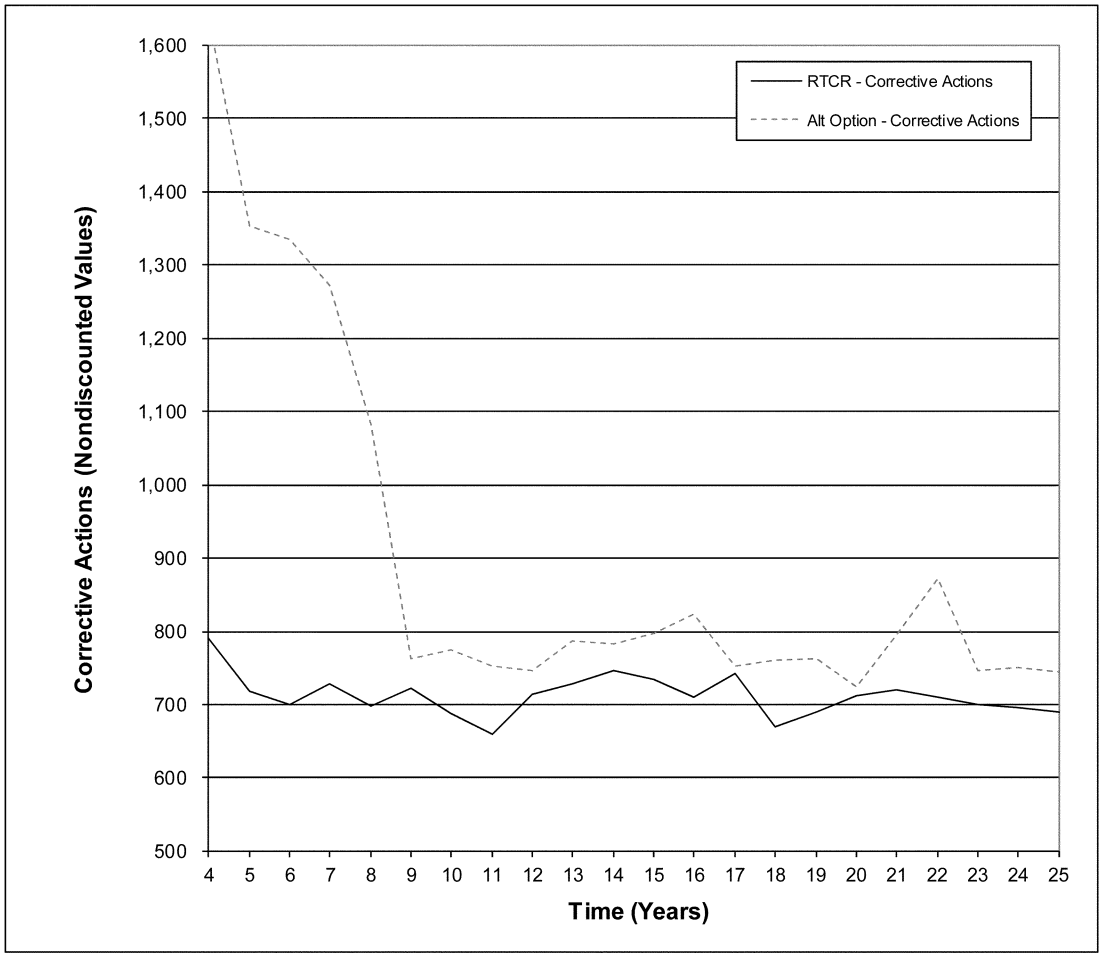
Source: RTCR occurrence model output.

Exhibit VI-10 Estimates of Acute Violations (1989 TCR) and *E. coli* MCL Violations (RTCR and Alternative Option)



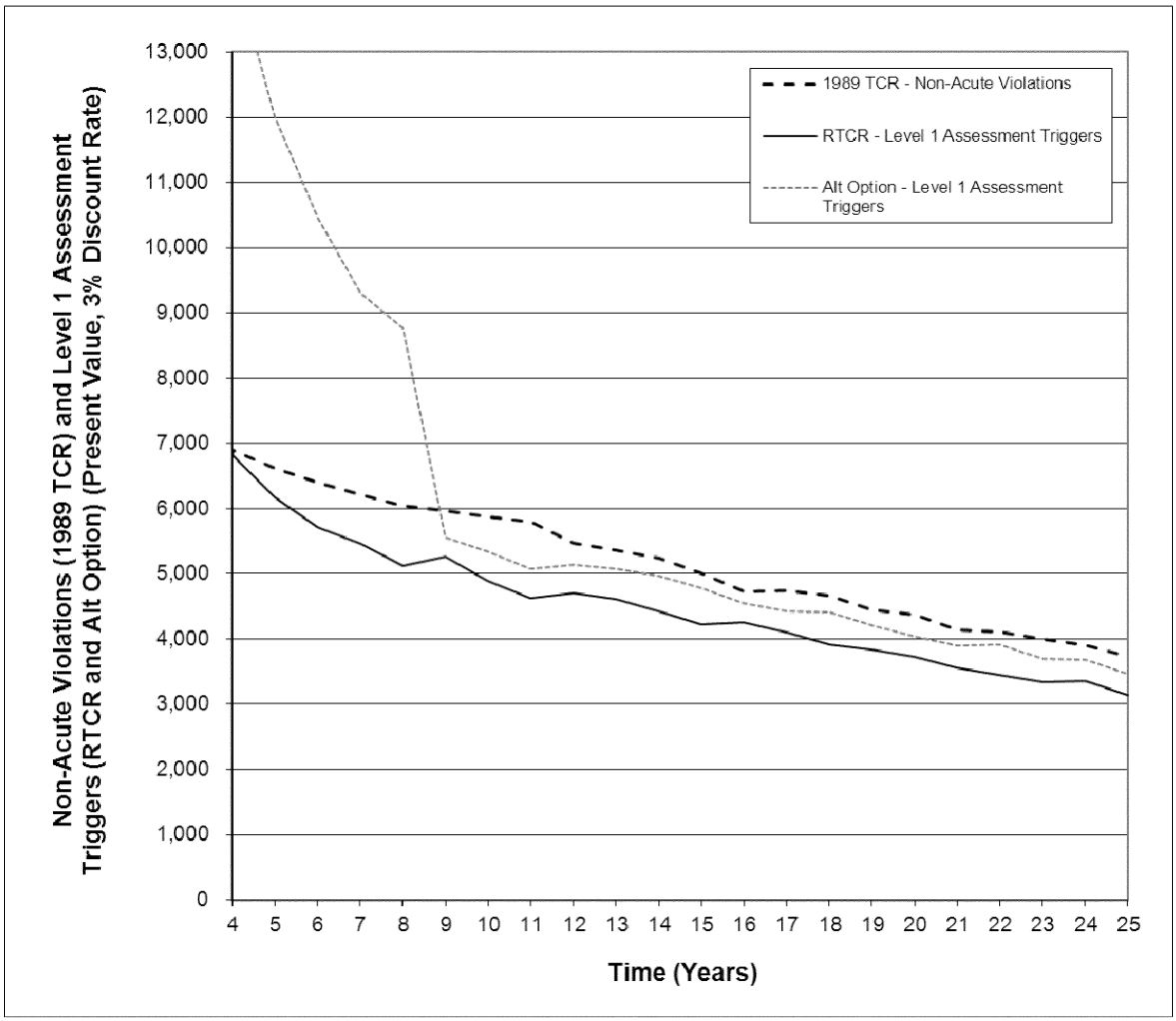
Notes: X-axis begins at Year 4 after rule promulgation, which is the first year of full implementation of the RTCR and Alternative option. The annual rates of acute violations (1989 TCR) and *E. coli* MCL violations (RTCR and Alternative option) as predicted by the model reach steady state in approximately Year 9, by which time PWSs that are expected to meet the criteria for reduced monitoring begin reduced monitoring, and the distribution of PWSs that monitor monthly, quarterly, and annually is assumed to remain relatively constant. Estimates represent the annual number of acute violations found by each option and the 1989 TCR.
Source: RTCR occurrence model output.

Exhibit VI-11 Estimates of Corrective Actions



Notes: X-axis begins at Year 4 after rule promulgation, which is the first year of full implementation of the RTCR and Alternative option. The annual rates of corrective actions as predicted by the model reach a steady state beginning approximately in Year 9, by which time PWSs that are expected to meet the criteria for reduced monitoring begin reduced monitoring, and the distribution of PWSs that monitor monthly, quarterly, and annually is assumed to remain relatively constant. All corrective actions performed are in addition to activity under the 1989 TCR, which does not require corrective actions. Therefore the 1989 TCR is not included in this graph.
Source: RTCR occurrence model output.

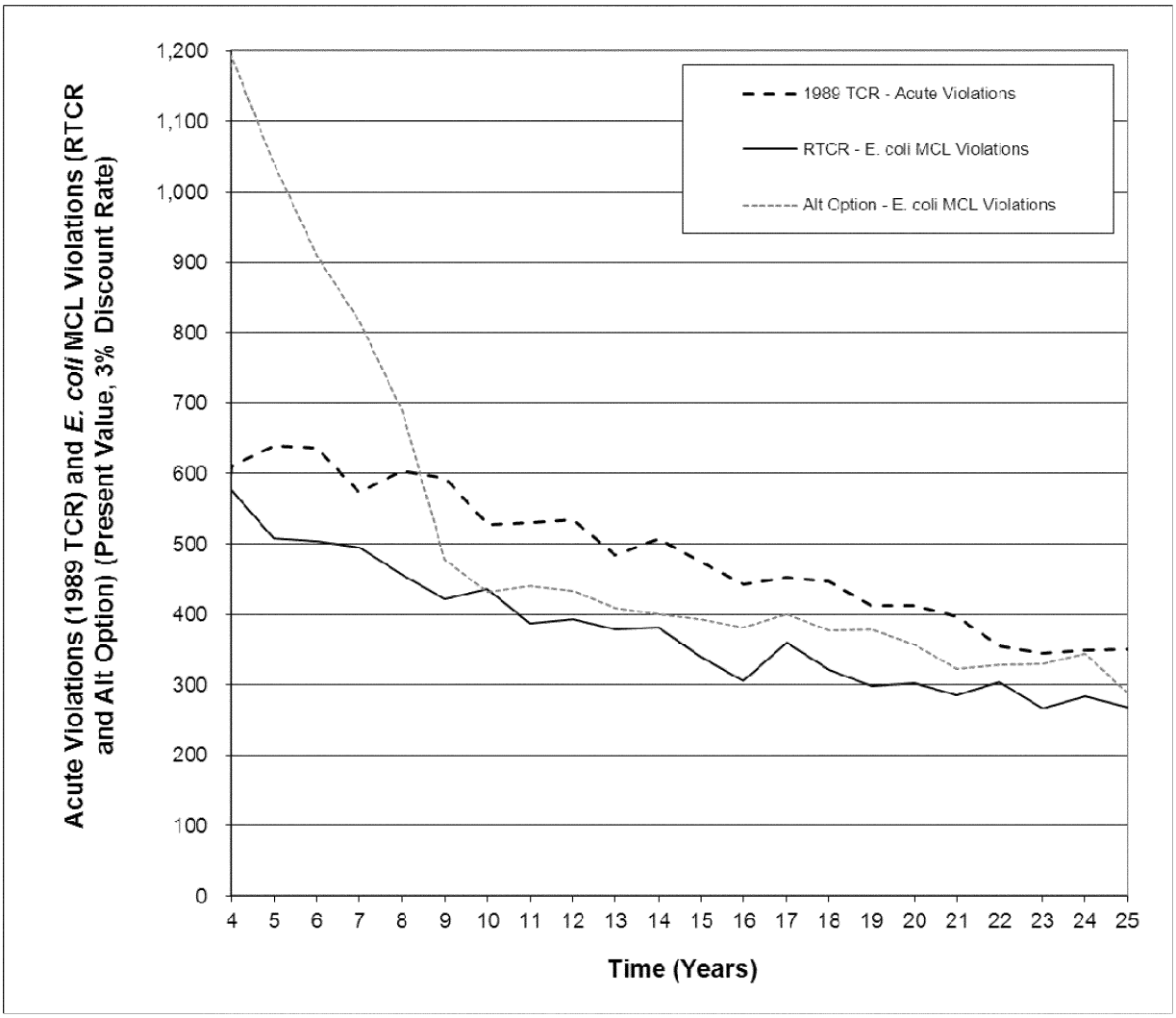
Exhibit VI-12 Discounted Estimates of Non-Acute Violations (1989 TCR) and Level 1 Assessment Triggers (RTCR and Alternative Option) (three percent discount rate)



Notes: X-axis begins at Year 4 after rule promulgation, which is the first year of full implementation of the RTCR and Alternative option. The annual rates of non-acute violations (1989 TCR) and Level 1 assessment triggers (RTCR and Alternative option) as predicted by the model reach a steady state beginning in approximately Year 9, by which time PWSs that are expected to meet the criteria for reduced monitoring begin reduced monitoring, and the distribution of PWSs that monitor monthly, quarterly, and annually is assumed to remain relatively constant. Estimates represent the annual number of assessment triggers found by each option and the non-acute violations found under the 1989 TCR.

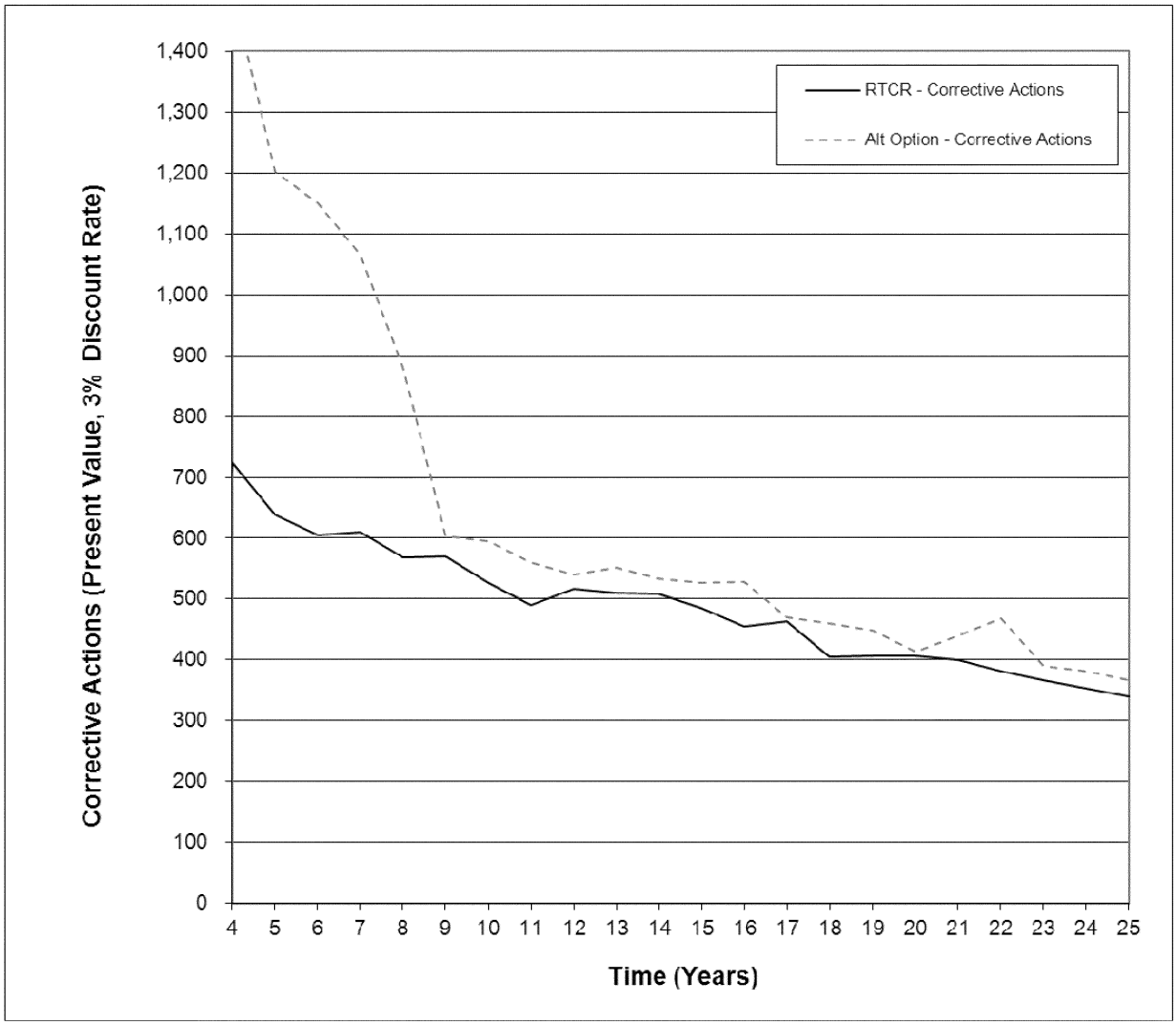
Source: RTCR occurrence model output.

Exhibit VI-13 Discounted Estimates of Acute Violations (1989 TCR) and *E. coli* Violations (RTCR and Alternative Option) (three percent discount rate)



Notes: X-axis begins at Year 4 after rule promulgation, which is the first year of full implementation of the RTCR and Alternative option. The annual rates of acute violations (1989 TCR) and *E. coli* MCL violations (RTCR and Alternative option) as predicted by the model reach steady state in approximately Year 9, by which time PWSs that are expected to meet the criteria for reduced monitoring begin reduced monitoring, and the distribution of PWSs that monitor monthly, quarterly, and annually is assumed to remain relatively constant. Estimates represent the annual number of acute violations found by each option and the 1989 TCR.
Source: RTCR occurrence model output.

Exhibit VI-14 Discounted Estimates of Corrective Actions (three percent discount rate)



Notes: X-axis begins at Year 4 after rule promulgation, which is the first year of full implementation of the RTCR and or Alternative option. The annual rates of corrective actions as predicted by the model reach a steady state beginning in approximately Year 9, by which time PWSs that are expected to meet the criteria for reduced monitoring begin reduced monitoring, and the distribution of PWSs that monitor monthly, quarterly, and annually is assumed to remain relatively constant. All corrective actions performed are in addition to activity under the 1989 TCR, which does not require corrective actions. Therefore the 1989 TCR is not included in this graph.
Source: RTCR occurrence model output.

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3. Nonquantifiable Benefits

a. Potential decreased incidence of endemic illness from fecal contamination, waterborne pathogens, and associated outbreaks. As discussed in section VI.E of this preamble, *Anticipated Benefits of the RTCR,* and chapter 2 of the RTCR EA, benefits from the RTCR may include avoidance of a full range of health effects from the consumption of fecally contaminated drinking water, including the following: acute and chronic illness, endemic and epidemic disease, waterborne disease outbreaks, and death. EPA recognizes that the EPA-approved standard methods available for *E. coli* do not typically identify the presence of the pathogenic *E. coli* strains, such as *E. coli* O157:H7. Thus, *E. coli* occurrence, as used in this EA, serves as an indication of fecal contamination but not necessarily pathogenic contamination. See also discussion in section II.D of this preamble, *Public Health Concerns Addressed by the Revised Total Coliform Rule.*

EPA was unable to quantify the cases of morbidity or mortality avoided because there are insufficient data reporting the co-occurrence of fecal indicator *E. coli* and pathogenic organisms in a single water sample, and because the available fecal indicator *E. coli* data from the Six-Year Review 2 dataset were limited to presence-absence data. Instead, EPA estimated changes in total coliform and fecal indicator *E. coli* occurrence and changes in number of corrective actions as measures of reduced risk. As discussed previously, the assessments and corrective actions required under the RTCR will help lead to a decrease in total coliform and *E. coli* occurrence in drinking water. Since fecal

contamination can contain waterborne pathogens including bacteria, viruses, and parasitic protozoa, in general, a reduction in fecal contamination should reduce the potential risk from all of these contaminants and the associated primary and secondary endemic disease burden, both acute and chronic.

b. Other nonquantifiable benefits. This section describes other nonquantified benefits, which include those associated with increased knowledge regarding system operation, accelerated maintenance and repair, avoided costs of outbreaks, and reductions in averting behavior.

By requiring PWSs to conduct assessments that meet minimum elements focused on identifying sanitary defects in response to triggers for total coliform- or *E. coli*-positive samples, the RTCR increases the likelihood that PWS operators, in particular those of systems triggered to conduct assessments and corrective action, will develop further understanding of system operations and improve and practice preventive maintenance compared to the 1989 TCR, which does not require PWSs to perform assessments and corrective action.

Another non-quantified benefit is that systems may choose corrective actions that also address other drinking water contaminants. For example, correcting for a pathway of potential contamination into the distribution system can possibly also mitigate a variety of other potential contaminants. Due to the lack of data available on the effect of corrective action on contamination entering through distribution system pathways, EPA has not quantified such potential benefits.

Some systems may see additional nonquantified benefits associated with the acceleration of their capital replacement fund investments in response to early identification of impending problems with large capital components. Although such capital investment will eventually occur in the absence of RTCR requirements, earlier investment may ensure that problems are addressed in a preventive manner and may preclude some decrease in protection that might have occurred otherwise. At the very least, the increased operator awareness is expected to reduce the occurrence of unplanned capital expenditures in any given year. However, because of the difficulty of projecting when capital replacements would occur, EPA has not costed this acceleration of capital replacement, so there would also be a nonquantified cost of making such investments sooner.

Another major non-health benefit is the avoided costs associated with outbreak response. Outbreaks can be very costly for both the PWS and the community in which they occur. Avoided outbreak response costs include such costs as issuing public health warnings, boiling drinking water and providing alternative supplies, remediation and repair, and testing and laboratory costs. Reduced total coliform occurrence resulting from the RTCR may also lead to a reduction of costs associated with boil-water orders, which some States require following non-acute violations under the 1989 TCR. Taken together, these expenses can be quite significant. For example, an analysis of the economic impacts of a waterborne disease outbreak in Walkerton, Ontario (population 5,000) estimated the economic impact (excluding estimates of the value of a statistical life for seven deaths and intangible costs for illness-related suffering) to be over $45.9M in 2007 Canadian dollars (approximately $42.8M 2007 US dollars) (Livernois 2002). Note that some of these costs were incurred by individuals and businesses in neighboring communities. The author of the study suggested that this was a conservative estimate.

In addition, the RTCR may also reduce uncertainty regarding drinking water safety, which may lead to reduced costs for averting behaviors. Averting behaviors include the use of bottled water and point-of-use devices. This benefit also includes the reductions in time spent on averting behavior such as the time spent obtaining alternative water supplies.

F. Anticipated Costs of the RTCR

To understand the net impacts of the RTCR on public water systems and States in terms of costs, EPA first used available data, information, and best professional judgment to characterize how PWSs and States are currently implementing the 1989 TCR. Then, EPA considered the net change in costs that results from implementing the RTCR or Alternative option as compared to the costs of continuing with the 1989 TCR. The objective was to present the net change in costs resulting from revisions to the 1989 TCR rather than absolute total costs of implementing the 1989 TCR as revised by the RTCR. More detailed information on cost estimates is provided in the sections that follow and a complete discussion can be found in chapter 7 of the RTCR EA. A detailed discussion of the RTCR requirements is located in section III of this preamble, *Requirements of the Revised Total Coliform Rule.*

1. Total Annualized Present Value Costs

To compare cost of compliance activities for the three regulatory scenarios, the year or years in which all costs are expended are determined and the costs are then calculated as a net present value. For the purposes of this EA, one-time and yearly costs were projected over a 25-year time period to allow comparison with other drinking water regulations using the same analysis period. For this analysis, the net present values of costs in 2007 dollars are calculated using discount rates of three percent and seven percent. These present value costs are then annualized over the 25-year period using the two discount rates.

Exhibit VI–15 summarizes the comparison of total and net change in annualized present value costs of the RTCR and Alternative option relative to the 1989 TCR baseline. A continuation of the 1989 TCR will result in no net change in costs. In calculating the 1989 TCR baseline, not all activities that PWSs and States are performing under the 1989 TCR were quantified (see Exhibit VI–16 of this preamble). Some of these activities are not required under the 1989 TCR but PWSs are performing them nonetheless (e.g., corrective actions); or these activities are required under the 1989 TCR and PWSs and States will continue to perform them under either the RTCR or Alternative option (e.g., revising sample siting plans). Instead of determining the absolute costs of performing these activities, EPA estimated the net increase in costs from these activities as a result of implementing either the RTCR or the Alternative option. The net change in mean annualized national costs of the RTCR option relative to the 1989 TCR is estimated to be approximately $14M using either a three percent or seven percent discount rate. The net change in mean annualized national costs for the Alternative option relative to the 1989 TCR are estimated to be approximately $30M using a three percent discount rate and $32M using a seven percent discount rate.

Under the RTCR, public water systems are estimated to incur greater than 90 percent of the RTCR's net annualized costs. States are expected to incur the remaining costs.

EXHIBIT VI–15—COMPARISON OF TOTAL AND NET CHANGE FROM 1989 TCR IN ANNUALIZED COSTS

[$Millions, 2007$]

	3% discount rate			7% discount rate		
	PWSs	State	Total	PWSs	State	Total
1989 TCR: Baseline [1]	185	0.9	186	178	0.9	179
RTCR: Baseline + Incremental [2]	199	1.1	200	192	1.3	193
RTCR: Net Change	14	0.1	14	14	0.4	14
RTCR: Percent Change	8%	16%	8%	8%	48%	8%
Alternative option: Baseline + Incremental [2]	214	1.2	216	209	1.5	210
Alternative option: Net Change	29	0.3	30	31	0.6	32
Alternative option: Percent Change	16%	34%	16%	17%	69%	18%

Note: Detail may not add due to independent rounding.
Source: RTCR EA (USEPA 2012a).
[1] Does not quantify all 1989 TCR components.
[2] For components not quantified for the 1989 TCR, only the net increase in the costs of these components is considered for the RTCR and Alternative option (e.g., corrective action costs).

Exhibit VI–16 presents the comparison of total and net change in annualized costs for PWSs and States by rule component. The table shows that corrective action costs are the most significant contributors to the net increase in costs for PWSs under the RTCR. For the Alternative option, routine monitoring costs are the most significant contributor to the net increase in costs for PWSs. For States, revision of sample siting plans contributes most to the cost increase under the RTCR and Alternative option. For both PWSs and States, a net decrease in costs associated with PN requirements helps to offset the total net cost increase.

EXHIBIT VI–16—COMPARISON OF TOTAL AND NET CHANGE IN ANNUALIZED COSTS BY RULE COMPONENT

[$Millions, 2007$]

	3% discount rate			7% discount rate		
	PWSs	State	Total	PWSs	State	Total
	Rule Implementation and Annual Administration					
1989 TCR—Total	.....	.....	.....	.....	.....	.....
RTCR—Total	2.77	0.18	2.95	4.00	0.26	4.26
RTCR—Net Change	2.77	0.18	2.95	4.00	0.26	4.26
Alternative Option—Total	2.77	0.18	2.95	4.00	0.26	4.26
Alternative Option—Net Change	2.77	0.18	2.95	4.00	0.26	4.26
	Sample Siting Plan Revision					
1989 TCR—Total	.....	.....	.....	.....	.....	.....
RTCR—Total	0.59	0.42	1.01	0.84	0.59	1.42
RTCR—Net Change	0.59	0.42	1.01	0.84	0.59	1.42
Alternative Option—Total	0.59	0.42	1.01	0.84	0.59	1.42
Alternative Option—Net Change	0.59	0.42	1.01	0.84	0.59	1.42
	Routine Monitoring					
1989 TCR—Total	170.59	.....	170.59	163.94	.....	163.94
RTCR—Total	174.71	.....	174.71	167.74	.....	167.74
RTCR—Net Change	4.12	.....	4.12	3.80	.....	3.80
Alternative Option—Total	187.50	.....	187.50	182.48	.....	182.48
Alternative Option—Net Change	16.91	.....	16.91	18.54	.....	18.54
	Additional Routine Monitoring					
1989 TCR—Total	3.87	.....	3.87	3.72	.....	3.72
RTCR—Total	1.12	.....	1.12	1.09	.....	1.09
RTCR—Net Change	(2.75)	.....	(2.75)	(2.63)	.....	(2.63)
Alternative Option—Total	0.78	.....	0.78	0.66	.....	0.66
Alternative Option—Net Change	(3.10)	.....	(3.10)	(3.06)	.....	(3.06)
	Repeat Monitoring					
1989 TCR—Total	5.11	.....	5.11	4.92	.....	4.92
RTCR—Total	4.88	.....	4.88	4.70	.....	4.70
RTCR—Net Change	(0.23)	.....	(0.23)	(0.22)	.....	(0.22)
Alternative Option—Total	5.66	.....	5.66	5.59	.....	5.59

EXHIBIT VI–16—COMPARISON OF TOTAL AND NET CHANGE IN ANNUALIZED COSTS BY RULE COMPONENT—Continued

[$Millions, 2007$]

	3% discount rate			7% discount rate		
	PWSs	State	Total	PWSs	State	Total
Alternative Option—Net Change	0.54	.....	0.54	0.67	.....	0.67
	Annual Site Visits					
1989 TCR—Total	.....	.....	.....	.....	.....	.....
RTCR—Total	.....	.....	.....	.....	.....	.....
RTCR—Net Change	.....	.....	.....	.....	.....	.....
Alternative Option—Total	.....	.....	.....	.....	.....	.....
Alternative Option—Net Change	.....	.....	.....	.....	.....	.....
	Level 1 Assessment					
1989 TCR—Total	1.13	0.21	1.34	1.08	0.20	1.29
RTCR—Total	1.63	0.20	1.84	1.57	0.20	1.77
RTCR—Net Change	0.51	(0.01)	0.50	0.49	(0.01)	0.48
Alternative Option—Total	1.76	0.23	1.99	1.72	0.23	1.94
Alternative Option—Net Change	0.63	0.02	0.65	0.63	0.02	0.65
	Level 2 Assessment					
1989 TCR—Total	0.70	0.26	0.96	0.68	0.25	0.92
RTCR—Total	0.90	0.19	1.08	0.88	0.18	1.06
RTCR—Net Change	0.20	(0.07)	0.12	0.20	(0.07)	0.13
Alternative Option—Total	1.26	0.29	1.55	1.30	0.31	1.61
Alternative Option—Net Change	0.55	0.03	0.58	0.62	0.06	0.68
	Corrective Actions Based on Level 1 Assessments					
1989 TCR—Total	.....	.....	.....	.....	.....	.....
RTCR—Total	9.62	0.01	9.63	8.14	0.01	8.15
RTCR—Net Change	9.62	0.01	9.63	8.14	0.01	8.15
Alternative Option—Total	10.01	0.01	10.02	8.52	0.01	8.53
Alternative Option—Net Change	10.01	0.01	10.02	8.52	0.01	8.53
	Corrective Actions Based on Level 2 Assessments					
1989 TCR—Total	.....	.....	.....	.....	.....	.....
RTCR—Total	2.82	0.00	2.82	2.49	0.00	2.49
RTCR—Net Change	2.82	0.00	2.82	2.49	0.00	2.49
Alternative Option—Total	3.78	0.01	3.79	3.57	0.01	3.58
Alternative Option—Net Change	3.78	0.01	3.79	3.57	0.01	3.58
	Public Notification					
1989 TCR—Total	3.75	0.44	4.19	3.60	0.42	4.02
RTCR—Total	0.26	0.06	0.32	0.25	0.06	0.31
RTCR—Net Change	(3.49)	(0.38)	(3.86)	(3.35)	(0.36)	(3.71)
Alternative Option—Total	0.35	0.08	0.43	0.35	0.08	0.44
Alternative Option—Net Change	(3.40)	(0.36)	(3.76)	(3.25)	(0.34)	(3.58)

Note: Detail may not add due to independent rounding.

Assumes a certain level of assessment activity already occurs under the 1989 TCR, as discussed in Chapter 7 of the RTCR EA (USEPA 2012a).

Not all 1989 TCR components are quantified. For components not quantified for the 1989 TCR, only the net increase in the costs of these components is considered for the RTCR and Alternative option (e.g., corrective action costs).

Source: RTCR EA (USEPA 2012a).

2. PWS Costs

Like the 1989 TCR, the RTCR applies to all PWSs. Exhibit VI–17 presents the total and net change in annualized costs to PWSs by size and type for the three regulatory options. No net change in costs will result from a continuation of the 1989 TCR. Among PWSs serving 4,100 or fewer people, looking at the three percent discount rate, the largest increase in aggregate net costs is incurred by the TNCWSs serving 100 or fewer people under either the RTCR ($5.3M) or Alternative option ($14.7M) because of the large number of systems. On a per system basis, this translates to a net annualized present value increase of approximately $86 per system under the RTCR and $240 per system under the Alternative option for the TNCWSs serving 100 or fewer people. As described in section VII.C of this preamble, *Regulatory Flexibility Act (RFA),* none of the small TNCWSs are estimated to have costs that are greater than or equal to three percent of their revenue and only 61 small systems (0.04%) are estimated to have costs greater than or equal to one percent of their revenue.

The total net change in national annualized present value costs for all

PWSs serving greater than 4,100 people (approximately $5.6M using three percent discount rate) is the same under the RTCR and Alternative option. This is expected because the provisions for PWSs serving greater than 4,100 are the same under the RTCR and the Alternative option. Monitoring requirements for PWSs serving greater than 4,100 people remain essentially unchanged under either the RTCR or Alternative option. The observed overall net increase in costs for PWSs serving greater than 4,100 people is driven primarily by the requirements to conduct assessments and to correct any sanitary defects that are found.

EXHIBIT VI–17—TOTAL AND NET CHANGE IN ANNUALIZED COSTS TO PWSS BY PWS SIZE AND TYPE

[$Millions, 2007$]

PWS Size (population served)	3% discount rate					7% discount rate				
	1989 TCR Total	RTCR Total	RTCR Net	Alternative option total	Alternative option net	1989 TCR total	RTCR total	RTCR net	Alternative option total	Alternative option net
	A	B	C = B − A	D	E = D − A	F	G	H = G − F	I	J = I − F
Community Water Systems (CWSs)										
≤100	7.4	7.5	0.1	7.6	0.2	7.1	7.3	0.2	7.5	0.3
101–500	9.0	9.4	0.4	9.5	0.5	8.6	9.1	0.5	9.2	0.6
501–1,000	3.7	3.8	0.0	3.8	0.1	3.6	3.7	0.1	3.7	0.1
1,001–4,100	13.2	13.6	0.4	13.6	0.4	12.7	13.1	0.4	13.1	0.4
4,101–33K	42.4	44.8	2.4	44.8	2.4	40.7	42.8	2.1	42.8	2.1
33,001–96K	34.9	36.4	1.5	36.4	1.5	33.5	34.8	1.3	34.8	1.3
96,001–500K	34.7	36.2	1.5	36.2	1.5	33.4	34.6	1.2	34.6	1.2
500,001–1M	6.5	6.7	0.2	6.7	0.2	6.2	6.4	0.1	6.4	0.1
>1M	5.6	5.6	(0.0)	5.6	(0.0)	5.3	5.3	(0.0)	5.3	(0.0)
Total	157.4	163.9	6.5	164.1	6.7	151.3	157.2	5.9	157.5	6.2
Nontransient Noncommunity Water Systems (NTNCWSs)										
≤100	2.6	2.7	0.1	3.7	1.1	2.5	2.7	0.2	3.8	1.4
101–500	1.9	2.0	0.1	2.8	0.9	1.8	2.0	0.2	2.9	1.1
501–1,000	0.6	0.6	0.1	0.9	0.3	0.6	0.6	0.1	0.9	0.3
1,001–4,100	1.2	1.3	0.1	1.3	0.1	1.1	1.2	0.1	1.2	0.1
4,101–33K	0.4	0.5	0.1	0.5	0.1	0.4	0.5	0.0	0.5	0.0
33,001–96K	0.1	0.1	0.0	0.1	0.0	0.1	0.1	0.0	0.1	0.0
96,001–500K	0.1	0.1	(0.0)	0.1	(0.0)	0.1	0.1	(0.0)	0.1	(0.0)
500,001–1M	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
>1M	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	6.9	7.3	0.4	9.3	2.5	6.6	7.2	0.6	9.6	3.0
Transient Noncommunity Water Systems(TNCWSs)										
≤100	13.4	18.7	5.3	28.1	14.7	12.8	18.2	5.3	28.9	16.1
101–500	4.9	6.5	1.6	9.5	4.7	4.7	6.3	1.6	9.8	5.1
501–1,000	0.6	0.8	0.2	1.2	0.5	0.6	0.8	0.2	1.2	0.6
1,001–4,100	0.9	1.0	0.1	1.0	0.1	0.9	1.0	0.1	1.0	0.1
4,101–33K	0.4	0.5	0.1	0.5	0.1	0.4	0.5	0.0	0.5	0.0
33,001–96K	0.1	0.1	(0.0)	0.1	(0.0)	0.1	0.1	(0.0)	0.1	(0.0)
96,001–500K	0.1	0.1	(0.0)	0.1	(0.0)	0.1	0.1	(0.0)	0.1	(0.0)
500,001–1M	0.2	0.2	(0.0)	0.2	(0.0)	0.2	0.2	(0.0)	0.2	(0.0)
>1M	0.3	0.3	0.0	0.3	0.0	0.3	0.3	0.0	0.3	0.0
Total	20.9	28.1	7.3	41.0	20.1	20.1	27.3	7.3	42.0	21.9
Grand Total	185.2	199.3	14.2	214.4	29.3	177.9	191.7	13.8	209.0	31.1

Note: Detail may not add due to independent rounding. Because only the incremental costs of some rule components are considered as part of the cost analysis, references to ''total'' costs in this exhibit do not refer to complete costs for regulatory implementation but only to specific costs considered to calculate net change in costs.

Source: RTCR cost model.

The following subsections discuss the different components of the costs to PWSs: Rule implementation and annual administration, sample siting plan revision, monitoring, annual site visits, assessments, corrective actions, and public notification.

a. Rule implementation and annual administration. Under the RTCR and Alternative option, all PWSs subject to the RTCR incur one-time costs that include time for staff to read the RTCR, become familiar with its provisions, and to train employees on rule requirements. No additional implementation burden or costs will be incurred by PWSs if the 1989 TCR option is maintained. Under the RTCR and Alternative option, all PWSs subject to the RTCR perform additional or transitional implementation activities. Based on previous experience with rule implementation, EPA estimated that

PWSs require a total of four hours to read and understand the rule, and a total of eight hours to plan and assign appropriate personnel and resources to carry out rule activities. EPA estimated a net increase in national annualized cost estimates incurred by PWSs for rule implementation and annual administration of $2.77M (three percent discount rate) and $4.00M (seven percent discount rate) under either the RTCR or the Alternative option. The annualized net present value total and net change cost estimates for PWSs for rule implementation and annual administration under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

b. Sample siting plan revision. Under the RTCR and Alternative option, all PWSs subject to the RTCR incur one-time costs to revise existing sample siting plans to identify sampling locations and collection schedules that are representative of water throughout the distribution system. Under the 1989 TCR, no additional burden or costs are expected to be incurred by PWSs to revise sample siting plans, as these PWSs are already collecting total coliform samples in accordance with a written sample siting plan. Based on previous experience, EPA estimated that PWSs require two to eight hours to revise their sample siting plan, depending on PWS size. EPA estimated a net increase in national annualized cost estimates incurred by PWSs for revising sample siting plans of $0.59M (three percent discount rate) and $0.84M (seven percent discount rate) under either the RTCR or the Alternative option. The annualized net present value total and net change cost estimates for PWSs to revise their sample siting plan under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

c. Monitoring. Monitoring costs for PWSs are calculated by multiplying the total numbers of routine, additional routine, and repeat samples required under the 1989 TCR, RTCR, and Alternative options by the monitoring costs per sample. Under the RTCR, the increased stringency to qualify for reduced monitoring results in more routine samples being taken over time (fewer PWSs are on reduced monitoring) compared to the 1989 TCR. For the Alternative option, this effect is combined with the requirement that all PWSs start the implementation period on monthly monitoring. The Alternative option also prohibits annual monitoring, resulting in a greater increase in the number of routine samples compared to the RTCR. Costs for routine monitoring under the RTCR and Alternative option are higher than routine monitoring costs under the 1989 TCR.

The overall reductions in the numbers of additional routine samples required under the RTCR and Alternative option result in lower costs for additional routine monitoring when compared to the 1989 TCR. Under the RTCR and Alternative option, additional routine monitoring is no longer required for systems that monitor at least monthly, and when additional routine monitoring is required, the number of samples required is reduced from five to three. Cost reductions are greater under the Alternative option than under the RTCR because under the Alternative option all PWSs start on monthly monitoring and are not required to take additional routine samples during that period.

Costs for repeat sampling are also lower under the RTCR and Alternative option. Under the 1989 TCR, PWSs serving 1,000 or fewer people take four repeat samples, at and within five service connections upstream and downstream of the initial total coliform positive occurrence location, over the course of 24 hours following the event. Under the RTCR and Alternative option, PWSs serving 1,000 or fewer people will need to take only three repeat samples, and they have greater flexibility about where to take them, consistent with the system sample siting plan that is developed in accordance with RTCR requirements and subject to review and revision by the State. The number of repeat samples required for PWSs serving more than 1,000 people is the same under the 1989 TCR and the RTCR and Alternative option, although these systems also have greater flexibility in sample location.

Exhibit VI–18 summarizes the cumulative number of samples taken by PWS size and category for routine, additional, and repeat monitoring under the 1989 TCR, RTCR, and Alternative option over the entire 25-year period of analysis. Under the 1989 TCR option, approximately 82.1M samples are taken over the 25-year period of analysis compared to approximately 82.2M samples under the RTCR and approximately 87.9M samples under the Alternative option (less than 10 percent more than 1989 TCR option). Appendix A of the RTCR EA presents additional information on the number of samples taken each year during the analysis period.

EXHIBIT VI–18—CUMULATIVE NUMBER OF SAMPLES OVER 25-YEAR PERIOD OF ANALYSIS FOR BASELINE (1989 TCR) AND REGULATORY ALTERNATIVES

[RTCR and Alternative option]

PWS Size (population served)	1989 TCR			RTCR			Alternative		
	Routine monitoring samples	Additional routine monitoring samples	Repeat monitoring samples	Routine monitoring samples	Additional routine monitoring samples	Repeat monitoring samples	Routine monitoring samples	Additional routine monitoring samples	Repeat monitoring samples
	A	B	C	D	E	F	G	H	I
Community Water Systems (CWSs)—Surface Water									
≤100	304,247	23,167	18,698	308,880	.....	13,764	308,880	.....	13,764
101–500	562,198	27,009	21,684	567,600	.....	15,660	567,600	.....	15,660
501–1,000	306,605	15,334	12,299	309,672	.....	8,708	309,672	.....	8,708
1,001–4,100	1,921,237	55,132	33,729	1,951,224	.....	33,326	1,951,224	.....	33,326
4,101–33K	10,636,296	.....	186,729	10,636,296	.....	181,661	10,636,296	.....	181,661
33,001–96K	11,058,960	.....	194,149	11,058,960	.....	188,880	11,058,960	.....	188,880
96,001–500K	10,190,400	.....	178,901	10,190,400	.....	174,046	10,190,400	.....	174,046
500,001–1M	2,019,600	.....	35,456	2,019,600	.....	34,493	2,019,600	.....	34,493
>1M	1,686,960	.....	29,616	1,686,960	.....	28,812	1,686,960	.....	28,812
Total	38,686,502	120,642	711,259	38,729,592	.....	679,350	38,729,592	.....	679,350

EXHIBIT VI–18—CUMULATIVE NUMBER OF SAMPLES OVER 25-YEAR PERIOD OF ANALYSIS FOR BASELINE (1989 TCR) AND REGULATORY ALTERNATIVES—Continued

[RTCR and Alternative option]

PWS Size (population served)	1989 TCR			RTCR			Alternative		
	Routine monitoring samples	Additional routine monitoring samples	Repeat monitoring samples	Routine monitoring samples	Additional routine monitoring samples	Repeat monitoring samples	Routine monitoring samples	Additional routine monitoring samples	Repeat monitoring samples
	A	B	C	D	E	F	G	H	I
Community Water Systems (CWSs)—Ground Water									
≤100	2,815,951	286,073	194,462	2,870,075	8,760	156,897	2,908,469	7,545	158,439
101–500	3,344,578	243,895	171,252	3,391,200	6,127	136,906	3,428,876	5,264	137,959
501–1,000	1,072,202	70,803	51,673	1,085,730	1,844	39,659	1,098,488	1,616	39,580
1,001–4,100	3,997,293	160,710	100,618	4,079,328	.....	96,939	4,079,328	.....	96,939
4,101–33K	9,145,224	.....	230,201	9,145,224	.....	217,321	9,145,224	.....	217,321
33,001–96K	4,884,000	.....	122,938	4,884,000	.....	116,060	4,884,000	.....	116,060
96,001–500K	1,945,680	.....	48,976	1,945,680	.....	46,236	1,945,680	.....	46,236
500,001–1M	253,440	.....	6,380	253,440	.....	6,023	253,440	.....	6,023
>1M	269,280	.....	6,778	269,280	.....	6,399	269,280	.....	6,399
Total	27,727,648	761,481	933,279	27,923,956	16,731	822,439	28,012,784	14,425	824,956
Nontransient Noncommunity Water Systems (NTNCWSs)—Surface Water									
≤100	65,018	4,910	3,991	66,000	.....	3,040	66,000	.....	3,040
101–500	66,045	3,735	3,011	66,792	.....	2,169	66,792	.....	2,169
501–1,000	22,976	1,278	1,029	23,232	.....	756	23,232	.....	756
1,001–4,100	41,759	2,142	1,348	42,768	.....	1,228	42,768	.....	1,228
4,101–33K	50,424	.....	1,628	50,424	.....	1,448	50,424	.....	1,448
33,001–96K	34,320	.....	1,108	34,320	.....	985	34,320	.....	985
96,001–500K	31,680	.....	1,023	31,680	.....	910	31,680	.....	910
500,001–1M	.....	.....	.....	.....	.....	.....	.....	.....	.....
>1M	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	312,223	12,065	13,138	315,216	.....	10,536	315,216	.....	10,536
Nontransient Noncommunity Water Systems (NTNCWSs)—Ground Water									
≤100	971,538	128,775	84,992	932,025	48,142	68,123	1,314,175	36,965	91,416
101–500	725,785	66,525	43,597	678,688	25,630	35,860	976,627	19,382	48,269
501–1,000	190,649	16,037	10,680	180,145	6,166	8,601	249,760	4,802	11,817
1,001–4,100	460,470	28,214	17,790	473,352	.....	15,887	473,352	.....	15,887
4,101–33K	153,648	.....	5,936	153,648	.....	5,157	153,648	.....	5,157
33,001–96K	23,760	.....	918	23,760	.....	797	23,760	.....	797
96,001–500K	.....	.....	.....	.....	.....	.....	.....	.....	.....
500,001–1M	.....	.....	.....	.....	.....	.....	.....	.....	.....
>1M	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	2,525,850	239,551	163,913	2,441,617	79,938	134,426	3,191,322	61,149	173,343
Transient Noncommunity Water Systems (TNCWSs)—Surface Water									
≤100	345,401	40,475	33,065	353,496	.....	23,122	353,496	.....	23,122
101–500	128,156	15,261	12,454	131,208	.....	8,192	131,208	.....	8,192
501–1,000	22,691	2,704	2,207	23,232	.....	1,533	23,232	.....	1,533
1,001–4,100	40,151	4,155	2,707	42,240	.....	2,312	42,240	.....	2,312
4,101–33K	40,656	.....	.....	40,656	.....	2,225	40,656	.....	2,225
33,001–96K	.....	.....	.....	.....	.....	.....	.....	.....	.....
96,001–500K	.....	.....	.....	.....	.....	.....	.....	.....	.....
500,001–1M	.....	.....	.....	.....	.....	.....	.....	.....	.....
>1M	102,960	.....	.....	102,960	.....	5,636	102,960	.....	5,636
Total	680,015	62,596	50,434	693,792	.....	43,020	693,792	.....	43,020
Transient Noncommunity Water Systems (TNCWSs)—Ground Water									
≤100	4,493,808	905,554	600,315	6,076,163	446,166	631,105	9,524,123	333,524	912,589
101–500	1,614,924	316,238	210,714	1,940,946	135,822	194,697	3,021,771	104,732	282,740
501–1,000	177,264	32,730	22,064	206,130	14,078	20,078	304,534	10,412	27,932
1,001–4,100	335,283	29,957	19,113	348,480	.....	16,027	348,480	.....	16,027
4,101–33K	156,288	.....	8,909	156,288	.....	7,188	156,288	.....	7,188
33,001–96K	34,320	.....	1,956	34,320	.....	1,578	34,320	.....	1,578
96,001–500K	26,400	.....	1,505	26,400	.....	1,214	26,400	.....	1,214
500,001–1M	63,360	.....	3,612	63,360	.....	2,914	63,360	.....	2,914
>1M	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	6,901,647	1,284,478	868,188	8,852,088	596,065	874,801	13,479,275	448,667	1,252,181
Grand Total	76,833,885	2,480,814	2,740,210	78,956,260	692,734	2,564,572	84,421,981	524,241	2,983,387

Note: (B), (E), (H) For modeling purposed, additional routine sample counts include regular routine samples taken in the same month.
Source: Appendix A of the RTCR EA (USEPA 2012a)—Total PWS Counts (A.1z, A.2z, A.3z).

The annualized total and net change cost estimates for PWSs to perform monitoring under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–19. EPA estimated a net increase in national annualized cost estimates incurred by PWSs for monitoring of $1.14M (three percent discount rate) and $0.95M (seven percent discount rate) under the RTCR and a net increase of $14.36M (three percent discount rate) and $16.15M (seven percent discount rate) under the Alternative option. See also Exhibit VI–16 of this preamble for a breakdown on the costs of monitoring (i.e., routine, additional routine, repeat).

EXHIBIT VI–19—ANNUALIZED NATIONAL PWS MONITORING COST ESTIMATES

[$Millions, 2007$]

	3% discount rate	7% discount rate
1989 TCR—Total	$179.57	$172.57
RTCR—Total	$180.71	$173.52
RTCR—Net Change	$1.14	$0.95
RTCR—Percent Change	0.63%	0.55%
Alternative option—Total	$193.93	$188.72
Alternative option—Net Change	$14.36	$16.15
Alternative option—Percent Change	7.99%	9.36%

Note: Detail may not add due to independent rounding.
Source: RTCR EA (USEPA 2012a).

The overall estimated increase in monitoring costs seen under the RTCR is driven by increases in routine monitoring due to stricter requirements to qualify for reduced monitoring. However, this is mostly offset by reductions in additional routine and repeat monitoring. For the Alternative option, the requirement for all PWSs to sample on a monthly basis at the beginning of rule implementation results in a much larger cost differential that is only partially offset by reduced costs from reductions in additional routine monitoring requirements.

d. Annual site visits. Under the RTCR, any PWS on an annual monitoring schedule is required to also have an annual site visit conducted by the State or State-designated third party. A voluntary Level 2 site assessment can also satisfy the annual site visit requirement. For years in which the State performs a sanitary survey (at least every five years for NCWSs and three years for CWSs), a sanitary survey performed during the same year can also be used to satisfy this requirement. Although similar site visits are not currently required under the 1989 TCR, discussions with States during the TCRDSAC proceedings revealed that some do, in fact, conduct such site visits for PWSs on annual monitoring schedules. Because of the high cost for an annual site visit by a State, for this analysis EPA assumed that no States choose to conduct annual site visits unless they already do so under the 1989 TCR. Therefore, for overall costing purposes, no net change in PWS or State costs are assumed for annual monitoring site visits under the RTCR or Alternative option.

e. Assessments. Annualized cost estimates for Level 1 and Level 2 assessments under the 1989 TCR, RTCR, and Alternative option are calculated in the RTCR EA by multiplying the number of assessments estimated by the predictive modeling (summarized in Exhibit 7.13 of the EA) by the unit costs (summarized in Exhibits 7–11 and 7–12 of the EA). Appendix A of the RTCR EA provides a detailed breakout of the number of Level 1 and Level 2 assessments estimated by the occurrence model. EPA estimated a net increase in national annualized cost estimates incurred by PWSs for conducting assessment of $0.70M (three percent discount rate) and $0.69M (seven percent discount rate) under the RTCR and a net increase of $1.18M (three percent discount rate) and $1.25M (seven percent discount rate) under the Alternative option. Annualized cost estimates are presented in Exhibit VI–16 of this preamble.

Under the RTCR, all PWSs are required to conduct assessments of their systems when they exceed Level 1 or Level 2 treatment technique triggers. While PWSs are not required to conduct assessments under the 1989 TCR, some PWSs do currently engage in assessment activity (which may or may not meet the RTCR criteria) following non-acute and acute MCL violations. EPA estimates both the costs to PWSs to conduct assessments under the RTCR as well as the level of effort that PWSs already put toward assessment activities under the 1989 TCR. These estimates are based on the work of the stakeholders in the Technical Work Group (TWG) during the proceedings of the TCRDSAC. These estimates allowed EPA to determine the average net costs to conduct assessments under the RTCR. EPA assumes that the numbers of non-acute and acute MCL violations would remain steady under a continuation of the 1989 TCR based on the review of SDWIS/FED violation data. Under the RTCR, EPA assumes that the numbers of assessment triggers decrease over time from the steady state level estimate based on the 1989 TCR to a new steady state level, as a result of reduced fecal indicator occurrence associated with the beneficial effects of requiring assessments and corrective action.

The overall number of assessments is larger under the Alternative option compared to the RTCR option. This is a result of the initial monthly monitoring requirements for all PWSs under the Alternative option. The modeling results indicate that a greater number of samples early in the implementation period results in more positive samples and associated assessments despite the predicted long term reductions in occurrence as informed by the assumptions. This increase in total assessments performed, combined with the higher unit cost of performing assessments compared to existing practices under the 1989 TCR, results in a higher net cost increase for the Alternative option than under the RTCR. The total net increase in cost for the Alternative option is estimated to be nearly twice that of the RTCR option. See Exhibit 7.15 of the RTCR EA.

f. Corrective actions. Under the RTCR and Alternative option, all PWSs are required to correct sanitary defects found through the performance of Level 1 or Level 2 assessments. For modeling purposes, EPA estimated the net change in the number of corrective actions performed under the RTCR and Alternative option. For ground water systems, EPA assumed that any corrective actions based on a positive source water sample are accounted for

under the GWR and not under the RTCR. Based on discussions with State representatives, EPA assumed that an additional 10 percent of corrective actions will be performed as a result of the assessment and corrective action requirements of the RTCR, representing the net increase of the RTCR over the 1989 TCR.

To estimate the costs incurred for the correction of sanitary defects, EPA assumed the percent distribution of PWSs that perform different types of corrective actions as presented in the compliance forecast shown in Exhibit VI–20 (i.e., distribution of the additional 10 percent of corrective actions) based on best professional judgment and stakeholder input. The compliance forecast presented in this section was informed by discussions of the TCRDSAC Technical Work Group and focuses on broad categories of types of corrective actions anticipated. EPA used best professional judgment and stakeholder input to make simplifying assumptions on the distribution of these categories that are implemented by different systems based on size and type of system. For each of the categories listed, a PWS is assumed to take a specific action that falls under that general category. Detailed compliance forecasts showing the specific corrective actions used in the cost analysis are provided in Appendix D of the RTCR EA, along with summary tables of the unit costs used in the analysis. Each corrective action in the detailed compliance forecast is also assigned a representative unit cost. Detailed descriptions of the derivation of unit costs are provided in Exhibits 5–1 through 5–47 of the *Technology and Cost Document for the Revised Total Coliform Rule* (USEPA 2012b).

EXHIBIT VI–20—COMPLIANCE FORECAST FOR CORRECTIVE ACTIONS BASED ON LEVEL 1 AND LEVEL 2 ASSESSMENTS

PWS Size (population served) (percent)	PWS flushing (percent)	Sampler training (percent)	Replace/ Repair of distribution system components (percent)	Maintenance of adequate pressure (percent)	Maintenance of appropriate hydraulic residence time (percent)	Storage facility maintenance (percent)	Booster disinfection (percent)	Cross-connection control and backflow prevention (percent)	Addition or upgrade of online monitoring and control (percent)	Addition of security measures (percent)	Development and implementation of an operations plan (percent)
	A	B	C	D	E	F	G	H	I	J	K
Level 1 Compliance Forecast											
≤100	39	15	12	9	8	6	4	1	3	1	2
101–500	39	15	12	9	8	6	4	1	3	1	2
501–1,000	39	15	12	9	8	6	4	1	3	1	2
1,001–4,100	39	15	12	9	8	6	4	1	3	1	2
4,101–33K	39	15	12	9	8	6	4	1	3	1	2
33,001–96K	39	15	12	9	8	6	4	1	3	1	2
96,001–500K	39	15	12	9	8	6	4	1	3	1	2
500,001–1M	39	15	12	9	8	6	4	1	3	1	2
>1M	39	15	12	9	8	6	4	1	3	1	2
Level 2 Compliance Forecast											
≤100	15	4	18	15	15	11	8	2	6	2	4
101–500	15	4	18	15	15	11	8	2	6	2	4
501–1,000	15	4	18	15	15	11	8	2	6	2	4
1,001–4,100	15	4	18	15	15	11	8	2	6	2	4
4,101–33K	15	4	18	15	15	11	8	2	6	2	4
33,001–96K	15	4	18	15	15	11	8	2	6	2	4
96,001–500K	15	4	18	15	15	11	8	2	6	2	4
500,001–1M	15	4	18	15	15	11	8	2	6	2	4
>1M	15	4	18	15	15	11	8	2	6	2	4

Source: (A)–(K) Percent of PWSs performing corrective actions based on Level 1 and Level 2 assessments reflect EPA estimates.

Level 1 assessments generally are less involved than Level 2 assessments and may result in finding less complex problems. As shown in the compliance forecast in Exhibit VI–20, EPA estimated that corrective actions found through Level 1 assessments result in corrective actions that focus more on transient solutions or training (columns A and B) than on permanent fixes to the PWS. However, in the case of flushing, EPA assumed that in a majority of instances, PWSs implement a regular flushing program as opposed to a single flushing, based on EPA and stakeholder best professional judgment.

Corrective actions taken as a result of Level 2 assessments are expected to find a higher proportion of structural/technical issues (columns C–K) resulting in material fixes to the PWSs and distribution system. Consistent with the discussions of the TCRDSAC regarding major structural fixes or replacements, EPA did not include these major costs in the analysis. Distribution system appurtenances such as storage tanks and water mains generally have a useful life that is accounted for in water system capital planning. The assessments conducted in response to RTCR triggers could identify when that useful life has ended but are not solely responsible for the need to correct the defect. In addition, EPA ran two sensitivity analyses to assess the potential impacts of different distributions within the compliance forecast. Results of the sensitivity analyses are presented in Exhibit VI–21, which indicates that the low bound estimates of annualized net change in costs at three percent discount rate are approximately $3M for the RTCR and $17M for the Alternative option, and the high bound estimates are approximately $25M for the RTCR and $43M for the Alternative option. Varying the assumptions about the percentage of corrective actions identified and the effectiveness of those actions had less than a linear effect on outcomes, and the RTCR continues to be less costly than the Alternative option under all scenarios modeled.

EXHIBIT VI–21—SENSITIVITY ANALYSIS—ANNUALIZED NET CHANGE IN COSTS BASED ON CHANGES IN COMPLIANCE FORECAST ($MILLIONS, 2007$)

	3% discount rate			7% discount rate		
	PWSs	State	Total	PWSs	State	Total
RTCR Net Change	14.15	0.15	14.30	13.75	0.42	14.17
RTCR Low Bound Net Change	2.61	0.15	2.75	3.91	0.42	4.33
RTCR High Bound Net Change	25.10	0.15	25.25	23.63	0.42	24.05
Alternative Option Net Change	29.29	0.31	29.60	31.09	0.61	31.69
Alternative Option Low Bound Net Change	16.54	0.31	16.84	19.93	0.61	20.54
Alternative Option High Bound Net Change	42.68	0.31	42.99	43.63	0.61	44.24

Note: Detail may not add due to independent rounding.
Source: RTCR cost model, described in chapter 7 of the RTCR EA (USEPA 2012a).

As indicated in the more detailed analysis presented in chapter 7 of the RTCR EA, PWSs also incur reporting and recordkeeping burden to notify the State upon completion of each corrective action. PWSs may also consult with the State or with outside parties to determine the appropriate corrective action to be implemented.

Annualized cost estimates for PWSs to perform corrective actions are estimated by multiplying the number of Level 1 and Level 2 corrective actions estimated by the predictive model, (i.e., 10 percent of Level 1 and Level 2 assessments) by the percentages in the compliance forecast and unit costs of corrective actions and associated reporting and recordkeeping. Exhibit 7.13 of the RTCR EA presents the estimated totals of non-acute and acute MCL violations (1989 TCR) and Level 1 and Level 2 assessments (RTCR and Alternative option). The model predicts a total of approximately 109,000 single non-acute MCL violations, 58,000 cases of a second non-acute MCL violation, and 16,000 acute MCL violations for the 1989 TCR, under which some PWSs currently engage in assessment activity which may or may not meet the RTCR criteria (see section 7.4.5 of the RTCR EA for details). For the RTCR, the model predicts approximately 104,000 Level 1 assessments and 52,000 Level 2 assessments. For the Alternative option, the model predicts approximately 120,000 Level 1 assessments and 81,000 Level 2 assessments. EPA estimated a net increase in national annualized cost estimates incurred by PWSs for conducting corrective actions of $12.44M (three percent discount rate) and $10.63M (seven percent discount rate) under the RTCR and a net increase of $13.79M (three percent discount rate) and $12.09M (seven percent discount rate) under the Alternative option. The annualized net present value total and net change cost estimates for PWSs to perform corrective actions under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

The differences in the net change in corrective action costs between the RTCR and Alternative option are a function of the different number of assessments estimated to be performed in the predictive model.

g. Public notification. Estimates of PWS unit costs for PN are derived by multiplying PWS labor rates from section 7.2.1 of the RTCR EA and burden hour estimates derived from the *Draft Information Collection Request for the Public Water System Supervision Program* (USEPA 2008b). PWS PN unit cost estimates are presented in Exhibit 7.19 of the RTCR EA.

Total and net change in annualized costs for PN under the RTCR and Alternative option are estimated by multiplying the model estimates of PWSs with acute (Tier 1 public notification) and non-acute (Tier 2 public notification) violations by the PWS unit costs for performing PN activities. The RTCR cost model assumed that all violations are addressed following initial PN, and no burden is incurred by PWSs for repeat notification. EPA estimated a net decrease in national annualized cost estimates incurred by PWSs for public notification of $3.49M (three percent discount rate) and $3.35M (seven percent discount rate) under the RTCR and a net decrease of $3.40M (three percent discount rate) and $3.25M (seven percent discount rate) under the Alternative option. The annualized total and net cost estimates for PWSs to perform public notification under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

A significant reduction in costs is estimated due to the elimination of Tier 2 public notification for non-acute/monthly MCL violations under both the RTCR and Alternative option.

3. State Costs

EPA estimated that States as a group incur a net increase in national annualized present value costs under the RTCR of $0.2M (at three percent discount rate) and $0.4M (at seven percent discount rate) and under the Alternative option of $0.3M (at three percent discount rate) and $0.6M (at seven percent discount rate). State costs include implementing and administering the rule, revising sample siting plans, reviewing sampling results, conducting annual site visits, reviewing completed assessment forms, tracking corrective actions, and tracking public notifications. The costs presented in the RTCR EA are summary costs; costs to individual states vary based on state programs and the number and types of systems in the state. The following sections summarize the key assumptions that EPA made to estimate the costs of the RTCR and Alternative option to States. Chapter 7 of the RTCR EA provides a description of the analysis.

a. Rule implementation and annual administration. States incur administrative costs to implement the RTCR. These implementation costs are not directly required by specific provisions of the RTCR alternatives, but are necessary for States to ensure the provisions of the RTCR are properly carried out. States need to allocate time for their staff to establish and maintain the programs necessary to comply with the RTCR, including developing and adopting State regulations and modifying data management systems to track new required PWS reports to the States. Time requirements for a variety of State agency activities and responses are estimated in this EA. Exhibit 7.4 of the RTCR EA lists the activities required to revise the program following promulgation of the RTCR along with their respective costs and burden including, for example, the net change

in State burden associated with tracking the monitoring frequencies of PWSs (captured under ''modify data management systems''). EPA estimated a net increase in national annualized cost estimates incurred by States for rule implementation of $0.18M (three percent discount rate) and $0.26M (seven percent discount rate) under either the RTCR or the Alternative option. Because time requirements for implementation and annual administration activities vary among State agencies, EPA recognizes that the unit costs used to develop national estimates may be an over- or under-estimate for some States. The annualized total and net change cost estimates for States to implement and administer the rule under the 1989 TCR, RTCR, and Alternative options are presented in Exhibit VI–16 of this preamble.

b. Sample siting plan revision. Under the RTCR and Alternative option, States are expected to incur one-time costs to review sample siting plans and recommend any revisions to PWSs. Under the 1989 TCR option, no additional burden or costs are incurred by States to review sample siting plans, as these PWSs' sample siting plans have already been reviewed and approved. State costs are based on the number of PWSs developing revised sample siting plans each year. Based on previous experience, EPA estimated that States require one to four hours to review revised sample siting plans and provide any necessary revisions to PWSs, depending on PWS size. EPA estimated a net increase in national annualized cost estimates incurred by States for reviewing sample siting plans of $0.42M (three percent discount rate) and $0.59M (seven percent discount rate) under either the RTCR or the Alternative option. The annualized net present value total and net change cost estimates for States to review and revise sample siting plan under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

c. Monitoring. EPA assumed that States incur a monthly 15-minute burden to review each PWS's sample results under the 1989 TCR. This estimate reflects the method used to calculate reporting and recordkeeping burden under the 1989 TCR in the *Draft Information Collection Request for the Microbial Rules* (USEPA 2008a). Because the existing method calculates cost on a per PWS basis and the total number of PWSs is the same for cost modeling under the 1989 TCR and the RTCR and Alternative option, the net change in costs for reviewing monitoring results is assumed to be zero for the RTCR and Alternative option (as shown in Exhibit VI–16 of this preamble). Specific actions by States related to positive samples are accounted for under the actions required in response to those samples.

d. Annual site visits. Under the RTCR, any PWS on an annual monitoring schedule is required to also have an annual site visit conducted by the State or State-designated third party. A voluntary Level 2 site assessment can also satisfy the annual site visit requirement. In many cases a sanitary survey performed during the same year can also be used to satisfy this requirement. Although similar site visits are not currently required under the 1989 TCR, discussions with States during the TCRDSAC proceedings revealed that some do, in fact, conduct such site visits for PWSs on annual monitoring schedules. Because of the high cost for an annual site visit by a State, for this analysis EPA assumed that no States choose to conduct annual site visits unless they already do so under the 1989 TCR. Therefore, for overall costing purposes, no net change in State or PWS costs are assumed for annual monitoring site visits under the RTCR or Alternative option (as shown in Exhibit VI–16 of this preamble).

e. Assessments. States incur burden to review completed Level 1 and Level 2 assessment forms required to be filed by PWSs under the RTCR and Alternative option. Although specific forms are not required under the 1989 TCR, EPA assumes that PWSs engage in some form of consultation with the State when they have positive sample results and MCL violations. For costing purposes, EPA assumes that the level of effort required for such consultations under the 1989 TCR is the same as that which would be required for consultations that occur when an assessment is conducted under the RTCR and Alternative option. State costs for the RTCR and Alternative option are based on the number of PWSs submitting assessment reports. EPA estimated that State burden to review PWS assessment forms ranges from one to eight hours depending on PWS size and type and the level of the assessment. This burden includes any time required to consult with the PWS about the assessment report.

Although some States may choose to conduct assessments for their PWSs, EPA does not quantify these costs. The costs are attributed to PWSs that are responsible for ensuring that assessments are done.

As explained in chapter 7 of the RTCR EA, EPA assumes a certain level of assessment activity already occurs under the 1989 TCR based on discussions with the technical workgroup supporting the advisory committee. Under the RTCR, the overall number of Level 1 and Level 2 assessment triggers decreases compared to the 1989 TCR as a function of reduced occurrence over time. This reduction in assessments under the RTCR is estimated to translate directly to a small national cost savings ($0.08M at either three or seven percent discount rate) for States. The overall number of Level 1 and Level 2 assessments is higher under the Alternative option as a result of the initial monthly monitoring requirements for all PWSs. The increase in the number of assessments under the Alternative option is estimated to translate directly to a national cost increase ($0.05M at three percent discount rate and $0.08M at seven percent discount rate) for States. The annualized net present value total and net change cost estimates for States to review completed Level 1 and Level 2 assessment forms under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

f. Corrective actions. For each corrective action performed under the RTCR and Alternative option, States incur recordkeeping and reporting burden to review assessment forms and coordinate with PWSs. This includes burden incurred from any optional consultations States may conduct with PWSs or outside parties to determine the appropriate corrective action to be implemented. There are no State costs for corrective action under the 1989 TCR because corrective action is not required under the 1989 TCR. The number of corrective actions under the RTCR is estimated to translate to a national net annualized cost increase to States of $0.01M at either three or seven percent discount rate. The number of corrective actions under the Alternative option is estimated to translate to a national net annualized cost increase to States of $0.02M at either three or seven percent discount rate. See Exhibit VI–16 of this preamble.

g. Public notification. Under the 1989 TCR, RTCR, and Alternative option, States incur recordkeeping and reporting burden to provide consultation, review the public notification certification, and file the report of the violation. A significant reduction in costs is estimated due to the elimination of Tier 2 public notification for non-acute MCL violations under the RTCR and Alternative option. Because State costs are calculated on a per-violation basis, State costs decline. Under the

Alternative option, some of the decrease in cost is offset by additional Tier 1 public notification from the increase in the number of *E. coli* MCL violations detected. Burden hour estimate for State unit PN costs are derived from the *Draft Information Collection Request for the Public Water System Supervision Program* (USEPA 2008b). EPA estimated a net decrease in national annualized cost estimates incurred by States for public notification of $0.38M (three percent discount rate) and $0.36M (seven percent discount rate) under the RTCR and a net decrease of $0.36M (three percent discount rate) and $0.34M (seven percent discount rate) under the Alternative option. The annualized net present value total and net change cost estimates for States to track public notifications under the 1989 TCR, RTCR, and Alternative option are presented in Exhibit VI–16 of this preamble.

4. Nonquantifiable Costs

EPA believes that all of the rule elements that are the major drivers of the net change in costs from the 1989 TCR have been quantified to the greatest degree possible. However, cost reductions related to fewer monitoring and reporting violations are not specifically accounted for in the cost analysis, and their exclusion from consideration may result in an overestimate of the net increase in cost between the 1989 TCR option and the RTCR or Alternative option.

Furthermore, under the 1989 TCR, RTCR, and Alternative option, Tier 3 public notification for monitoring and reporting violations are assumed to be reported once per year as part of the Consumer Confidence Reports (CCRs). Because of the use of the CCR to communicate Tier 3 public notification on a yearly basis, no cost differential between the current 1989 TCR and the RTCR and Alternative option is estimated in the cost model. However, the advisory committee concluded that significant reductions in monitoring and reporting violations may be realized through the revised regulatory framework of the RTCR, which includes new consequences for failing to comply with monitoring provisions such as the requirement to conduct an assessment or ineligibility for reduced monitoring. These possible reductions have not been quantified. System resources used to process monitoring violation notices for the CCR and respond to customer inquiries about the notices, as well as State resources to remind systems to take samples, may be reduced if significant reductions in monitoring and reporting violations are realized. Exclusion of this potential cost savings may lead to an underestimate of the PN cost savings under both the RTCR and Alternative option.

Additionally, as an underlying assumption to the costing methodology, EPA assumed that all PWSs subject to the RTCR requirements are already complying with the 1989 TCR. There may be some PWSs that are not in full compliance with the 1989 TCR, and if so, additional costs and benefits may be incurred. EPA does not anticipate non-compliance when performing economic analyses for NPDWRs, therefore those costs and benefits are not captured in this analysis.

G. Potential Impact of the RTCR on Households

The household cost analysis considers the potential increase in a household's annual water bill if a CWS passed the entire cost increase resulting from the rule on to their customers. This analysis is a tool to gauge potential impacts and should not be construed as a precise estimate of potential changes to household water bills. State costs and costs to TNCWSs and NTNCWSs are not included in this analysis since their costs are not typically passed through directly to households. Exhibit VI–22 presents the mean expected increases in annual household costs for all CWSs, including those systems that do not have to take corrective action. Exhibit VI–22 also presents the same information for CWSs that must take corrective action. Household costs tend to decrease as system size increases, due mainly to the economies of scale for the corrective actions.

Exhibit VI–22 presents net costs per household under the RTCR and Alternative option for all rule components spread across all CWSs. Comparison to the 1989 TCR shows a cost savings for some households. The average annual water bill is expected to increase by six cents or less on average per year.

While the average increase in annual household water bills to implement the RTCR is well less than a dollar, customers served by a small CWS that have to take corrective actions as a result of the rule incur slightly larger increases in their water bills. The subsequent categories of the exhibit present net costs per household for three different subsets of CWSs: (1) CWSs that perform assessments but no corrective actions, (2) CWSs that perform corrective actions, and (3) CWSs that do not perform assessments or corrective actions. Approximately 67 percent of households are served by CWSs that perform assessments but do not perform corrective actions over the 25-year period of analysis (because no sanitary defects are found). These households experience a slight cost savings on an annual basis, due to a slight reduction in monitoring and public notification costs. The nine percent of households belonging to CWSs that perform corrective actions over the 25-year period of analysis experience an increase in annual net household costs of less than $0.70 on average for CWSs serving greater than 4,100 people to approximately $4.50 on average for CWSs serving 4,100 or fewer people on an annual basis. EPA estimated that 24 percent of households are served by CWSs that do not perform assessments or corrective actions over the 25-year period of analysis because they never exceed an assessment trigger. This group of households served by small systems (4,100 or fewer people) experiences a slight cost change on an annual basis, comparable to those performing assessments but no corrective actions. Overall, the main driver of additional household costs under the RTCR is corrective actions.

EXHIBIT VI–22—SUMMARY OF NET ANNUAL PER-HOUSEHOLD COSTS FOR THE RTCR

[2007$]

Population served by PWS	3% discount rate		7% discount rate	
	RTCR Net cost per household	Alternative option net cost per household	RTCR Net cost per household	Alternative option net cost per household
All Community Water Systems (CWSs)				
≤4,100	0.08	0.10	0.11	0.13

EXHIBIT VI–22—SUMMARY OF NET ANNUAL PER-HOUSEHOLD COSTS FOR THE RTCR—Continued

[2007$]

Population served by PWS	3% discount rate		7% discount rate	
	RTCR Net cost per household	Alternative option net cost per household	RTCR Net cost per household	Alternative option net cost per household
>4,100	0.05	0.05	0.05	0.05
Total	0.06	0.06	0.05	0.05
Community Water Systems (CWSs) performing Level 1/Level 2 Assessments (and no Corrective Actions)				
≤4,100	(0.22)	(0.19)	(0.16)	(0.13)
>4,100	(0.01)	(0.01)	(0.01)	(0.01)
Total	(0.02)	(0.02)	(0.01)	(0.01)
Community Water Systems (CWSs) performing Corrective Actions				
≤4,100	4.47	4.51	3.93	3.98
>4,100	0.66	0.66	0.55	0.55
Total	0.80	0.80	0.68	0.68
Community Water Systems (CWSs) not performing Level 1/Level 2 Assessments, or Corrective Actions				
≤4,100	(0.00)	0.02	0.04	0.06
>4,100	.....	.....	.....	.....
Total	(0.00)	0.00	0.01	0.02

Source: RTCR EA (USEPA 2012a).

H. Incremental Costs and Benefits

The RTCR regulatory options achieve increasing levels of benefits at increasing levels of costs. The regulatory options for this rule, in order of increasing costs and benefits (Option 1 lowest and Option 3 highest) are as follows:

- Option 1: 1989 TCR option
- Option 2: RTCR
- Option 3: Alternative option

Incremental costs and benefits are those that are incurred or realized to reduce potential illnesses and deaths from one alternative to the next more stringent alternative. Estimates of incremental costs and benefits are useful when considering the economic efficiency of different regulatory alternatives considered by EPA. One goal of an incremental analysis is to identify the regulatory alternatives where net social benefits are maximized. However, incremental net benefits analysis is not possible when benefits are discussed qualitatively and are not monetized, as is the case with the RTCR.

However, incremental analysis can still provide information on relative cost-effectiveness of different regulatory options. For the RTCR, only costs were monetized. While benefits were not quantified, an indirect proxy for benefits was quantified. To compare the additional net cost increases and associated incremental benefits of the RTCR and the Alternative option, benefits are presented in terms of corrective actions performed since performance of corrective actions is expected to have the impact that is most directly translatable into potential health benefits.

Exhibit VI–23 shows the incremental cost of the RTCR over the 1989 TCR and the Alternative option over the RTCR for costs annualized using three percent and seven percent discount rates. The non-monetized corrective action endpoints are discounted in order to make them comparable to monetized endpoints. The relationship between the incremental costs and benefits is examined further with respect to cost effectiveness in section VI.M of this preamble, *Benefit Cost Determination for the RTCR.*

EXHIBIT VI—23 INCREMENTAL NET CHANGE IN ANNUALIZED COSTS ($MILLIONS, 2007$) AND BENEFITS

[Number of Corrective Actions]

Regulatory option	Costs ($millions)		Benefits (L2 corrective actions)	
	3%	7%	3%	7%
1989 TCR	186.1	178.8	No change [3]	No change [3]
RTCR	200.4	193.0	208	202
Incremental RTCR [1]	14.3	14.2	208	202
Alternative Option	215.7	210.5	336	355
Incremental Alternative Option [2]	15.3	17.5	128	153

[1] Represents the incremental net change of the RTCR over the 1989 TCR option.

[2] Represents the incremental net change of the Alternative option over the RTCR. Add incremental net change for Alternative option to incremental net change for RTCR to calculate the total net change of the Alternative option over the 1989 TCR option.

Note: The RTCR occurrence model yields the number of corrective actions that are expected to be implemented in addition to (net of) those already implemented under the 1989 TCR. The model does not incorporate an estimate of the number of corrective actions implemented per year under the 1989 TCR and does not yield a total for the RTCR and Alternative option that includes the 1989 TCR corrective actions. Benefits shown include corrective actions based on L2 assessments. Detailed benefits and cost information is provided in Appendices A and C, respectively, of the RTCR EA (USEPA 2012a).

[3] As explained in section VI.F.2.f of this preamble, *Corrective actions,* for modeling purposes, EPA estimates the net change only in the number of corrective actions performed under the RTCR and Alternative option compared to the 1989 TCR and thus did not quantify the (non-zero) baseline number of corrective actions performed under the 1989 TCR.

I. Benefits From Simultaneous Reduction of Co-occurring Contaminants

As discussed in section VI.E of this preamble, *Anticipated Benefits of the RTCR,* the potential benefits from the RTCR include avoidance of a full range of health effects from the consumption of fecally contaminated drinking water, including the following: acute and chronic illness, endemic and epidemic disease, waterborne disease outbreaks, and death.

Systems may choose corrective actions that also reduce other drinking water contaminants as a result of the fact that the corrective action eliminates a pathway of potential contamination into the distribution system. For example, eliminating a cross connection reduces the potential for chemical contamination as well as microbial. Due to a lack of contamination co-occurrence data that could relate to the effect that treatment corrective action may have on contamination entering through distribution system pathways, EPA has not quantified such potential benefits.

J. Change in Risk From Other Contaminants

All surface water systems are already required to disinfect under the SWTR (USEPA 1989b, 54 FR 27486, June 29, 1989) but the RTCR could impact currently undisinfected ground water systems. If a previously undisinfected ground water system chooses disinfection as a corrective action, the disinfectant can react with pipe scale causing increased risk from some contaminants that may be entrained in the pipe scales and other water quality problems. Examples of contaminants that could be released include lead, copper, and arsenic. Disinfection could also possibly lead to a temporary discoloration of the water as the scale is loosened from the pipe. These risks can be addressed by gradually phasing in disinfection to the system, by targeted flushing of distribution system mains, and by maintaining an effective corrosion control program.

Introducing a disinfectant could also result in an increased risk from disinfection byproducts (DBPs). Risk from DBPs has already been addressed in the Stage 1 Disinfection Byproducts Rule (DBPR) (USEPA 1998a) and additional consideration of DBP risk has been addressed in the final Stage 2 DBPR (USEPA 2006e). In general, ground water systems are less likely to experience high levels of DBPs than surface water systems because they have lower levels of naturally occurring organic materials that contribute to DBP formation.

EPA does not expect many previously undisinfected systems to add disinfection as a result of either the RTCR or Alternative rule options. Ground water systems that are not currently disinfecting may eventually install disinfection if RTCR distribution system monitoring and assessments, and/or subsequent source water monitoring required under the GWR, result in the determination that source water treatment is required.

K. Effects of Fecal Contamination and/or Waterborne Pathogens on the General Population and Sensitive Subpopulations

It is anticipated that the requirements of the RTCR will help reduce pathways of entry for fecal contamination and/or waterborne pathogens into the distribution system, thereby reducing risk to both the general population as well as to sensitive subpopulations.

As discussed previously in this preamble, fecal contamination may contain waterborne pathogens including bacteria, viruses, and parasitic protozoa. Waterborne pathogens can cause a variety of illnesses, including acute gastrointestinal illness (AGI) with diarrhea, abdominal discomfort, nausea, vomiting, and other symptoms. Most AGI cases are of short duration and result in mild illness. Other more severe illnesses caused by waterborne pathogens include hemolytic uremic syndrome (HUS) (kidney failure), hepatitis, and bloody diarrhea (WHO 2004). Chronic disease such as irritable bowel syndrome, reduced kidney function, hypertension and reactive arthritis can result from infection by a waterborne agent (Clark *et al.* 2008).

Waterborne pathogens may subsequently infect other people through a variety of other routes (WHO 2004). When humans are exposed to and infected by an enteric pathogen, the pathogen becomes capable of reproducing in the gastrointestinal tract. As a result, healthy humans shed pathogens in their feces for a period ranging from days to weeks. This shedding of pathogens often occurs in the absence of any signs of clinical illness. Regardless of whether a pathogen causes clinical illness in the person who sheds it in his or her feces, the pathogen being shed may infect other people directly by person-to-person spread, contact with contaminated surfaces, and other means, which are collectively referred to as secondary spread.

When sensitive subpopulations are exposed to fecal contamination and/or waterborne pathogens, more severe illness (and sometimes death) can occur. Examples of sensitive subpopulations are provided in chapter 2 of the RTCR EA. The potential health effects associated with sensitive population groups—children, pregnant women, the elderly, and the immunocompromised—are described in the following paragraphs.

1. Risk to Children, Pregnant Women, and the Elderly

Children and the elderly are particularly vulnerable to kidney failure (hemolytic uremic syndrome) caused by the pathogenic bacterium *E. coli* O157:H7. Kidney failure in children and the elderly have resulted from waterborne outbreaks due to exposure to *E. coli* O157:H7 from consuming ground water in Cabool, Missouri (Swerdlow *et al.* 1992); Alpine, Wyoming (Olsen *et al.* 2002); Washington County, New York (NY State DOH 2000); and Walkerton, Ontario, Canada (Health Canada 2000).

The risk of acute illness and death due to viral contamination of drinking water depends on several factors, including the age of the exposed individual. Infants and young children have higher rates of infection and disease from enteroviruses than other age groups (USEPA 1999). Several enteroviruses that can be transmitted through water can have serious health consequences in children. Enteroviruses (which include poliovirus, coxsackievirus, and echovirus) have been implicated in cases of flaccid

paralysis, myocarditis, encephalitis, hemorrhagic conjunctivitis, and diabetes mellitus (Dalldorf and Melnick 1965; Smith 1970; Berlin *et al.* 1993; Cherry 1995; Melnick 1996; CDC 1997; Modlin 1997). Women may be at increased risk from enteric viruses during pregnancy (Gerba *et al.* 1996). Enterovirus infections in pregnant women can also be transmitted to the unborn child late in pregnancy, sometimes resulting in severe illness in the newborn (USEPA 2000b).

Other waterborne viruses can also be particularly harmful to children. Rotavirus disproportionately affects children less than five years of age (Parashar *et al.* 1998). However, the pentavalent rotavirus vaccine licensed for use in the United States has been shown to be 74 percent effective against rotavirus gastroenteritis of any severity (Dennehy 2008). For echovirus, children are disproportionately at risk of becoming ill once infected (Modlin 1986). According to CDC, echovirus is not a vaccine-preventable disease (CDC 2007).

The elderly are particularly at risk from diarrheal diseases (Glass *et al.* 2000) such as those associated with waterborne pathogens. In the US, approximately 53 percent of diarrheal deaths occur among those older than 74 years of age, and 77 percent of diarrheal deaths occur among those older than 64 years of age. In Cabool, Missouri (Swerdlow *et al.* 1992), a waterborne *E. coli* O157:H7 outbreak in a ground water system resulted in four deaths, all among the elderly. One death occurred from HUS (kidney failure), the others from gastrointestinal illness. Furthermore, hospitalizations due to diarrheal disease are higher in the elderly than younger adults (Glass *et al.* 2000). Average hospital stays for individuals older than 74 years of age due to diarrheal illness are 7.4 days compared to 4.1 days for individuals aged 20 to 49 (Glass *et al.* 2000).

It is anticipated that the requirements of the RTCR will help reduce pathways of entry for fecal contamination and/or waterborne pathogens into the distribution system, thereby reducing risk to both the general population as well as to sensitive subpopulations such as children, pregnant women, and the elderly.

2. Risk to Immunocompromised Persons

AGI symptoms may be more severe in immunocompromised persons (Frisby *et al.* 1997; Carey *et al.* 2004). Such persons include those with acquired immune deficiency syndrome (AIDS), cancer patients undergoing chemotherapy, organ transplant recipients treated with drugs that suppress the immune system, and patients with autoimmune disorders such as lupus. In AIDS patients, *Cryptosporidium,* a waterborne protozoa, has been found in the lungs, ear, stomach, bile duct, and pancreas in addition to the small intestine (Farthing 2000). Immunocompromised patients with severe persistent cryptosporidiosis may die (Carey *et al.* 2004).

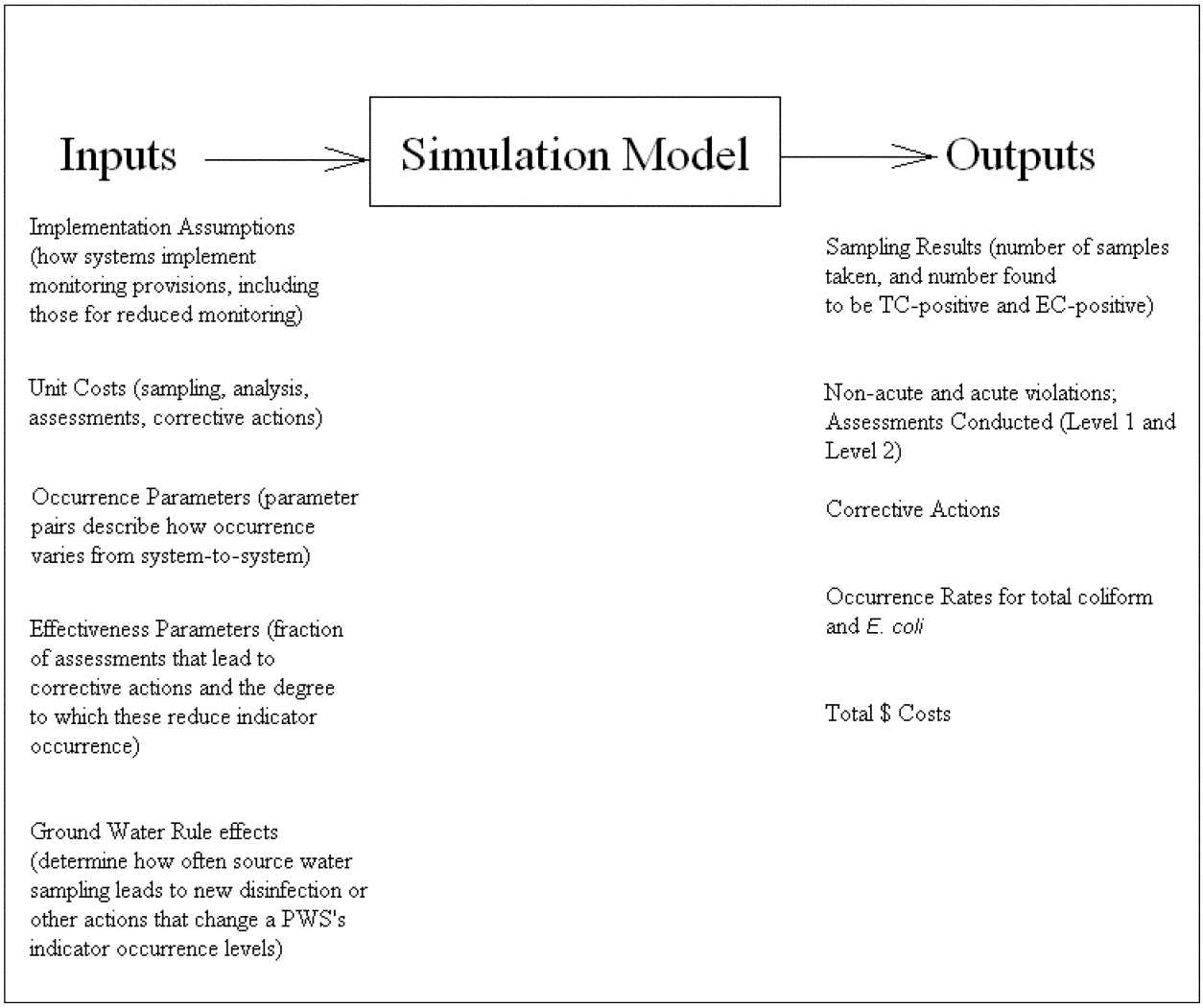
For the immunocompromised, Gerba *et al.* (1996) reviewed the literature and reported that enteric adenovirus and rotavirus are the two waterborne viruses most commonly isolated in the stools of AIDS patients. For patients undergoing bone-marrow transplants, several studies cited by Gerba *et al.* (1996) reported mortality rates greater than 50 percent among patients infected with enteric viruses.

It is anticipated that the requirements of the RTCR will help reduce pathways of entry for fecal contamination and/or waterborne pathogens into the distribution system, thereby reducing risk to both the general population as well as to sensitive subpopulations such as the immunocompromised.

L. Uncertainties in the Benefit and Cost Estimates for the RTCR

A computer simulation model was used to estimate costs and indicators of benefits of the RTCR. Exhibit VI–24 shows that these outputs depend on a number of key model inputs. This section describes analyses that were conducted to understand how uncertainties in these inputs contributed to uncertainty in model outputs.

Exhibit VI-24 Simulation Model, Inputs, and Outputs



1. Inputs and Their Uncertainties

It is anticipated that the requirements of the RTCR will help reduce pathways of entry for fecal contamination and/or waterborne pathogens into the distribution system, thereby reducing exposure and illness from these contaminants in drinking water. These exposure and illness reductions could not be modeled and estimated quantitatively, due to a lack of a quantitative relationship between indicators and pathogens. Section VI.E.3 of this preamble, *Nonquantifiable benefits,* and chapter 6 of the RTCR EA discuss this issue qualitatively.

Model outputs include two important indicators that are used to qualitatively describe benefits: *E. coli* occurrence in routine total coliform samples and the occurrence of Level 1 and 2 assessments. These outputs were monitored as endpoints in the sensitivity analyses described in this section.

Quantified national cost estimates include costs of required monitoring, assessments, corrective actions, and public notifications. Total costs were monitored as end-points in the sensitivity analyses described in this section.

None of the inputs shown in Exhibit VI–24 is perfectly known, so each has some degree of uncertainty. Some of these inputs are informed directly by data, so their uncertainties are due to limitations of the data. For example, uncertainty about the statistical model used to characterize occurrence is due to the limited numbers of systems and measurements per system in the Six-Year Review 2 dataset. Other inputs are informed by professional judgment, so their uncertainties are expressed in terms of reasonable upper and lower bounds that are, themselves, based on expert judgment. For example, 10 percent of assessments (representing the incremental increase over the 1989 TCR) are expected to result in effective corrective actions, based on professional judgment, with reasonable upper and lower bounds of 20 percent and 5 percent, respectively.

Sensitivity analyses were conducted to assess the degree to which uncertainties about selected inputs contribute to uncertainty in the resulting cost estimates. The analyses focused on the inputs that are listed in Exhibit VI–24. Varying the assumptions about the percentages of corrective actions identified and the effectiveness of those actions has a less than linear effect on outcomes, and the RTCR continues to be less costly than the Alternative option under all scenarios modeled. Exhibits 5.22a and 5.22b of the RTCR EA provide summaries of the driving model parameters and indicate where in the RTCR EA the full discussion of uncertainty on each parameter is contained.

Not shown in Exhibit VI–24 are some inputs that are very well known. These are inventory data, which include the list of all PWSs affected by the RTCR and, for each system, information on its source water type, disinfection practice, and population served. Although this information is not perfect, any uncertainty is believed to have negligible impact on model outputs. EPA did not conduct sensitivity analyses to evaluate the importance of these small uncertainties.

2. Sensitivity Analysis

Default values of the model inputs are considered reasonable best-estimates. Model outputs that are obtained when the inputs are set to these default values are also considered to be reasonable best-estimates. EPA conducted sensitivity analyses to learn how much the outputs might change when individual inputs are changed from their default values. The approach taken was to change each input to some reasonable upper and lower bounds, based on professional judgment.

Many of the uncertainties are expected to impact the model output in a similar fashion for the 1989 TCR, RTCR, and the Alternative option. For example, an increase in a total coliform occurrence tends to increase the total cost and benefit estimates for all of the rule alternatives. Because the benefit and cost analyses focus on net changes among the 1989 TCR, RTCR, and Alternative option, these common sources of uncertainty may tend to cancel out in the net change analyses. Other uncertainties were expected to have stronger influence on net changes among the 1989 TCR, RTCR, and Alternative option because of their unequal influence on the options. For example, assumptions about the effectiveness of corrective actions influences total costs of the RTCR and Alternative option, but not the 1989 TCR option.

Results of the sensitivity analyses (reported in the RTCR EA) showed that the fundamental conclusions of the economic analysis do not change over a wide range of assumptions. Both the RTCR and Alternative option provide benefits as compared to the 1989 TCR. Varying key assumptions has a less than linear effect on outcomes, and the RTCR continues to be less costly than the Alternative option under all scenarios modeled. See section 5.3.3.1 of the RTCR EA for details.

M. Benefit Cost Determination for the RTCR

Pursuant to SDWA section 1412(b)(6)(A), EPA has determined that the benefits of the RTCR justify the costs. In making this determination, EPA considered quantified and nonquantified benefits and costs as well as the other components of the HRRCA outlined in section 1412(b)(3)(C) of the SDWA.

Additionally, EPA used several other techniques to compare benefits and costs including a break-even analysis and a cost effectiveness analysis. EPA developed a break-even analysis to inform the discussion of whether the benefits justify the cost of the regulation. The break-even analysis (see chapter 9 of the RTCR EA) was conducted using two example pathogens responsible for some (unknown) proportion of waterborne illnesses in the United States: shiga toxin-producing *E. coli* O157:H7 [2] (STEC O157:H7) and *Salmonella*. In the break-even analysis, CDC and Economic Research Service (ERS) estimates were used for STEC O157:H7 and *Salmonella* infections, respectively. Valuations of medical cases were developed using the ERS Foodborne Illness Calculator. Chapter 9 of the RTCR EA has a complete discussion of the break even analysis and how costs per case were calculated.

Based on either example pathogen considered in the breakeven analysis, a small number of fatal cases annually would need to be avoided, relative to the CDC's estimate of cases caused by waterborne pathogens, in order to break even with rule costs. For example, under the RTCR, just two deaths would need to be avoided annually using a three percent discount rate based on consideration of the bacterial pathogen STEC O157:H7. Alternatively, approximately 3,000 or 8,000 non-fatal cases, using the enhanced or traditional benefits valuations approaches,[3] respectively, would need to be avoided to break even with rule costs. As expected based on its costs, the lower cost of the RTCR relative to the Alternative option means that fewer cases need to be avoided in order to break even. See Exhibit VI–25.

As Exhibit VI–25 shows, approximately 2 deaths would need to be avoided from a *Salmonella* infection for the rule to break even. The estimated number of non-fatal *Salmonella* cases that would need to be avoided to break even is approximately 10,000 or 68,000 cases under the enhanced and traditional benefits valuations approaches, respectively. Given the large number of potential waterborne pathogens shown to occur in PWSs and the relatively low net costs of the RTCR, EPA believes, as discussed in this section and in the RTCR EA, that the RTCR is likely to at least break even. Chapter 9 of the RTCR EA has a complete discussion of the break-even analysis and how costs per case were calculated.

EXHIBIT VI–25—ESTIMATED BREAKEVEN THRESHOLD FOR AVOIDED CASES OF *E. coli* O157:H7 AND *Salmonella*

Cost of illness (COI) methodology	Discount rate (percent)	RTCR		Alternative option	
		Non-fatal cases only	Fatal cases only [1]	Non-fatal cases only	Fatal cases only [1]
E. coli O157:H7					
Traditional COI	3	8,000	1.6	17,000	3.4
	7	8,000	1.6	18,000	3.6
Enhanced COI	3	3,000	1.6	6,000	3.4
	7	3,000	1.6	6,000	3.6
Salmonella					

[2] According to the Web site of the American Academy of Family Physicians (*http://www.aafp.org/afp/20000401/tips/11.html*), ''Shiga toxin-producing *Escherichia coli* is a group of bacteria strains capable of causing significant human disease. The pathogen is transmitted primarily by food and has become an important pathogen in industrialized North America. The subgroup enterohemorrhagic *E. coli* includes the relatively important serotype O157:H7, and more than 100 other non-O157 strains.''

[3] Both traditional and enhanced cost of illness (COI) approaches count the value of the direct medical costs and of time lost that would been spent working for a wage, but differ in their assessment of the value of time lost that would be spent in nonmarket work (e.g., housework, yardwork, and raising children) and leisure (e.g., recreation, family time, and sleep). They also differ in their valuation of (other) disutility, which encompasses a range of factors of well-being, including both inconvenience and any pain and suffering. A complete discussion of the traditional and enhanced COI approaches can be found in Appendix E of the RTCR EA (USEPA 2012a).

EXHIBIT VI–25—ESTIMATED BREAKEVEN THRESHOLD FOR AVOIDED CASES OF *E. coli* O157:H7 AND *Salmonella*—Continued

Cost of illness (COI) methodology	Discount rate (percent)	RTCR		Alternative option	
		Non-fatal cases only	Fatal cases only [1]	Non-fatal cases only	Fatal cases only [1]
Traditional COI	3	68,000	1.6	141,000	3.4
	7	68,000	1.6	151,000	3.6
Enhanced COI	3	10,000	1.6	21,000	3.4
	7	10,000	1.6	23,000	3.6

[1] Calculations for fatal cases include the non-fatal COI component for the underlying illness prior to death.

Note: The number of cases needed to reach break-even threshold is calculated by dividing the net change in costs for the RTCR by the average estimated value of avoided cases.

E. coli O157:H7 and *Salmonella* are only two of multiple pathogenic endpoints that could have been used for this analysis. Use of additional pathogenic contaminants in addition to these single endpoints would result in lower threshold values.

Detail may not add due to independent rounding.

The breakeven threshold is higher using a 7% discount rate than a 3% discount rate under the Alternative option. This result is consistent with the costs of the Alternative option being higher using the 7% discount rate, which is caused by the frontloading of costs in the period of analysis, as explained further in Chapter 7 of the RTCR EA (USEPA 2012a).

Cost-effectiveness is another way of examining the benefits and costs of the rule. Exhibit VI–26 shows the cost of the rule per corrective action implemented. The cost-effectiveness analysis, as with the net benefits, is limited because EPA was able to only partially quantify and monetize the benefits of the RTCR. As discussed previously and demonstrated in the RTCR EA, the RTCR achieves the lowest cost per corrective action avoided among the options considered. The incremental cost-effectiveness analysis shows that the RTCR has a lower cost per corrective action than the Alternative option.

EXHIBIT VI–26—TOTAL NET ANNUAL COST PER CORRECTIVE ACTION IMPLEMENTED UNDER RTCR AND ALTERNATIVE OPTION, ANNUALIZED (USING THREE PERCENT AND SEVEN PERCENT DISCOUNT RATES)

[$Millions, $2007]

Regulatory scenario	3% discount rate	7% discount rate
RTCR—Net Change	$14.3	$14.2
RTCR—Incremental Number of Corrective Actions (L1 & L2)	616	594
RTCR—Cost Effectiveness Analysis	$0.02	$0.02
Alternative Option—Net Change	$29.6	$31.7
Alternative Option—Incremental Number of Corrective Actions (L1 & L2)	808	819
Alternative Option—Cost Effectiveness Analysis	$0.04	$0.04

Note: Corrective actions include those conducted as a result of either Level 1 or Level 2 assessments. Total rule costs are shown in Exhibit 9.14 of the RTCR EA (USEPA 2012a). Detailed benefits and cost information is provided in Appendices A and C, respectively, of the RTCR EA (USEPA 2012a).

The preferred option for the final rule is the RTCR. The analyses performed as part of the RTCR EA (USEPA 2012a) support the collective judgment and consensus of the advisory committee that the RTCR requirements provide for effective and efficient revisions to the 1989 TCR regulatory requirements. The estimated net cost increase of the RTCR is small ($14M annually) relative to the 1989 TCR and small compared to the net cost increase of the Alternative option ($30M–$32M) relative to the 1989 TCR. In addition, no backsliding in overall risk is predicted.

N. Comments Received in Response to EPA's Requests for Comment

In the proposal for the RTCR, EPA requested comment on the SAB's concerns (selection of the RTCR option and measures for tracking long term effectiveness of RTCR), on replacement and maintenance costs for major distribution system appurtenances, on assumptions regarding State use of annual monitoring and annual site visits, and on assumptions regarding the results and effectiveness of Level 1 and Level 2 assessments. This section summarizes the comments EPA received on these issues.

1. SAB's Concerns

Most comments EPA received were in favor of the selection of the RTCR option over the 1989 TCR and the Alternative option. Commenters thought that the additional transition costs associated with the Alternative option did not justify the relatively small increase in benefits and noted that over the long term the benefits for both options were extremely similar. Some commenters provided EPA with specific input on what kind of data to collect in order to indicate the long term effectiveness of the RTCR. However, most commenters instead emphasized the need for SDWIS to be equipped to record the data, and that necessary changes to SDWIS be made in time for the rule to take effect. EPA remains committed to providing the necessary update to SDWIS before the final rule goes into effect and will continue to work with data users to identify system data collection needs and measures.

2. Costs of Major Distribution System Appurtenances

Most comments supported EPA's decision not to include replacement or maintenance costs of major distribution system appurtenances under the RTCR. However, some commenters expressed concern that some systems, in particular small systems, do not plan for capital expenditures, and therefore these costs should be included. EPA continues to believe, as informed by the TCRDSAC deliberations, that the assessment requirement of the RTCR may help to identify when the useful life of an appurtenance has occurred or

maintenance is required, but that these costs should be attributable to regular maintenance and repair, not to the RTCR. Therefore, EPA has not changed this assumption in the EA for the final rule.

3. Annual Monitoring and Annual Site Visits

Comments on this subject were mixed. Most commenters thought that the assumption that only states that currently allow annual monitoring and conduct annual site visits would continue to do so under the RTCR was a reasonable one. However, there were some commenters that pointed out that some States that currently do not allow annual monitoring may begin to allow it because of a lack of resources and because of the desire to meet only the minimum aspects of the RTCR. Based on stakeholder input and comments received, EPA continues to believe that EPA's original assumption is valid, that only States that currently allow annual monitoring and perform annual visits would continue to do so.

4. Effectiveness of Assessments

Several commenters agreed that EPA made a reasonable assumption that 10 percent of assessments would lead to corrective action above what is occurring under the 1989 TCR. For those that did not agree the assumption was reasonable, the response was split between those that thought the estimate was too high, and those that thought the estimate was too low. Therefore, EPA has chosen to retain the estimate of 10 percent, which was originally derived with stakeholder input.

Several commenters supported the assumptions regarding the effectiveness of corrective actions. Many of these commenters stated that it would be extremely difficult to determine if these assumptions are accurate or not. Some commenters thought that these assumptions were too optimistic and that little or no benefit would be realized by the use of the assessments and corrective action. In the absence of strong consensus for changing these assumptions, EPA has elected to keep the assumptions in place.

O. Other Comments Received by EPA

In addition to comments received as a result of requests for comment, EPA also received comments on various technical aspects of the EA. Those comments included concerns with the analysis in the following areas: EPA's inability to quantify health benefits, small PWS's possible inability to return to reduced monitoring after being triggered into monthly monitoring, the shift of State resources from public health related activities to tracking and compliance under the RTCR, and estimates about the State burden.

1. Quantifying Health Benefits

Some commenters expressed concern that EPA is not quantifying benefits. Instead of quantifying the benefits, the RTCR EA examines the benefits in terms of trade-offs between compliance with the 1989 TCR and the other options considered (RTCR and Alternative option). As allowed under and consistent with the HRRCA requirements outlined in section 1412 (b)(3)(C) of the SDWA, EPA used several methods to qualitatively evaluate the benefits of the RTCR and Alternative option. The qualitative evaluation uses both the judgment of EPA as informed by the TCRDSAC deliberations as well as quantitative estimates of changes in total coliform occurrence and counts of systems implementing corrective actions. EPA acknowledges that the predicted benefits of changes in total coliform occurrence and numbers of corrective actions implemented are a function of model assumptions, and EPA recognizes that there is some uncertainty with the assumptions. However, sensitivity analyses showed that the fundamental conclusions of the EA do not change over a wide range of assumptions tested, and that the RTCR provides benefits over the 1989 TCR.

EPA notes that the supporting analyses that formed the foundation of the RTCR EA were reviewed by the SAB. SAB noted in their report that ''in general, the Committee was impressed by the work the Agency undertook. The Agency obviously did a great deal of work and put a significant amount of thought into making use of the limited amount of data.'' SAB also acknowledged that ''the EA represents the best possible analysis given the paucity of available data'' (SAB 2010).

2. Return to Reduced Monitoring

Some commenters stated that PWSs, in particular NCWSs, will never again qualify for quarterly or annual monitoring under the RTCR once they are triggered into increased monthly monitoring. EPA disagrees with this statement. Under the RTCR, NCWSs that are triggered into monthly monitoring could possibly meet the criteria to once again qualify for (routine) quarterly or (reduced) annual monitoring in as little as one year. Some commenters stated that EPA has underestimated the numbers of systems that will be triggered into monthly monitoring based on existing noncompliance rates, with particular emphasis on systems with monitoring violations.

Consistent with past EPA EA analyses, the occurrence model and cost estimates in the EA do not include estimates for non-compliance with EPA regulatory requirements such as monitoring. In addition, EPA disagrees with many commenters' assumptions that monitoring violation rates will remain the same under the RTCR. EPA believes that the rates of monitoring violations will decrease because of strengthened incentives for systems to monitor and the enhanced consequences of noncompliance. A PWS on quarterly or annual monitoring has a greater incentive under the RTCR to do its monitoring because if it doesn't, it will be triggered into increased monitoring. The 1989 TCR did not include such a requirement. Under the RTCR, if a PWS does not complete its repeat samples, it will be triggered to conduct an assessment. With greater consequences for not completing required sampling, systems will be more likely to complete their monitoring. Thus, EPA believes that rates of monitoring and reporting violations will be lower under the RTCR than they are under the 1989 TCR.

Many commenters had concerns with monitoring violation rates specifically for those systems that are on annual monitoring. EPA believes that the monitoring violation rates for these systems will not be as high as predicted by commenters since one of the requirements to remain on annual monitoring is an annual site visit by the State or a Level 2 assessment. If, at the time of the site visit or the Level 2 assessment, that year's annual samples have not been taken, the State or assessor will have the opportunity to remind the system to take the required samples, assist the system in taking the sample at that time, or include taking the sample as part of the site visit or assessment.

All triggers to increased monitoring in the RTCR are consistent with EPA's position, as informed by TCRDSAC discussions, that annual monitoring is a privilege for only the most well run systems. Systems that are not able to meet annual monitoring requirements would not be considered among the most well run, and therefore would be triggered into more frequent monitoring.

3. Shift of State Resources

Some commenters assert that States will be overwhelmed by the burden of tracking and enforcement activities of RTCR because all small PWSs, especially NCWSs, will be triggered into monthly monitoring under the RTCR

and that this will result in a significant increase in violations and tracking and enforcement activities.

In order to address these concerns, EPA made a change from the proposal to this final rule by changing the result of a monitoring violation trigger for systems on annual monitoring. Instead of a monitoring violation triggering a system directly into monthly monitoring, a monitoring violation will now trigger the system in violation to quarterly monitoring. All other triggers (i.e., *E. coli* MCL violation, a Level 2 assessment, a coliform treatment technique violation) continue to move the system to monthly monitoring. This was done to address concerns that too many systems would end up on monthly monitoring and it would be too burdensome for both systems and States. This change did not affect any cost numbers in the EA since the EA does not model non-compliance. See sections III.C.1.b.iv, *Increased monitoring,* and III.C.2.b, *Ground water NCWSs serving ≤ 1,000 people,* of this preamble for a more detailed explanation of this change.

EPA disagrees with any characterization of tracking and enforcement activities as unrelated to public health protection. Tracking and enforcement helps to ensure that systems take their samples, find contamination when it is present, and assess the system and make any necessary corrections improving public health protection. Thus, tracking and enforcement serves an integral role in the protection of public health that RTCR provides.

4. State Burden

a. Monitoring and Level 2 assessments. Some commenters expressed concern that States would ultimately bear the costs of conducting monitoring and Level 2 assessments of PWSs. Other commenters indicated that some States already cover the costs of monitoring and assessment-type activities under the 1989 TCR but would no longer be able to do so under the RTCR because the rule would require them to shift their resources to enforcement activities. EPA notes that while States do have the right to choose to cover the costs of conducting monitoring and assessments, the PWSs themselves are ultimately responsible for completing these activities. Neither the 1989 TCR nor the RTCR requires States to conduct monitoring for PWSs. The RTCR allows Level 2 assessments to be conducted by parties approved by the State, including the PWS where appropriate. EPA believes that there are many third parties that can reliably conduct Level 2 assessments, including certified operators, professional engineers, circuit riders and others. This flexibility should allow the State to assure thorough assessments without requiring the State to use its own resources to conduct them.

b. Underestimation. Some commenters said that EPA underestimated the cost for systems and States to read and understand the rule. Others assert that EPA underestimated the cost for annual administration. In calculating the estimates for systems and States to read and understand the rule, EPA looked to estimates prepared for other recent rulemakings, including the Aircraft Drinking Water Rule (USEPA 2009, 74 FR 53590, October 19, 2009) and the Lead and Copper Rule Short-Term Revisions (USEPA 2007, 72 FR 57782, October 10, 2007). EPA then considered the rule requirements in comparison to the 1989 TCR, given that systems and States are well acquainted with the 1989 rule. The 4-hour figure is a national average, and may vary due to individual system complexity. EPA continues to believe that the estimated number of hours to read and understand the RTCR is logical.

VII. Statutory and Executive Order Review

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action. Accordingly, 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.

EPA estimates that the RTCR will have an overall annual impact on PWSs of $14 M and that the impact on small entities (PWSs serving 10,000 people or fewer) will be $10.0M–$10.3M annualized at three and seven percent discount rates, respectively. These impacts are described in sections VI, *Economic Analysis (Health Risk Reduction and Cost Analysis),* and VII.C, *Regulatory Flexibility Act (RFA),* of this preamble, respectively, and in the analysis that EPA prepared of the potential costs and benefits of this action, contained in the RTCR EA.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them.

The information collected as a result of this rule will allow States/primacy agencies and EPA to determine appropriate requirements for specific systems and evaluate compliance with the proposed RTCR. Burden is defined at 5 CFR 1320.3(b) and means the total time, effort, and financial resources required to generate, maintain, retain, disclose, or provide information to or for a Federal agency. The burden for this final rule includes the time needed to conduct the following State and PWS activities:

State activities:

- Read and understand the rule;
- Mobilize (including primacy application), plan, and implement;
- Train PWS and consultant staff;
- Track compliance;
- Analyze and review PWS data;
- Review sample siting plans and recommend any revisions to PWSs;
- Make determinations concerning PWS monitoring requirements;
- Respond to PWSs that have positive samples;
- Recordkeeping;
- Review completed assessment forms and consult with the PWS about the assessment report;
- Review and coordinate with PWSs to determine optimal corrective actions to be implemented; and
- Provide consultation, review PN certifications, and file reports of violations.

PWS activities:

- Read and understand the rule;
- Planning and mobilization activities;
- Revise existing sample siting plans to identify sampling locations and collection schedules that are representative of water throughout the distribution system;
- Conduct routine, additional routine, and repeat monitoring, and report the results as required;
- Complete a Level 1 assessment if the PWS experiences a Level 1 trigger, and submit a form to the State to identify sanitary defects detected, corrective actions completed, and a timetable for any corrective actions not already completed;
- Complete a Level 2 assessment if the PWS experiences a Level 2 trigger, and submit a form to the State to identify sanitary defects detected, corrective actions completed, and a timetable for any corrective actions not already completed;
- Correct sanitary defects found through the performance of Level 1 or

Level 2 assessments and report on completion of corrective actions as required;

• Develop and distribute Tier 1 public notices when *E. coli* MCL violations occur;

• Develop and distribute Tier 2 public notices when the PWSs fail to take corrective action; and

• Develop and distribute Tier 3 public notices when the PWSs fail to comply with the monitoring requirements or with mandatory reporting of required information within the specified timeframe.

For the first three years after publication of the RTCR in the FR, the major information requirements apply to 154,894 respondents. The total incremental burden associated with the change in moving from the information requirements of the 1989 TCR to those in the RTCR over the three years covered by the ICR is 2,518,578 hours, for an average of 839,526 hours per year. The total incremental cost over the three-year clearance period is $71.3M, for an average of $23.8M per year (simple average over three years). (Note that this is higher than the annualized costs for the RTCR because in the EA, the up-front costs that occur in the first three years, as well as future costs, are annualized over a 25-year time horizon.) The average burden per response (i.e., the amount of time needed for each activity that requires a collection of information) is 5.4 hours; the average cost per response is $153. The collection requirements are mandatory under SDWA section 1445(a)(1). Detail on the calculation of the RTCR's information collection burden and costs can be found in the ICR for the Revised Total Coliform Rule (USEPA 2012c) and chapter 8 of the EA (USEPA 2012a). A summary of the burden and costs of the collection is presented in Exhibit VII–1.

EXHIBIT VII–1—AVERAGE ANNUAL NET CHANGE BURDEN AND COSTS FOR THE RTCR ICR

Respondent type	Annual burden hours	Cost				Annual responses
		Annual labor cost	Annual operation & maintenance (O&M) cost	Annual capital cost	Total annual cost	
PWSs	747,848	$20,171,639			$20,171,639	103,225
States and Territories	91,678	3,595,421			3,595,421	51,669
Total	839,526	23,767,060			23,767,060	154,894

Notes: Detail may not add exactly to total due to independent rounding.
"Annual Burden Hours" reflects an annual average for all system sizes over the 3-year ICR period.
Source: ICR for the Revised Total Coliform Rule (USEPA 2012c).

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 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the FR to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA)

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

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the FR and taking comment. 5 USC 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of the RTCR on small entities, EPA considered small entities to be PWSs serving 10,000 or fewer people. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. As required by the RFA, EPA proposed using this alternative definition in the FR (63 FR 7620, February 13, 1998), requested public comment, consulted with the SBA, and finalized the alternative definition in the Agency's CCR regulation (63 FR 44524, August 19, 1998). As stated in that Final Rule, the alternative definition would be applied for all future drinking water regulations.

After considering the economic impacts of the RTCR on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this rule are small PWSs serving 10,000 or fewer people. These include small CWSs, NTNCWSs, and TNCWSs, entities such as municipal water systems (publicly and privately owned), and privately-owned PWSs and for-profit businesses where provision of water may be ancillary, such as mobile home parks, day care centers, churches, schools and homeowner associations. We have determined that only 61 of 150,672 small systems (0.04%) will experience an impact of more than 1% of revenues, and that none of the small systems will experience an impact of 3% or greater of revenue. This information is described further in chapter 8 of the RTCR EA.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small PWSs. Provisions in the RTCR that result in

reduced costs for many small entities include:

- Reduced routine monitoring for qualifying PWSs serving 1,000 or fewer people.
- Reduced number of repeat samples required for systems serving 1,000 or fewer people.
- Reduced additional routine monitoring for PWSs serving 4,100 or fewer people.
- Reduced PN requirements for all systems, including small systems.

EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to this rule's requirements. For a description of the Small Business Advocacy Review Panel and stakeholder recommendations, please see section VII.C of the preamble to the proposed RTCR, *Regulatory Flexibility Act (RFA).*

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100M or more in any one year. Expenditures associated with compliance, defined as the incremental costs beyond the 1989 TCR, will not surpass $100M in the aggregate in any year. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

The RTCR is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Costs to small entities are generally not significant, as described previously in section VII.C of this preamble, *Regulatory Flexibility Act (RFA),* and are detailed in the RTCR EA. The regulatory requirements of the final RTCR are not unique to small governments, as they apply to all PWSs regardless of size.

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. The net change in cost for State, local, and Tribal governments in the aggregate is estimated to be approximately $0.2M and $0.4M at three percent and seven percent discount rates, respectively. Thus, Executive Order 13132 does not apply to this final rule.

Although section 6 of Executive Order 13132 does not apply to the RTCR, EPA conducted a Federalism Consultation, consistent with Executive Order 13132, in July 2008. The consultation included a stakeholder meeting where EPA requested comments on the impacts of the potential revisions to the 1989 TCR with respect to State, county and local governments. EPA did not receive any comments in response to this consultation. In addition, the advisory committee included representatives of State, local and Tribal governments, and through this process EPA consulted with State, local, and Tribal government representatives to ensure that their views were considered when the AIP recommendations for the proposed RTCR were developed. EPA also included representatives from four states on its workgroup for developing the proposed RTCR.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials. Some States were concerned with the burden of implementing the rule, especially those States that have a high proportion of NCWSs. Under this rule, expenditures for assessments and corrective actions and increased monitoring are targeted to the fraction of PWSs that are most vulnerable to pathways for contamination of the distribution system, thereby minimizing the burden for the majority of PWSs and for States implementing the rule. As described in sections III.E.2, *Assessment,* and III.C.1.b.iv, *Increased monitoring,* of this preamble, EPA is also providing flexibility on how the PWSs and States conduct and track assessments, and by changing the consequence for systems on annual monitoring that have RTCR monitoring violations (i.e., increase to quarterly monitoring instead of monthly monitoring). EPA also has plans to update SDWIS to maximize its efficiency in support of rule implementation. These actions should address many of the State concerns about burden.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). EPA consulted with Tribes throughout the development of the RTCR (as described in this section) and no issues that were particular to Tribal entities were identified.

Although Executive Order 13175 does not apply to this action, EPA consulted with Tribal officials in developing this action. EPA consulted with Tribal governments through the EPA American Indian Environmental Office; included a representative of the Native American Water Association on the advisory committee who helped develop and signed the AIP on recommendations on the proposed rule; and addressed Tribal concerns throughout the regulatory development process, as appropriate. The consultation included participation in three Tribal conference calls (EPA regional Tribal call (February 2008), National Indian Workgroup call (March 2008), and National Tribal Water Conference (March 2008)). EPA requested comments on the 1989 TCR, requested suggestions for 1989 TCR revisions (March 2008), and presented possible revisions to the 1989 TCR to the National Tribal Council (April 2008). In addition, the advisory committee included a representative from the Native American Water Association who represented Tribal entities, and through this process EPA ensured that Tribal views were considered when the AIP recommendations for the proposed RTCR were developed. None of these consultations identified issues that were particular to Tribal entities. EPA also specifically solicited additional comment on the proposed rule from Tribal officials, and no additional issues were identified. As a result of the Tribal consultations and other Tribal outreach, EPA has determined that the RTCR is not anticipated to have a negative impact on Tribal systems. Thus, Executive Order 13175 does not apply to this action.

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

The RTCR is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments regarding children are contained in section VI.K.1 of this preamble, *Risk to children, pregnant women, and the elderly,* and in the RTCR EA. EPA expects that the RTCR would provide additional protection to

both children and adults who consume drinking water supplied from PWSs. EPA also believes the benefits of this rule, including reduced health risk, accrue more to children because young children are more susceptible than adults to some waterborne illnesses. For example, the risk of mortality resulting from diarrhea is often greatest in the very young and elderly (Rose 1997; Gerba *et al.* 1996), and viral and bacterial illnesses often disproportionately affect children. Any overall benefits of the rule would reduce this mortality risk for 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 (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. Additionally, none of the requirements of this rule involve the installation of treatment or other components that use a measurable amount of energy.

I. National Technology Transfer and Advancement Act

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

This rule involves technical voluntary consensus standards. As in the 1989 TCR, under the provisions of the RTCR water systems are required to use several analytical methods to monitor for total coliforms and/or *E. coli* as they are described in *Standard Methods for the Examination of Water and Wastewater,* 20th and 21st editions (Clesceri *et al.* 1998; Eaton *et al.* 2005). Methods included in *Standard Methods* are voluntary consensus standards. The 1989 TCR and RTCR include the same 11 methods that can be used to test for total coliforms. Four of the 11 are voluntary consensus methods described in *Standard Methods.*

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

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The RTCR applies uniformly to all PWSs and consequently provides health protection equally to all income and minority groups served by PWSs. The RTCR and other drinking water regulations are expected to have a positive effect on human health regardless of the social or economic status of a specific population. To the extent that contaminants in drinking water might be disproportionately high among minority or low-income populations (which is unknown), the RTCR contributes toward removing those differences by assuring that all public water systems meet drinking water standards and take appropriate corrective action whenever appropriate. Thus, the RTCR meets the intent of the Federal policy requiring incorporation of environmental justice into Federal agency missions.

K. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412(d) and (e) of the SDWA, EPA consulted with the SAB, the NDWAC, and the Secretary of the US Department of Health and Human Services on the RTCR.

EPA met with the Drinking Water Committee (DWC) of the SAB to discuss the proposed RTCR on May 20, 2009 (teleconference) and June 9 and 10, 2009 (Washington, DC). The SAB DWC review focused on (1) the data sources used to estimate baseline total coliform and *E. coli* occurrence, public water system profile, and sensitive subpopulations in the US; (2) the occurrence analysis used to inform the benefits analysis; (3) the qualitative analysis used to assess the reduction in risk due to implementation of the rule requirements; and (4) analysis of the engineering costs and costs to States resulting from implementation of the revisions.

Overall, the SAB DWC supported EPA's analysis. SAB members commended EPA for making use of the best available data to assess the impacts of the proposed rule. The SAB DWC supported the decision by EPA not to quantify public health benefits, acknowledging that EPA had insufficient data to do so. However, they noted in their analysis of the EA that they are not generally supportive of decreased monitoring, and that overall, the Alternative option appears to address and protect public health sooner in time than the AIP proposed implementation. The SAB DWC recommended that EPA clarify rationales for assumptions; expand explanations of sensitivity analyses that were included; provide further justification in those areas in which sensitivity analyses were not conducted; and collect data after promulgation of the rule to allow EPA to better understand the public health impacts of the RTCR.

In response to the SAB DWC recommendations, EPA conducted sensitivity analyses to explore a wider range of assumptions regarding the percentage of assessments leading to corrective actions and to demonstrate that using an annual average for occurrence provided results comparable to varying the occurrence based on the season. EPA also added an exhibit in the EA that summarizes all significant model parameters and assumptions, their influence on variability and uncertainty, and their most likely effect on benefits or costs. The added exhibits and expanded and clarified text can be found in the RTCR EA. A copy of the SAB report (SAB 2010) is available in the docket for this rule.

EPA consulted with NDWAC on May 28, 2009, in Seattle, Washington, to discuss the proposed RTCR. NDWAC members expressed concern that a rule based on the AIP sounds complicated and recommended that EPA provide the utilities and States with tools to help them understand the revised rule provisions and to assist with providing public education. In response to

NDWAC's concern, EPA requested comment on whether the proposed RTCR would result in requirements that would be easier to implement compared to the 1989 TCR.

EPA heard from commenters that the RTCR will be difficult to implement in States that have a lot of small NCWSs, especially the reduced and increased monitoring provisions. To address this concern, EPA provided flexibility to States to help them implement, and to PWSs to help them comply, with the monitoring provisions of the RTCR. States are given the flexibility to not count monitoring violations towards eligibility for a TNCWS to remain on quarterly monitoring or to return to quarterly monitoring as long as the system collects the make-up sample by the end of the next monitoring period. EPA also changed the consequence of having one RTCR monitoring violation for systems on annual monitoring. Instead of having to go to monthly monitoring, the system now moves to quarterly monitoring. See section III.C.2.b of this preamble, *Ground water NCWSs serving ≤ 1,000 people,* for more details.

NDWAC members also suggested that EPA request comment on the costs and benefits of reduced monitoring. Specifically, NDWAC expressed concern that a reduction in the number of certain samples taken (such as the reduction in the number of repeat and additional routine samples for some small systems) could lessen the opportunity for systems to identify violations. Thus, EPA requested comment on the cost and benefit of reduced monitoring.

EPA received comment that expressed concern that a reduction in the number of additional routine samples reduces the likelihood of detecting both total coliforms and *E. coli.* EPA and the advisory committee recognized that a reduction in the number of samples taken could also mean a reduction in the number of positive samples found. However, EPA and the advisory committee concluded that the new assessment and corrective action provisions of the RTCR lead to a rule that is more protective of public health and to improvement in water quality despite the reductions in the number of samples taken. See section III.C.2.b of this preamble, *Ground water NCWSs serving ≤ 1,000 people,* for more details.

A few NDWAC members stated that they would like to provide EPA with additional advice on PN. To follow up on this request, EPA met with several NDWAC members on July 1, 2009, to review and discuss the 1989 TCR PN requirements, the advisory committee's recommendations on revisions to the PN requirements, and to obtain feedback from NDWAC members. EPA considered the recommendations from NDWAC in developing the PN requirements and requested comment on these issues in the preamble to the proposed RTCR.

EPA consulted with NDWAC again on July 21, 2011, to discuss the draft final rule and comments received on the proposed RTCR, specifically regarding those areas where NDWAC made recommendations in the March and July 2009 consultations. The NDWAC members recommended that in finalizing the RTCR, EPA follow the recommendations of the TCRDSAC.

EPA completed its consultations with the US Department of Health and Human Services on October 5, 2009, and August 8, 2011, as required by SDWA section 1412(d). EPA provided an informational briefing to the Center for Food Safety office of the Food and Drug Administration and representatives from the Office of the Assistant Secretary for Health and the Assistant Secretary for Planning and Evaluation at the Department of Health and Human Services. No substantive comments were received as a result of the briefing and consultation.

L. Considerations of Impacts on Sensitive Subpopulations as Required by Section 1412(b)(3)(C)(i)(V) of the 1996 Amendments of SDWA

As required by Section 1412(b)(3)(C)(i)(V) of the SDWA, EPA sought public comment regarding the effects of contamination associated with the proposed RTCR on the general population and sensitive subpopulations. Sensitive subpopulations include ''infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population'' (SDWA section 1412(b)(3)(C)(i)(V), 42 U.S.C. 300g–1(b)(3)(C)(i)(V)).

Pregnant and lactating women may be at an increased risk from pathogens as well as act as a source of infection for newborns. Infection during pregnancy may also result in the transmission of infection from the mother to the child *in utero,* during birth, or shortly thereafter. Since very young children do not have fully developed immune systems, they are at increased risk and are particularly difficult to treat.

Infectious diseases are also a major problem for the elderly because immune function declines with age. As a result, outbreaks of waterborne diseases can be devastating on the elderly community (e.g., nursing homes) and may increase the possibility of significantly higher mortality rates in the elderly than in the general population.

Immunocompromised individuals are a growing proportion of the population with the continued increase in Human Immunodeficiency Virus/AIDS, the aging population, and the escalation in organ and tissue transplantations. Immunocompromised individuals are more susceptible to severe and invasive infection. These infections are particularly difficult to treat and can result in a significantly higher mortality than in immunocompetent persons.

It is anticipated that the requirements of the RTCR will help reduce pathways of entry for fecal contamination and/or waterborne pathogens into the distribution system, thereby reducing exposure and risk from these contaminants in drinking water to the entire general population. The RTCR seeks to provide a similar level of drinking water protection to all groups including sensitive subpopulations, thus meeting the intent of this Federal policy. See also section VI.K of this preamble, *Effects of Fecal Contamination and/or Waterborne Pathogens on the General Population and Sensitive Subpopulations,* for a more detailed discussion of this topic.

M. Effect of Compliance With the RTCR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA, as amended, requires that, in promulgating an NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, managerial, and financial (TMF) capacity of PWSs. The following analysis fulfills this statutory obligation by identifying the incremental impact that the RTCR will have on the TMF capacity of regulated water systems. Analyses presented in this document reflect only the impact of new or revised requirements, as established by the RTCR; the impacts of previously established requirements on system capacity are not considered.

EPA has defined overall water system capacity as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity encompasses three components: technical, managerial, and financial. Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. This refers to the physical infrastructure of the water system,

including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements. Technical, managerial, and financial capacity can be assessed through key issues and questions, including the following:

Technical Capacity	
Source water adequacy	Does the system have a reliable source of water with adequate quantity? Is the source generally of good quality and adequately protected?
Infrastructure adequacy	Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including wells or source water intakes, treatment and storage facilities, and distribution systems? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
Technical knowledge and implementation	Are the system's operators certified? Do the operators have sufficient knowledge of applicable standards? Can the operators effectively implement this technical knowledge? Do the operators understand the system's technical and operational characteristics? Does the system have an effective O&M program?
Managerial Capacity	
Ownership accountability	Are the owners clearly identified? Can they be held accountable for the system?
Staffing and organization	Are the operators and managers clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations (i.e., to conduct implementation, monitor for *E. coli*)? Do personnel have the necessary licenses and certifications?
Effective external linkages	Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?
Financial Capacity	
Revenue sufficiency	Do revenues cover costs?
Creditworthiness	Is the system financially healthy? Does it have access to capital through public or private sources?
Fiscal management and controls	Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

EPA looked at the major requirements of the RTCR that may affect the TMF capacity of PWSs. These requirements include: sample siting plan revision, monitoring, assessments, corrective actions, and PNs. Another factor that may affect the TMF capacity is the need for PWS personnel to familiarize themselves with the RTCR requirements. EPA developed a scoring system to analyze the impact of complying with these requirements on the TMF capacity of PWSs. A detailed discussion of EPA's analysis is presented in chapter 8.14 of the RTCR EA (USEPA 2012a).

The RTCR will apply to all PWSs and may affect 51,972 CWSs, 18,729 NTNCWSs, and 84,136 TNCWSs—154,837 systems in all. While some systems may require increased TMF capacity to comply with the new RTCR requirements, or will need to tailor their compliance approaches to match their capacities, most systems will not.

Small systems will likely face only a small challenge to their technical and managerial capacity as a result of efforts to familiarize themselves with the monitoring requirements of the RTCR. Routine and repeat monitoring requirements under the RTCR are essentially the same as under the 1989 TCR, with more explicit criteria to qualify for reduced monitoring. Therefore, understanding the RTCR monitoring requirements is not expected to pose many new technical or managerial capacity issues for small systems.

Small system technical and managerial capacity may be affected by the assessment requirements of the RTCR. Performing assessments may require the system to increase staffing levels in addition to providing training to ensure that system staff understand how those assessments are to be performed. Reporting, record-keeping, and data administration requirements will also affect the managerial capacity of small systems.

Small systems that are required to take corrective action are expected to experience the most significant financial challenge since some corrective actions may consist of a large, one-time capital expenditure to resolve the problem.

Large systems will likely not face any significant challenge to their technical and managerial capacity as a result of efforts to familiarize themselves with the RTCR. Most large systems are familiar with the 1989 TCR and there are no changes in the basic monitoring requirements for large systems under the RTCR. They are therefore assumed to already have the TMF capacity in place for the RTCR.

Only large systems performing assessments and corrective actions would be expected to face a significant challenge meeting the TMF capacity requirements. However, this requirement is only necessary when monitoring reveals potential problems, and this is not expected to occur significantly in large systems above that experienced under the 1989 TCR. Many large systems already have the TMF capacity to conduct assessments and

corrective actions if they are needed. These systems will be affected less significantly than smaller systems that have to implement corrective actions because it is recognized that they are typically already implementing similar assessments and corrective actions when a routine monitoring sample tests positive for fecal indicators under the 1989 TCR.

N. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the US. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the US prior to publication of the rule in the FR. A Major rule cannot take effect until 60 days after it is published in the FR. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 15, 2013.

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indian-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 20, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, Title 40 chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Section 141.2 is amended by adding, in alphabetical order, definitions for ''Clean compliance history'', ''Level 1 assessment'', ''Level 2 assessment'', ''Sanitary defect'', and ''Seasonal system'' to read as follows:

§ 141.2 Definitions.

* * * * *

Clean compliance history is, for the purposes of subpart Y, a record of no MCL violations under § 141.63; no monitoring violations under § 141.21 or subpart Y; and no coliform treatment technique trigger exceedances or treatment technique violations under subpart Y.

* * * * *

Level 1 assessment is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

Level 2 assessment is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the State, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the State in the case of an *E. coli* MCL violation.

* * * * *

Sanitary defect is a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.

* * * * *

Seasonal system is a non-community water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season.

* * * * *

■ 3. Section 141.4 is revised to read as follows:

§ 141.4 Variances and exemptions.

(a) Variances or exemptions from certain provisions of these regulations may be granted pursuant to sections 1415 and 1416 of the Act and subpart K of part 142 of this chapter (for small system variances) by the entity with primary enforcement responsibility, except that variances or exemptions from the MCLs for total coliforms and *E. coli* and variances from any of the treatment technique requirements of subpart H of this part may not be granted.

(b) EPA has stayed the effective date of this section relating to the total coliform MCL of § 141.63(a) for systems that demonstrate to the State that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This is stayed until March 31, 2016, at which time the total coliform MCL is no longer effective.

Note to paragraph (a): As provided in § 142.304(a), small system variances are not available for rules addressing microbial contaminants, which would

include subparts H, P, S, T, W, and Y of this part.

■ 4. Section 141.21 is amended by adding paragraph (h) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(h) The provisions of paragraphs (a) and (d) of this section are applicable until March 31, 2016. The provisions of paragraphs (b), (c), (e), (f), and (g) of this section are applicable until all required repeat monitoring under paragraph (b) of this section and fecal coliform or *E. coli* testing under paragraph (e) of this section that was initiated by a total coliform-positive sample taken before April 1, 2016 is completed, as well as analytical method, reporting, recordkeeping, public notification, and consumer confidence report requirements associated with that monitoring and testing. Beginning April 1, 2016, the provisions of subpart Y of this part are applicable, with systems required to begin regular monitoring at the same frequency as the system-specific frequency required on March 31, 2016.

■ 5. Section 141.52 is revised to read as follows:

§ 141.52 Maximum contaminant level goals for microbiological contaminants.

(a) MCLGs for the following contaminants are as indicated:

Contaminant	MCLG
(1) *Giardia lamblia*	zero
(2) Viruses	zero
(3) *Legionella*	zero
(4) Total coliforms (including fecal) coliforms and *Escherichia coli*.	zero
(5) *Cryptosporidium*	zero
(6) *Escherichia coli (E. coli)*	zero

(b) The MCLG identified in paragraph (a)(4) of this section is applicable until March 31, 2016. The MCLG identified in paragraph (a)(6) of this section is applicable beginning April 1, 2016.

■ 6. Section 141.63 is revised to read as follows:

§ 141.63 Maximum contaminant levels (MCLs) for microbiological contaminants.

(a) Until March 31, 2016, the total coliform MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(1) For a system that collects at least 40 samples per month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) For a system that collects fewer than 40 samples per month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) Until March 31, 2016, any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample, constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in subpart Q of this part, this is a violation that may pose an acute risk to health.

(c) Beginning April 1, 2016, a system is in compliance with the MCL for *E. coli* for samples taken under the provisions of subpart Y of this part unless any of the conditions identified in paragraphs (c)(1) through (c)(4) of this section occur. For purposes of the public notification requirements in subpart Q of this part, violation of the MCL may pose an acute risk to health.

(1) The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(2) The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(3) The system fails to take all required repeat samples following an *E. coli*-positive routine sample.

(4) The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(d) Until March 31, 2016, a public water system must determine compliance with the MCL for total coliforms in paragraphs (a) and (b) of this section for each month in which it is required to monitor for total coliforms. Beginning April 1, 2016, a public water system must determine compliance with the MCL for *E. coli* in paragraph (c) of this section for each month in which it is required to monitor for total coliforms.

(e) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in paragraphs (a) and (b) of this section and for achieving compliance with the maximum contaminant level for *E. coli* in paragraph (c) of this section:

(1) Protection of wells from fecal contamination by appropriate placement and construction;

(2) Maintenance of a disinfectant residual throughout the distribution system;

(3) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, cross connection control, and continual maintenance of positive water pressure in all parts of the distribution system;

(4) Filtration and/or disinfection of surface water, as described in subparts H, P, T, and W of this part, or disinfection of ground water, as described in subpart S of this part, using strong oxidants such as chlorine, chlorine dioxide, or ozone; and

(5) For systems using ground water, compliance with the requirements of an EPA-approved State Wellhead Protection Program developed and implemented under section 1428 of the SDWA.

(f) The Administrator, pursuant to section 1412 of the Act, hereby identifies the technology, treatment techniques, or other means available identified in paragraph (e) of this section as affordable technology, treatment techniques, or other means available to systems serving 10,000 or fewer people for achieving compliance with the maximum contaminant level for total coliforms in paragraphs (a) and (b) of this section and for achieving compliance with the maximum contaminant level for *E. coli* in paragraph (c) of this section.

■ 7. Section 141.71 is amended by revising paragraph (b)(5) to read as follows:

§ 141.71 Criteria for avoiding filtration.

* * * * *

(b) * * *

(5) The public water system must comply with the maximum contaminant level (MCL) for total coliforms in § 141.63(a) and (b) and the MCL for *E. coli* in § 141.63(c) at least 11 months of the 12 previous months that the system served water to the public, on an ongoing basis, unless the State determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

* * * * *

■ 8. Section 141.74 is amended by revising paragraphs (b)(6)(i) and (c)(3)(i) to read as follows:

§ 141.74 Analytical and monitoring requirements.

* * * * *

(b) * * *

(6)(i) Until March 31, 2016, the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21.

Beginning April 1, 2016, the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in §§ 141.854 through 141.858. The State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(1) of this section, may be measured in lieu of residual disinfectant concentration.

* * * * *

(c) * * *

(3)(i) Until March 31, 2016, the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21. Beginning April 1, 2016, the residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in §§ 141.854 through 141.858. The State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(1) of this section, may be measured in lieu of residual disinfectant concentration.

* * * * *

■ 9. Section 141.132 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 141.132 Monitoring requirements.

* * * * *

(c) * * *

(1) * * *

(i) *Routine monitoring.* Until March 31, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21. Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in §§ 141.854 through 141.858. Subpart H systems of this part may use the results of residual disinfectant concentration sampling conducted under § 141.74(b)(6)(i) for unfiltered systems or § 141.74(c)(3)(i) for systems which filter, in lieu of taking separate samples.

* * * * *

■ 10. Section 141.153 is amended as follows:

■ a. By adding paragraphs (c)(4),

■ b. By revising paragraph (d)(4)(iv) introductory text,

■ c. By revising paragraph (d)(4)(vii) introductory text,

■ d. By revising paragraph (d)(4)(viii),

■ e. By adding paragraph (d)(4)(x), and

■ f. By adding paragraph (h)(7).

§ 141.153 Content of the reports.

* * * * *

(c) * * *

(4) A report that contains information regarding a Level 1 or Level 2 Assessment required under Subpart Y of this part must include the applicable definitions:

(i) *Level 1 Assessment:* A Level 1 assessment is a study of the water system to identify potential problems and determine (if possible) why total coliform bacteria have been found in our water system.

(ii) *Level 2 Assessment:* A Level 2 assessment is a very detailed study of the water system to identify potential problems and determine (if possible) why an *E. coli* MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

(d) * * *

(4) * * *

(iv) For contaminants subject to an MCL, except turbidity, total coliform, fecal coliform and *E. coli,* the highest contaminant level used to determine compliance with an NPDWR and the range of detected levels, as follows:

* * * * *

(vii) For total coliform analytical results until March 31, 2016:

* * * * *

(viii) For fecal coliform and *E. coli* until March 31, 2016: The total number of positive samples;

* * * * *

(x) For *E. coli* analytical results under subpart Y: The total number of positive samples.

* * * * *

(h) * * *

(7) *Systems required to comply with subpart Y.* (i) Any system required to comply with the Level 1 assessment requirement or a Level 2 assessment requirement that is not due to an *E. coli* MCL violation must include in the report the text found in paragraph (h)(7)(i)(A) and paragraphs (h)(7)(i)(B) and (C) of this section as appropriate, filling in the blanks accordingly and the text found in paragraphs (h)(7)(i)(D)(1) and (2) of this section if appropriate.

(A) Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.

(B) During the past year we were required to conduct [INSERT NUMBER OF LEVEL 1ASSESSMENTS] Level 1 assessment(s). [INSERT NUMBER OF LEVEL 1 ASSESSMENTS] Level 1 assessment(s) were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(C) During the past year [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were required to be completed for our water system. [INSERT NUMBER OF LEVEL 2 ASSESSMENTS] Level 2 assessments were completed. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(D) Any system that has failed to complete all the required assessments or correct all identified sanitary defects, is in violation of the treatment technique requirement and must also include one or both of the following statements, as appropriate:

(*1*) During the past year we failed to conduct all of the required assessment(s).

(*2*) During the past year we failed to correct all identified defects that were found during the assessment.

(ii) Any system required to conduct a Level 2 assessment due to an *E. coli* MCL violation must include in the report the text found in paragraphs (h)(7)(ii)(A) and (B) of this section, filling in the blanks accordingly and the text found in paragraphs (h)(7)(ii)(C)(1) and (2) of this section, if appropriate.

(A) *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.

(B) We were required to complete a Level 2 assessment because we found *E. coli* in our water system. In addition, we were required to take [INSERT NUMBER OF CORRECTIVE ACTIONS] corrective actions and we completed [INSERT NUMBER OF CORRECTIVE ACTIONS] of these actions.

(C) Any system that has failed to complete the required assessment or correct all identified sanitary defects, is in violation of the treatment technique requirement and must also include one or both of the following statements, as appropriate:

(*1*) We failed to conduct the required assessment.

(*2*) We failed to correct all sanitary defects that were identified during the assessment that we conducted.

(iii) If a system detects *E. coli* and has violated the *E. coli MCL,* in addition to completing the table as required in paragraph (d)(4) of this section, the system must include one or more of the following statements to describe any noncompliance, as applicable:

(A) We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(B) We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(C) We failed to take all required repeat samples following an *E. coli*-positive routine sample.

(D) We failed to test for *E. coli* when any repeat sample tests positive for total coliform.

(iv) If a system detects *E. coli* and has not violated the *E. coli MCL,* in addition to completing the table as required in paragraph (d)(4) of this section, the system may include a statement that explains that although they have detected *E. coli,* they are not in violation of the *E. coli* MCL.

■ 11. Appendix A to Subpart O of Part 141 is amended as follows:

■ a. By revising the entries for ''Total Coliform Bacteria'' and ''Fecal Coliform and *E. coli,''*

■ b. By adding a second entry for ''Total Coliform Bacteria,''

■ c. By adding as a fourth entry ''*E. coli,''* and

■ d. By adding two endnotes before Endnote 1.

APPENDIX A TO SUBPART O OF PART 141—REGULATED CONTAMINANTS

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Microbiological contaminants:						
Total Coliform Bacteria †.	MCL (systems that collect ≥40 samples/month) 5% of monthly samples are positive; (systems that collect <40 samples/month) 1 positive monthly sample.	.....	MCL (systems that collect ≥40 samples/month) 5% of monthly samples are positive; (systems that collect <40 samples/month) 1 positive monthly sample..	0	Naturally present in the environment.	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Total Coliform Bacteria ‡.	TT	.....	TT	N/A	Naturally present in the environment.	Use language found in § 141.153(h)(7)(i)(A)
Fecal coliform and *E. coli* †.	0	.....	0	0	Human and animal fecal waste.	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

APPENDIX A TO SUBPART O OF PART 141—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
E. coli ‡	Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails to analyze total coliform-positive repeat sample for *E. coli*.	.....	Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails to analyze total coliform-positive repeat sample for *E. coli*.	0	Human and animal fecal waste.	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely-compromised immune systems.
*	*	*	*	*	*	*

† Until March 31, 2016.
‡ Beginning April 1, 2016.

* * * * *

■ 12. Section 141.202(a), Table 1, is amended by adding one sentence at the end of entry one (1) to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

* * * * *

TABLE 1 TO § 141.202—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

(1) * * * Violation of the MCL for *E. coli* (as specified in § 141.63(c));						
*	*	*	*	*	*	*

■ 13. Section 141.203(b)(2) is revised to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

* * * * *

(b) * * *

(2) The public water system must repeat the notice every three months as long as the violation or situation persists, unless the primacy agency determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the primacy agency to allow less frequent repeat notice for an MCL or treatment technique violation under the Total Coliform Rule or subpart Y of this part or a treatment technique violation under the Surface Water Treatment Rule or Interim Enhanced Surface Water Treatment Rule. It is also not appropriate for the primacy agency to allow through its rules or policies across-the-board reductions in the repeat notice frequency for other ongoing violations requiring a Tier 2 repeat notice. Primacy agency determinations allowing repeat notices to be given less frequently than once every three months must be in writing.

* * * * *

■ 14. Section 141.204(a), Table 1, is amended by revising entries (4) and (5) and adding entry (6) to read as follows:

§ 141.204 Tier 3 Public Notice—Form, manner, frequency of notice.

(a) * * *

TABLE 1 TO § 141.204—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 3 PUBLIC NOTICE

*	*	*	*	*	*	*
(4) Availability of unregulated contaminant monitoring results, as required under § 141.207;						
(5) Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under § 141.208; and						
(6) Reporting and Recordkeeping violations under subpart Y of 40 CFR part 141.						

* * * * *

■ 15. Appendix A to subpart Q of Part 141 is amended as follows:

■ a. By revising entries I.A.1 and I.A.2,

■ b. By adding two endnotes before Endnote 1, and

■ c. By revising Endnote 1.

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring, testing & reporting procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR): [3].				
A. Microbiological Contaminants.				
1.a Total coliform bacteria †	2	141.63(a)	3	141.21(a)–(e)
1.b Total coliform (Monitoring or TT violations resulting from failure to perform assessments or corrective actions) ‡	2	141.860(b)	3	141.860(c)
1.c Seasonal system failure to follow State-approved start-up plan prior to serving water to the public. ‡	2	141.860(b)(2)		
2.a Fecal coliform/*E. coli* †	1	141.63(b)	[4] 1,3	141.21(e)
2.b *E. coli* ‡	1	141.860 (a)	3	141.860(c) 141.860(d)(2)
2.c *E.coli* (TT violations resulting from failure to perform level 2 Assessments or corrective action) ‡	2	141.860(b)		
* * *	*	*	*	*

Appendix A—Endnotes

† Until March 31, 2016.

‡ Beginning April 1, 2016.

1. Violations and other situations not listed in this table (e.g., failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique

3. The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

4. Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.

* * * * *

■ 16. Appendix B to subpart Q of Part 141 is amended as follows:

■ a. By revising entries 1a and 1b,

■ b. By adding entries 1e, 1f, 1g and 1h, and

■ c. By adding two endnotes before Endnote 1.

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG[1]mg/L	MCL[2]mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR)			
A. Microbiological Contaminants			
1a. Total coliform †	Zero	See footnote [3]	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal coliform/*E. coli* †	Zero	Zero	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

Contaminant	MCLG[1]mg/L	MCL[2]mg/L	Standard health effects language for public notification
*	* *	*	* * *
1e. Subpart Y Coliform Assessment and/or Corrective Action Violations ‡.	N/A	TT	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessments to identify problems and to correct any problems that are found. [THE SYSTEM MUST USE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment(s).
1f. Subpart Y *E.coli* Assessment and/or Corrective Action Violations ‡.	N/A	TT	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We violated the standard for *E. coli,* indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct a detailed assessment to identify problems and to correct any problems that are found. [THE SYSTEM MUST USE THE FOLLOWING APPLICABLE SENTENCES.] We failed to conduct the required assessment. We failed to correct all identified sanitary defects that were found during the assessment that we conducted.
1g. *E. coli* ‡	Zero	In compliance unless one of the following conditions occurs:. (1) The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.. (2) The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.. (3) The system fails to take all required repeat samples following an *E. coli*-positive routine sample.. (4) The system fails to test for *E. coli* when any repeat sample tests positive for total coliform..	*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems.
1h. Subpart Y Seasonal System TT Violations ‡.	N/A	TT	When this violation includes the failure to monitor for total coliforms or *E. coli* prior to serving water to the public, the mandatory language found at 141.205(d)(2) must be used. When this violation includes failure to complete other actions, the appropriate elements found in 141.205(a) to describe the violation must be used.
*	* *	*	* * *

Appendix B—Endnotes

† Until March 31, 2016.
‡ Beginning April 1, 2016.
1. MCLG—Maximum contaminant level goal
2. MCL—Maximum contaminant level
3. For water systems analyzing at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. For systems analyzing fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.

* * * * *

■ 17. Section 141.402 is amended by revising paragraph (a) to read as follows:

§ 141.402 Ground water source microbial monitoring and analytical methods.

(a) *Triggered source water monitoring—*

(1) *General requirements.* A ground water system must conduct triggered source water monitoring if the conditions identified in paragraphs (a)(1)(i) and either (a)(1)(ii) or (a)(1)(iii) of this section exist.

(i) The system does not provide at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log virus inactivation and removal) before or at the first customer for each ground water source; and either

(ii) The system is notified that a sample collected under § 141.21(a) is total coliform-positive and the sample is not invalidated under § 141.21(c) until March 31, 2016, or

(iii) The system is notified that a sample collected under §§ 141.854 through 141.857 is total coliform-positive and the sample is not invalidated under § 141.853(c) beginning April 1, 2016.

(2) *Sampling requirements.* A ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under § 141.21(a) until March 31, 2016, or collected under §§ 141.854 through 141.857 beginning April 1, 2016, except as provided in paragraph (a)(2)(ii) of this section.

(i) The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the State must specify how much time the system has to collect the sample.

(ii) If approved by the State, systems with more than one ground water source may meet the requirements of this paragraph (a)(2) by sampling a representative ground water source or sources. If directed by the State, systems must submit for State approval a triggered source water monitoring plan that identifies one or more ground water sources that are representative of each monitoring site in the system's sample siting plan under § 141.21(a) until March 31, 2016, or under § 141.853 beginning April 1, 2016, and that the system intends to use for representative sampling under this paragraph.

(iii) Until March 31, 2016, a ground water system serving 1,000 or fewer people may use a repeat sample collected from a ground water source to meet both the requirements of § 141.21(b) and to satisfy the monitoring requirements of paragraph (a)(2) of this section for that ground water source only if the State approves the use of *E. coli* as a fecal indicator for source water monitoring under this paragraph (a). If the repeat sample collected from the ground water source is *E. coli*-positive, the system must comply with paragraph (a)(3) of this section.

(iv) Beginning April 1, 2016, a ground water system serving 1,000 or fewer people may use a repeat sample collected from a ground water source to meet both the requirements of subpart Y and to satisfy the monitoring requirements of paragraph (a)(2) of this section for that ground water source only if the State approves the use of *E. coli* as a fecal indicator for source water monitoring under this paragraph (a) and approves the use of a single sample for meeting both the triggered source water monitoring requirements in this paragraph (a) and the repeat monitoring requirements in § 141.858. If the repeat sample collected from the ground water source is *E. coli*- positive, the system must comply with paragraph (a)(3) of this section.

(3) *Additional requirements.* If the State does not require corrective action under § 141.403(a)(2) for a fecal indicator-positive source water sample collected under paragraph (a)(2) of this section that is not invalidated under paragraph (d) of this section, the system must collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

(4) *Consecutive and wholesale systems.* (i) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample collected under § 141.21(a) until March 31, 2016, or under §§ 141.854 through 141.857 beginning April 1, 2016, must notify the wholesale system(s) within 24 hours of being notified of the total coliform-positive sample.

(ii) In addition to the other requirements of this paragraph (a), a wholesale ground water system must comply with paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B) of this section.

(A) A wholesale ground water system that receives notice from a consecutive system it serves that a sample collected under § 141.21(a) until March 31, 2016, or collected under §§ 141.854 through 141.857 beginning April 1, 2016, is total coliform-positive must, within 24 hours of being notified, collect a sample from its ground water source(s) under paragraph (a)(2) of this section and analyze it for a fecal indicator under paragraph (c) of this section.

(B) If the sample collected under paragraph (a)(4)(ii)(A) of this section is fecal indicator-positive, the wholesale ground water system must notify all consecutive systems served by that ground water source of the fecal indicator source water positive within 24 hours of being notified of the ground water source sample monitoring result and must meet the requirements of paragraph (a)(3) of this section.

(5) *Exceptions to the triggered source water monitoring requirements.* A ground water system is not required to comply with the source water monitoring requirements of paragraph (a) of this section if either of the following conditions exists:

(i) The State determines, and documents in writing, that the total coliform-positive sample collected under § 141.21(a) until March 31, 2016, or under §§ 141.854 through 141.857 beginning April 1, 2016, is caused by a distribution system deficiency; or

(ii) The total coliform-positive sample collected under § 141.21(a) until March 31, 2016, or under §§ 141.854 through 141.857 beginning April 1, 2016, is collected at a location that meets State criteria for distribution system conditions that will cause total coliform-positive samples.

* * * * *

■ 18. Section 141.405 is amended by revising paragraph (b)(4) to read as follows:

§ 141.405 Reporting and recordkeeping for ground water systems.

* * * * *

(b) * * *

(4) For consecutive systems, documentation of notification to the wholesale system(s) of total coliform-positive samples that are not invalidated under § 141.21(c) until March 31, 2016, or under § 141.853 beginning April 1,

2016. Documentation shall be kept for a period of not less than five years.

* * * * *

■ 19. Section 141.803 is amended by revising paragraphs (a)(3) and (a)(5) to read as follows:

§ 141.803 Coliform sampling.

(a) * * *

(3) Air carriers must conduct analyses for total coliform and *E. coli* in accordance with the analytical methods approved in § 141.21(f)(3) and 141.21(f)(6)) until March 31, 2016, and in accordance with the analytical methods approved in § 141.852 beginning April 1, 2016.

* * * * *

(5) The invalidation of a total coliform sample result can be made only by the Administrator in accordance with § 141.21(c)(1)(i), (ii), or (iii) or by the certified laboratory in accordance with § 141.21(c)(2) until March 31, 2016, or in accordance with § 141.853(c) beginning April 1, 2016, with the Administrator acting as the State.

* * * * *

■ 20. Part 141 is amended by adding a new subpart Y to read as follows:

Subpart Y—Revised Total Coliform Rule

Sec.
141.851 General.
141.852 Analytical methods and laboratory certification.
141.853 General monitoring requirements for all public water systems.
141.854 Routine monitoring requirements for non-community water systems serving 1,000 or fewer people using only ground water.
141.855 Routine monitoring requirements for community water systems serving 1,000 or fewer people using only ground water.
141.856 Routine monitoring requirements for subpart H public water systems of this part serving 1,000 or fewer people.
141.857 Routine monitoring requirements for public water systems serving more than 1,000 people.
141.858 Repeat monitoring and *E. coli* requirements.
141.859 Coliform treatment technique triggers and assessment requirements for protection against potential fecal contamination.
141.860 Violations.
141.861 Reporting and recordkeeping.

Subpart Y—Revised Total Coliform Rule

§ 141.851 General.

(a) *General.* The provisions of this subpart include both maximum contaminant level and treatment technique requirements.

(b) *Applicability.* The provisions of this subpart apply to all public water systems.

(c) *Compliance date.* Systems must comply with the provisions of this subpart beginning April 1, 2016, unless otherwise specified in this subpart.

(d) *Implementation with EPA as State.* Systems falling under direct oversight of EPA, where EPA acts as the State, must comply with decisions made by EPA for implementation of subpart Y. EPA has authority to establish such procedures and criteria as are necessary to implement subpart Y.

(e) *Violations of national primary drinking water regulations.* Failure to comply with the applicable requirements of §§ 141.851 through 141.861, including requirements established by the State pursuant to these provisions, is a violation of the national primary drinking water regulations under subpart Y.

§ 141.852 Analytical methods and laboratory certification.

(a) *Analytical methodology.* (1) The standard sample volume required for analysis, regardless of analytical method used, is 100 ml.

(2) Systems need only determine the presence or absence of total coliforms and *E. coli;* a determination of density is not required.

(3) The time from sample collection to initiation of test medium incubation may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 deg. C during transit.

(4) If water having residual chlorine (measured as free, combined, or total chlorine) is to be analyzed, sufficient sodium thiosulfate ($Na_2S_2O_3$) must be added to the sample bottle before sterilization to neutralize any residual chlorine in the water sample. Dechlorination procedures are addressed in Section 9060A.2 of *Standard Methods for the Examination of Water and Wastewater* (20th and 21st editions).

(5) Systems must conduct total coliform and *E. coli* analyses in accordance with one of the analytical methods in the following table or one of the alternative methods listed in Appendix A to subpart C of part 141.

Organism	Methodology category	Method [1]	Citation [1]
Total Coliforms	Lactose Fermentation Methods	Standard Total Coliform Fermentation Technique.	Standard Methods 9221 B.1, B.2 (20th ed.; 21st ed.) [2 3] Standard Methods Online 9221 B.1, B.2–99 [2 3]
		Presence-Absence (P–A) Coliform Test.	Standard Methods 9221 D.1, D.2 (20th ed.; 21st ed.) [2 7] Standard Methods Online 9221 D.1, D.2–99 [2 7]
	Membrane Filtration Methods	Standard Total Coliform Membrane Filter Procedure.	Standard Methods 9222 B, C (20th ed.; 21st ed.) [2 4] Standard Methods Online 9222 B–97 [2 4], 9222 C–97 [2 4]
		Membrane Filtration using MI medium.	EPA Method 1604 [2]
		m-ColiBlue24® Test [2 4]	
		Chromocult [2 4].	
	Enzyme Substrate Methods	Colilert®	Standard Methods 9223 B (20th ed.; 21st ed.) [2 5] Standard Methods Online 9223 B–97 [2 5]
		Colisure®	Standard Methods 9223 B (20th ed.; 21st ed.) [2 5 6] Standard Methods Online 9223 B–97 [2 5 6]
		E*Colite® Test [2].	
		Readycult® Test [2].	

Organism	Methodology category	Method [1]	Citation [1]
Escherichia coli.		modified Colitag® Test [2].	
	Escherichia coli Procedure (following Lactose Fermentation Methods).	EC–MUG medium	Standard Methods 9221 F.1 (20th ed.; 21st ed.) [2]
	Escherichia coli Partition Method	EC broth with MUG (EC–MUG)	Standard Methods 9222 G.1*c*(2) (20th ed.; 21st ed.) [2 8]
		NA–MUG medium	Standard Methods 9222 G.1*c*(1) (20th ed.; 21st ed.) [2]
	Membrane Filtration Methods	Membrane Filtration using MI medium.	EPA Method 1604 [2]
		m-ColiBlue24® Test [2 4]	
		Chromocult [2 4].	
	Enzyme Substrate Methods	Colilert®	Standard Methods 9223 B (20th ed.; 21st ed.) [2 5] Standard Methods Online 9223 B–97 [2 5 6]
		Colisure®	Standard Methods 9223 B (20th ed.; 21st ed.) [2 5 6] Standard Methods Online 9223 B–97 [2 5 6]
		E*Colite® Test [2].	
		Readycult® Test [2].	
		modified Colitag® Test [2].	

[1] The procedures must be done in accordance with the documents listed in paragraph (c) of this section. For Standard Methods, either editions, 20th (1998) or 21st (2005), may be used. For the Standard Methods Online, the year in which each method was approved by the Standard Methods Committee is designated by the last two digits following the hyphen in the method number. The methods listed are the only online versions that may be used. For vendor methods, the date of the method listed in paragraph (c) of this section is the date/version of the approved method. The methods listed are the only versions that may be used for compliance with this rule. Laboratories should be careful to use only the approved versions of the methods, as product package inserts may not be the same as the approved versions of the methods.

[2] Incorporated by reference. See paragraph (c) of this section.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between lactose broth and lauryl tryptose broth using the water normally tested, and if the findings from this comparison demonstrate that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4] All filtration series must begin with membrane filtration equipment that has been sterilized by autoclaving. Exposure of filtration equipment to UV light is not adequate to ensure sterilization. Subsequent to the initial autoclaving, exposure of the filtration equipment to UV light may be used to sanitize the funnels between filtrations within a filtration series. Alternatively, membrane filtration equipment that is pre-sterilized by the manufacturer (i.e., disposable funnel units) may be used.

[5] Multiple-tube and multi-well enumerative formats for this method are approved for use in presence-absence determination under this regulation.

[6] Colisure® results may be read after an incubation time of 24 hours.

[7] A multiple tube enumerative format, as described in *Standard Methods for the Examination of Water and Wastewater* 9221, is approved for this method for use in presence-absence determination under this regulation.

[8] The following changes must be made to the EC broth with MUG (EC–MUG) formulation: Potassium dihydrogen phosphate, KH_2PO_4, must be 1.5g, and 4-methylumbelliferyl-Beta-D-glucuronide must be 0.05 g.

(b) *Laboratory certification.* Systems must have all compliance samples required under this subpart analyzed by a laboratory certified by the EPA or a primacy State to analyze drinking water samples. The laboratory used by the system must be certified for each method (and associated contaminant(s)) used for compliance monitoring analyses under this rule.

(c) *Incorporation by reference.* The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, EPA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection either electronically at *www.regulations.gov,* in hard copy at the Water Docket, or from the sources indicated below. The Docket ID is EPA–HQ–OW–2008–0878. Hard copies of these documents may be viewed at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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 1–202–566–1744, and the telephone number for the Water Docket is 1–202–566–2426. Copyrighted materials are only available for viewing in hard copy. These documents are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) American Public Health Association, 800 I Street, NW., Washington, DC 20001.

(i) ''Standard Methods for the Examination of Water and Wastewater,'' 20th edition (1998):

(A) Standard Methods 9221, ''Multiple-Tube Fermentation Technique for Members of the Coliform Group,'' B.1, B.2, ''Standard Total Coliform Fermentation Technique.''

(B) Standard Methods 9221, ''Multiple-Tube Fermentation Technique for Members of the Coliform Group,'' D.1, D.2, ''Presence-Absence (P–A) Coliform Test.''

(C) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' B, ''Standard Total Coliform Membrane Filter Procedure.''

(D) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' C,

''Delayed-Incubation Total Coliform Procedure.''

(E) Standard Methods 9223, ''Enzyme Substrate Coliform Test,'' B, ''Enzyme Substrate Test,'' Colilert® and Colisure®.

(F) Standard Methods 9221, ''Multiple Tube Fermentation Technique for Members of the Coliform Group,'' F.1, ''*Escherichia coli* Procedure: EC–MUG medium.''

(G) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' G.1.*c*(2), ''*Escherichia coli* Partition Method: EC broth with MUG (EC–MUG).''

(H) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' G.1.*c*(1), ''*Escherichia coli* Partition Method: NA–MUG medium.''

(ii) ''Standard Methods for the Examination of Water and Wastewater,'' 21st edition (2005):

(A) Standard Methods 9221, ''Multiple-Tube Fermentation Technique for Members of the Coliform Group,'' B.1, B.2, ''Standard Total Coliform Fermentation Technique.''

(B) Standard Methods 9221, ''Multiple-Tube Fermentation Technique for Members of the Coliform Group,'' D.1, D.2, ''Presence-Absence (P–A) Coliform Test.''

(C) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' B, ''Standard Total Coliform Membrane Filter Procedure.''

(D) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' C, ''Delayed-Incubation Total Coliform Procedure.''

(E) Standard Methods 9223, ''Enzyme Substrate Coliform Test,'' B, ''Enzyme Substrate Test,'' Colilert® and Colisure®.

(F) Standard Methods 9221, ''Multiple Tube Fermentation Technique for Members of the Coliform Group,'' F.1, ''*Escherichia coli* Procedure: EC–MUG medium.''

(G) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' G.1.*c*(2), ''*Escherichia coli* Partition Method: EC broth with MUG (EC–MUG).''

(H) Standard Methods 9222, ''Membrane Filter Technique for Members of the Coliform Group,'' G.1.*c*(1), ''*Escherichia coli* Partition Method: NA–MUG medium.''

(iii) ''Standard Methods Online'' available at *http://www.standardmethods.org:*

(A) Standard Methods Online 9221, ''Multiple-Tube Fermentation Technique for Members of the Coliform Group'' (1999), B.1, B.2–99, ''Standard Total Coliform Fermentation Technique.''

(B) Standard Methods Online 9221, ''Multiple-Tube Fermentation Technique for Members of the Coliform Group'' (1999), D.1, D.2–99, ''Presence-Absence (P–A) Coliform Test.''

(C) Standard Methods Online 9222, ''Membrane Filter Technique for Members of the Coliform Group'' (1997), B–97, ''Standard Total Coliform Membrane Filter Procedure.''

(D) Standard Methods Online 9222, ''Membrane Filter Technique for Members of the Coliform Group'' (1997), C–97, ''Delayed-Incubation Total Coliform Procedure.''

(E) Standard Methods Online 9223, ''Enzyme Substrate Coliform Test'' (1997), B–97, ''Enzyme Substrate Test'', Colilert® and Colisure®.

(2) Charm Sciences, Inc., 659 Andover Street, Lawrence, MA 01843–1032, telephone 1–800–343–2170:

(i) E*Colite®—''Charm E*Colite™ Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Drinking Water,'' January 9, 1998.

(ii) [Reserved]

(3) CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA, 95403, telephone 1–800–878–7654:

(i) modified Colitag®, ATP D05–0035—''Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water,'' August 28, 2009.

(ii) [Reserved]

(4) EMD Millipore (a division of Merck KGaA, Darmstadt Germany), 290 Concord Road, Billerica, MA 01821, telephone 1–800–645–5476:

(i) Chromocult—''Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* for Finished Waters,'' November 2000, Version 1.0.

(ii) Readycult®—''Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters,'' January 2007, Version 1.1.

(5) EPA's Water Resource Center (MC–4100T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone 1–202–566–1729:

(i) EPA Method 1604, EPA 821–R–02–024—''EPA Method 1604: Total Coliforms and *Escherichia coli* in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium),'' September 2002, *http://www.epa.gov/nerlcwww/1604sp02.pdf.*

(ii) [Reserved]

(6) Hach Company, P.O. Box 389, Loveland, CO 80539, telephone 1–800–604–3493:

(i) m-ColiBlue24®—''Membrane Filtration Method m-ColiBlue24® Broth,'' Revision 2, August 17, 1999.

(ii) [Reserved]

§ 141.853 General monitoring requirements for all public water systems.

(a) *Sample siting plans.* (1) Systems must develop a written sample siting plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system not later than March 31, 2016. These plans are subject to State review and revision. Systems must collect total coliform samples according to the written sample siting plan. Monitoring required by §§ 141.854 through 141.858 may take place at a customer's premise, dedicated sampling station, or other designated compliance sampling location. Routine and repeat sample sites and any sampling points necessary to meet the requirements of subpart S must be reflected in the sampling plan.

(2) Systems must collect samples at regular time intervals throughout the month, except that systems that use only ground water and serve 4,900 or fewer people may collect all required samples on a single day if they are taken from different sites.

(3) Systems must take at least the minimum number of required samples even if the system has had an *E. coli* MCL violation or has exceeded the coliform treatment technique triggers in § 141.859(a).

(4) A system may conduct more compliance monitoring than is required by this subpart to investigate potential problems in the distribution system and use monitoring as a tool to assist in uncovering problems. A system may take more than the minimum number of required routine samples and must include the results in calculating whether the coliform treatment technique trigger in § 141.859(a)(1)(i) and (ii) has been exceeded only if the samples are taken in accordance with the existing sample siting plan and are representative of water throughout the distribution system.

(5) Systems must identify repeat monitoring locations in the sample siting plan. Unless the provisions of paragraphs (a)(5)(i) or (a)(5)(ii) of this section are met, the system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample

at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one service connection away from the end of the distribution system, the system must still take all required repeat samples. However, the State may allow an alternative sampling location in lieu of the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. Except as provided for in paragraph (a)(5)(ii) of this section, systems required to conduct triggered source water monitoring under § 141.402(a) must take ground water source sample(s) in addition to repeat samples required under this subpart.

(i) Systems may propose repeat monitoring locations to the State that the system believes to be representative of a pathway for contamination of the distribution system. A system may elect to specify either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a standard operating procedure (SOP) in its sample siting plan. The system must design its SOP to focus the repeat samples at locations that best verify and determine the extent of potential contamination of the distribution system area based on specific situations. The State may modify the SOP or require alternative monitoring locations as needed.

(ii) Ground water systems serving 1,000 or fewer people may propose repeat sampling locations to the State that differentiate potential source water and distribution system contamination (e.g., by sampling at entry points to the distribution system). A ground water system with a single well required to conduct triggered source water monitoring may, with written State approval, take one of its repeat samples at the monitoring location required for triggered source water monitoring under § 141.402(a) if the system demonstrates to the State's satisfaction that the sample siting plan remains representative of water quality in the distribution system. If approved by the State, the system may use that sample result to meet the monitoring requirements in both § 141.402(a) and this section.

(A) If a repeat sample taken at the monitoring location required for triggered source water monitoring is *E. coli*-positive, the system has violated the *E. coli* MCL and must also comply with § 141.402(a)(3). If a system takes more than one repeat sample at the monitoring location required for triggered source water monitoring, the system may reduce the number of additional source water samples required under § 141.402(a)(3) by the number of repeat samples taken at that location that were not *E. coli*-positive.

(B) If a system takes more than one repeat sample at the monitoring location required for triggered source water monitoring under § 141.402(a), and more than one repeat sample is *E. coli*-positive, the system has violated the *E. coli* MCL and must also comply with § 141.403(a)(1).

(C) If all repeat samples taken at the monitoring location required for triggered source water monitoring are *E. coli*-negative and a repeat sample taken at a monitoring location other than the one required for triggered source water monitoring is *E. coli*-positive, the system has violated the *E. coli* MCL, but is not required to comply with § 141.402(a)(3).

(6) States may review, revise, and approve, as appropriate, repeat sampling proposed by systems under paragraphs (a)(5)(i) and (ii) of this section. The system must demonstrate that the sample siting plan remains representative of the water quality in the distribution system. The State may determine that monitoring at the entry point to the distribution system (especially for undisinfected ground water systems) is effective to differentiate between potential source water and distribution system problems.

(b) *Special purpose samples.* Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform treatment technique trigger has been exceeded. Repeat samples taken pursuant to § 141.858 are not considered special purpose samples, and must be used to determine whether the coliform treatment technique trigger has been exceeded.

(c) *Invalidation of total coliform samples.* A total coliform-positive sample invalidated under this paragraph (c) of this section does not count toward meeting the minimum monitoring requirements of this subpart.

(1) The State may invalidate a total coliform-positive sample only if the conditions of paragraph (c)(1)(i), (ii), or (iii) of this section are met.

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result.

(ii) The State, on the basis of the results of repeat samples collected as required under § 141.858(a), determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The State cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a location other than the original tap are total coliform-negative (e.g., a State cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the system has only one service connection).

(iii) The State has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under § 141.858(a), and use them to determine whether a coliform treatment technique trigger in § 141.859 has been exceeded. To invalidate a total coliform-positive sample under this paragraph, the decision and supporting rationale must be documented in writing, and approved and signed by the supervisor of the State official who recommended the decision. The State must make this document available to EPA and the public. The written documentation must state the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The State may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(2) A laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P–A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The State may waive the 24-hour time limit on a case-by-case basis. Alternatively, the State may implement criteria for waiving the 24-hour

sampling time limit to use in lieu of case-by-case extensions.

§ 141.854 Routine monitoring requirements for non-community water systems serving 1,000 or fewer people using only ground water.

(a) *General.* (1) The provisions of this section apply to non-community water systems using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving 1,000 or fewer people.

(2) Following any total coliform-positive sample taken under the provisions of this section, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in § 141.858.

(3) Once all monitoring required by this section and § 141.858 for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in § 141.859 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by § 141.859.

(4) For the purpose of determining eligibility for remaining on or qualifying for quarterly monitoring under the provisions of paragraphs (f)(4) and (g)(2), respectively, of this section for transient non-community water systems, the State may elect to not count monitoring violations under § 141.860(c)(1) of this part if the missed sample is collected no later than the end of the monitoring period following the monitoring period in which the sample was missed. The system must collect the make-up sample in a different week than the routine sample for that monitoring period and should collect the sample as soon as possible during the monitoring period. The State may not use this provision under paragraph (h) of this section. This authority does not affect the provisions of §§ 141.860(c)(1) and 141.861(a)(4) of this part.

(b) *Monitoring frequency for total coliforms.* Systems must monitor each calendar quarter that the system provides water to the public, except for seasonal systems or as provided under paragraphs (c) through (h) and (j) of this section. Seasonal systems must meet the monitoring requirements of paragraph (i) of this section.

(c) *Transition to subpart Y.* (1) Systems, including seasonal systems, must continue to monitor according to the total coliform monitoring schedules under § 141.21 that were in effect on March 31, 2016, unless any of the conditions for increased monitoring in paragraph (f) of this section are triggered on or after April 1, 2016, or unless otherwise directed by the State.

(2) Beginning April 1, 2016, the State must perform a special monitoring evaluation during each sanitary survey to review the status of the system, including the distribution system, to determine whether the system is on an appropriate monitoring schedule. After the State has performed the special monitoring evaluation during each sanitary survey, the State may modify the system's monitoring schedule, as necessary, or it may allow the system to stay on its existing monitoring schedule, consistent with the provisions of this section. The State may not allow systems to begin less frequent monitoring under the special monitoring evaluation unless the system has already met the applicable criteria for less frequent monitoring in this section. For seasonal systems on quarterly or annual monitoring, this evaluation must include review of the approved sample siting plan, which must designate the time period(s) for monitoring based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). The seasonal system must collect compliance samples during these time periods.

(d) *Annual site visits.* Beginning no later than calendar year 2017, systems on annual monitoring, including seasonal systems, must have an initial and recurring annual site visit by the State that is equivalent to a Level 2 assessment or an annual voluntary Level 2 assessment that meets the criteria in § 141.859(b) to remain on annual monitoring. The periodic required sanitary survey may be used to meet the requirement for an annual site visit for the year in which the sanitary survey was completed.

(e) *Criteria for annual monitoring.* Beginning April 1, 2016, the State may reduce the monitoring frequency for a well-operated ground water system from quarterly routine monitoring to no less than annual monitoring, if the system demonstrates that it meets the criteria for reduced monitoring in paragraphs (e)(1) through (e)(3) of this section, except for a system that has been on increased monitoring under the provisions of paragraph (f) of this section. A system on increased monitoring under paragraph (f) of this section must meet the provisions of paragraph (g) of this section to go to quarterly monitoring and must meet the provisions of paragraph (h) of this section to go to annual monitoring.

(1) The system has a clean compliance history for a minimum of 12 months;

(2) The most recent sanitary survey shows that the system is free of sanitary defects or has corrected all identified sanitary defects, has a protected water source, and meets approved construction standards; and

(3) The State has conducted an annual site visit within the last 12 months and the system has corrected all identified sanitary defects. The system may substitute a Level 2 assessment that meets the criteria in § 141.859(b) for the State annual site visit.

(f) *Increased Monitoring Requirements for systems on quarterly or annual monitoring.* A system on quarterly or annual monitoring that experiences any of the events identified in paragraphs (f)(1) through (f)(4) of this section must begin monthly monitoring the month following the event. A system on annual monitoring that experiences the event identified in paragraphs (f)(5) of this section must begin quarterly monitoring the quarter following the event. The system must continue monthly or quarterly monitoring until the requirements in paragraph (g) of this section for quarterly monitoring or paragraph (h) of this section for annual monitoring are met. A system on monthly monitoring for reasons other than those identified in paragraphs (f)(1) through (f)(4) of this section is not considered to be on increased monitoring for the purposes of paragraphs (g) and (h) of this section.

(1) The system triggers a Level 2 assessment or two Level 1 assessments under the provisions of § 141.859 in a rolling 12-month period.

(2) The system has an *E. coli* MCL violation.

(3) The system has a coliform treatment technique violation.

(4) The system has two subpart Y monitoring violations or one subpart Y monitoring violation and one Level 1 assessment under the provisions of § 141.859 in a rolling 12-month period for a system on quarterly monitoring.

(5) The system has one subpart Y monitoring violation for a system on annual monitoring.

(g) *Requirements for returning to quarterly monitoring.* The State may reduce the monitoring frequency for a system on monthly monitoring triggered under paragraph (f) of this section to quarterly monitoring if the system meets the criteria in paragraphs (g)(1) and (g)(2) of this section.

(1) Within the last 12 months, the system must have a completed sanitary survey or a site visit by the State or a voluntary Level 2 assessment by a party approved by the State, be free of sanitary defects, and have a protected water source; and

(2) The system must have a clean compliance history for a minimum of 12 months.

(h) *Requirements for systems on increased monitoring to qualify for annual monitoring.* The State may reduce the monitoring frequency for a system on increased monitoring under paragraph (f) of this section if the system meets the criteria in paragraph (g) of this section plus the criteria in paragraphs (h)(1) and (h)(2) of this section.

(1) An annual site visit by the State and correction of all identified sanitary defects. The system may substitute a voluntary Level 2 assessment by a party approved by the State for the State annual site visit in any given year.

(2) The system must have in place or adopt one or more additional enhancements to the water system barriers to contamination in paragraphs (h)(2)(i) through (h)(2)(v) of this section.

(i) Cross connection control, as approved by the State.

(ii) An operator certified by an appropriate State certification program or regular visits by a circuit rider certified by an appropriate State certification program.

(iii) Continuous disinfection entering the distribution system and a residual in the distribution system in accordance with criteria specified by the State.

(iv) Demonstration of maintenance of at least a 4-log removal or inactivation of viruses as provided for under § 141.403(b)(3).

(v) Other equivalent enhancements to water system barriers as approved by the State.

(i) *Seasonal systems.* (1) Beginning April 1, 2016, all seasonal systems must demonstrate completion of a State-approved start-up procedure, which may include a requirement for startup sampling prior to serving water to the public.

(2) A seasonal system must monitor every month that it is in operation unless it meets the criteria in paragraphs (i)(2)(i) through (iii) of this section to be eligible for monitoring less frequently than monthly beginning April 1, 2016, except as provided under paragraph (c) of this section.

(i) Seasonal systems monitoring less frequently than monthly must have an approved sample siting plan that designates the time period for monitoring based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). Seasonal systems must collect compliance samples during this time period.

(ii) To be eligible for quarterly monitoring, the system must meet the criteria in paragraph (g) of this section.

(iii) To be eligible for annual monitoring, the system must meet the criteria under paragraph (h) of this section.

(3) The State may exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating, except that systems that monitor less frequently than monthly must still monitor during the vulnerable period designated by the State.

(j) *Additional routine monitoring the month following a total coliform-positive sample.* Systems collecting samples on a quarterly or annual frequency must conduct additional routine monitoring the month following one or more total coliform-positive samples (with or without a Level 1 treatment technique trigger). Systems must collect at least three routine samples during the next month, except that the State may waive this requirement if the conditions of paragraph (j)(1), (2), or (3) of this section are met. Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform treatment technique trigger calculations under § 141.859(a).

(1) The State may waive the requirement to collect three routine samples the next month in which the system provides water to the public if the State, or an agent approved by the State, performs a site visit before the end of the next month in which the system provides water to the public. Although a sanitary survey need not be performed, the site visit must be sufficiently detailed to allow the State to determine whether additional monitoring and/or any corrective action is needed. The State cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the State to perform sanitary surveys.

(2) The State may waive the requirement to collect three routine samples the next month in which the system provides water to the public if the State has determined why the sample was total coliform-positive and has established that the system has corrected the problem or will correct the problem before the end of the next month in which the system serves water to the public. In this case, the State must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the State official who recommends such a decision, and make this document available to the EPA and public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem.

(3) The State may not waive the requirement to collect three additional routine samples the next month in which the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. If the State determines that the system has corrected the contamination problem before the system takes the set of repeat samples required in § 141.858, and all repeat samples were total coliform-negative, the State may waive the requirement for additional routine monitoring the next month.

§ 141.855 Routine monitoring requirements for community water systems serving 1,000 or fewer people using only ground water.

(a) *General.* (1) The provisions of this section apply to community water systems using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving 1,000 or fewer people.

(2) Following any total coliform-positive sample taken under the provisions of this section, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in § 141.858.

(3) Once all monitoring required by this section and § 141.858 for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in § 141.859 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by § 141.859.

(b) *Monitoring frequency for total coliforms.* The monitoring frequency for total coliforms is one sample/month, except as provided for under paragraphs (c) through (f) of this section.

(c) *Transition to subpart Y.* (1) All systems must continue to monitor according to the total coliform monitoring schedules under § 141.21 that were in effect on March 31, 2016, unless any of the conditions in paragraph (e) of this section are triggered on or after April 1, 2016, or unless otherwise directed by the State.

(2) Beginning April 1, 2016, the State must perform a special monitoring

evaluation during each sanitary survey to review the status of the system, including the distribution system, to determine whether the system is on an appropriate monitoring schedule. After the State has performed the special monitoring evaluation during each sanitary survey, the State may modify the system's monitoring schedule, as necessary, or it may allow the system to stay on its existing monitoring schedule, consistent with the provisions of this section. The State may not allow systems to begin less frequent monitoring under the special monitoring evaluation unless the system has already met the applicable criteria for less frequent monitoring in this section.

(d) *Criteria for reduced monitoring.* (1) The State may reduce the monitoring frequency from monthly monitoring to no less than quarterly monitoring if the system is in compliance with State-certified operator provisions and demonstrates that it meets the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section. A system that loses its certified operator must return to monthly monitoring the month following that loss.

(i) The system has a clean compliance history for a minimum of 12 months.

(ii) The most recent sanitary survey shows the system is free of sanitary defects (or has an approved plan and schedule to correct them and is in compliance with the plan and the schedule), has a protected water source and meets approved construction standards.

(iii) The system meets at least one of the following criteria:

(A) An annual site visit by the State that is equivalent to a Level 2 assessment or an annual Level 2 assessment by a party approved by the State and correction of all identified sanitary defects (or an approved plan and schedule to correct them and is in compliance with the plan and schedule).

(B) Cross connection control, as approved by the State.

(C) Continuous disinfection entering the distribution system and a residual in the distribution system in accordance with criteria specified by the State.

(D) Demonstration of maintenance of at least a 4-log removal or inactivation of viruses as provided for under § 141.403(b)(3).

(E) Other equivalent enhancements to water system barriers as approved by the State.

(e) *Return to routine monthly monitoring requirements.* Systems on quarterly monitoring that experience any of the events in paragraphs (e)(1) through (e)(4) of this section must begin monthly monitoring the month following the event. The system must continue monthly monitoring until it meets the reduced monitoring requirements in paragraph (d) of this section.

(1) The system triggers a Level 2 assessment or two Level 1 assessments in a rolling 12-month period.

(2) The system has an *E. coli* MCL violation.

(3) The system has a coliform treatment technique violation.

(4) The system has two subpart Y monitoring violations in a rolling 12-month period.

(f) *Additional routine monitoring the month following a total coliform-positive sample.* Systems collecting samples on a quarterly frequency must conduct additional routine monitoring the month following one or more total coliform-positive samples (with or without a Level 1 treatment technique trigger). Systems must collect at least three routine samples during the next month, except that the State may waive this requirement if the conditions of paragraph (f)(1), (2), or (3) of this section are met. Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform treatment technique trigger calculations.

(1) The State may waive the requirement to collect three routine samples the next month in which the system provides water to the public if the State, or an agent approved by the State, performs a site visit before the end of the next month in which the system provides water to the public. Although a sanitary survey need not be performed, the site visit must be sufficiently detailed to allow the State to determine whether additional monitoring and/or any corrective action is needed. The State cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the State to perform sanitary surveys.

(2) The State may waive the requirement to collect three routine samples the next month in which the system provides water to the public if the State has determined why the sample was total coliform-positive and has established that the system has corrected the problem or will correct the problem before the end of the next month in which the system serves water to the public. In this case, the State must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the State official who recommends such a decision, and make this document available to the EPA and the public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem.

(3) The State may not waive the requirement to collect three additional routine samples the next month in which the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. If the State determines that the system has corrected the contamination problem before the system takes the set of repeat samples required in § 141.858, and all repeat samples were total coliform-negative, the State may waive the requirement for additional routine monitoring the next month.

§ 141.856 Routine monitoring requirements for subpart H public water systems serving 1,000 or fewer people.

(a) *General.* (1) The provisions of this section apply to subpart H public water systems of this part serving 1,000 or fewer people.

(2) Following any total coliform-positive sample taken under the provisions of this section, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in § 141.858.

(3) Once all monitoring required by this section and § 141.858 for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in § 141.859 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by § 141.859.

(4) Seasonal systems. (i) Beginning April 1, 2016, all seasonal systems must demonstrate completion of a State-approved start-up procedure, which may include a requirement for start-up sampling prior to serving water to the public.

(ii) The State may exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating.

(b) *Routine monitoring frequency for total coliforms.* Subpart H systems of this part (including consecutive systems) must monitor monthly. Systems may not reduce monitoring.

(c) *Unfiltered subpart H systems.* A subpart H system of this part that does not practice filtration in compliance with subparts H, P, T, and W must

collect at least one total coliform sample near the first service connection each day the turbidity level of the source water, measured as specified in § 141.74(b)(2), exceeds 1 NTU. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection and identifies an alternative sample collection schedule. Sample results from this coliform monitoring must be included in determining whether the coliform treatment technique trigger in § 141.859 has been exceeded.

§ 141.857 Routine monitoring requirements for public water systems serving more than 1,000 people.

(a) *General.* (1) The provisions of this section apply to public water systems serving more than 1,000 persons.

(2) Following any total coliform-positive sample taken under the provisions of this section, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in § 141.858.

(3) Once all monitoring required by this section and § 141.858 for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in § 141.859 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by § 141.859.

(4) Seasonal systems. (i) Beginning April 1, 2016, all seasonal systems must demonstrate completion of a State-approved start-up procedure, which may include a requirement for start-up sampling prior to serving water to the public.

(ii) The State may exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating.

(b) *Monitoring frequency for total coliforms.* The monitoring frequency for total coliforms is based on the population served by the system, as follows:

TOTAL COLIFORM MONITORING FREQUENCY FOR PUBLIC WATER SYSTEMS SERVING MORE THAN 1,000 PEOPLE

Population served	Minimum number of samples per month
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

(c) *Unfiltered subpart H systems.* A subpart H system of this part that does not practice filtration in compliance with subparts H, P, T, and W must collect at least one total coliform sample near the first service connection each day the turbidity level of the source water, measured as specified in § 141.74(b)(2), exceeds 1 NTU. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection and identifies an alternative sample collection schedule. Sample results from this coliform monitoring must be included in determining whether the coliform treatment technique trigger in § 141.859 has been exceeded.

(d) *Reduced monitoring.* Systems may not reduce monitoring, except for non-community water systems using only ground water (and not ground water under the direct influence of surface water) serving 1,000 or fewer people in some months and more than 1,000 persons in other months. In months when more than 1,000 persons are served, the systems must monitor at the frequency specified in paragraph (a) of this section. In months when 1,000 or fewer people are served, the State may reduce the monitoring frequency, in writing, to a frequency allowed under § 141.854 for a similarly situated system that always serves 1,000 or fewer people, taking into account the provisions in § 141.854(e) through (g).

§ 141.858 Repeat monitoring and *E. coli* requirements.

(a) *Repeat monitoring.* (1) If a sample taken under §§ 141.854 though 141.857 is total coliform-positive, the system must collect a set of repeat samples within 24 hours of being notified of the positive result. The system must collect no fewer than three repeat samples for each total coliform-positive sample found. The State may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. Alternatively, the State may implement criteria for the system to use in lieu of case-by-case extensions. In the case of an extension, the State must specify how much time the system has to collect the repeat samples. The State cannot waive the requirement for a system to collect repeat samples in paragraphs (a)(1) through (a)(3) of this section.

(2) The system must collect all repeat samples on the same day, except that the State may allow a system with a single service connection to collect the required set of repeat samples over a three-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.

(3) The system must collect an additional set of repeat samples in the manner specified in paragraphs (a)(1) through (a)(3) of this section if one or more repeat samples in the current set of repeat samples is total coliform-positive. The system must collect the additional set of repeat samples within 24 hours of being notified of the positive result, unless the State extends the limit as provided in paragraph (a)(1) of this section. The system must continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or the system determines that a coliform treatment technique trigger specified in § 141.859(a) has been exceeded as a result of a repeat sample being total coliform-positive and notifies the State. If a trigger identified

in § 141.859 is exceeded as a result of a routine sample being total coliform-positive, systems are required to conduct only one round of repeat monitoring for each total coliform-positive routine sample.

(4) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(5) Results of all routine and repeat samples taken under §§ 141.854 through 141.858 not invalidated by the State must be used to determine whether a coliform treatment technique trigger specified in § 141.859 has been exceeded.

(b) *Escherichia coli (E. coli) testing.* (1) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if *E. coli* are present. If *E. coli* are present, the system must notify the State by the end of the day when the system is notified of the test result, unless the system is notified of the result after the State office is closed and the State does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the State before the end of the next business day.

(2) The State has the discretion to allow a system, on a case-by-case basis, to forgo *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is *E. coli*-positive. Accordingly, the system must notify the State as specified in paragraph (b)(1) of this section and the provisions of § 141.63(c) apply.

§ 141.859 Coliform treatment technique triggers and assessment requirements for protection against potential fecal contamination.

(a) *Treatment technique triggers.* Systems must conduct assessments in accordance with paragraph (b) of this section after exceeding treatment technique triggers in paragraphs (a)(1) and (a)(2) of this section.

(1) Level 1 treatment technique triggers.

(i) For systems taking 40 or more samples per month, the system exceeds 5.0% total coliform-positive samples for the month.

(ii) For systems taking fewer than 40 samples per month, the system has two or more total coliform-positive samples in the same month.

(iii) The system fails to take every required repeat sample after any single total coliform-positive sample.

(2) Level 2 treatment technique triggers.

(i) An *E. coli* MCL violation, as specified in § 141.860(a).

(ii) A second Level 1 trigger as defined in paragraph (a)(1) of this section, within a rolling 12-month period, unless the State has determined a likely reason that the samples that caused the first Level 1 treatment technique trigger were total coliform-positive and has established that the system has corrected the problem.

(iii) For systems with approved annual monitoring, a Level 1 trigger in two consecutive years.

(b) *Requirements for assessments.* (1) Systems must ensure that Level 1 and 2 assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. Level 2 assessments must be conducted by parties approved by the State.

(2) When conducting assessments, systems must ensure that the assessor evaluates minimum elements that include review and identification of inadequacies in sample sites; sampling protocol; sample processing; atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., small ground water systems); and existing water quality monitoring data. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

(3) Level 1 Assessments. A system must conduct a Level 1 assessment consistent with State requirements if the system exceeds one of the treatment technique triggers in paragraph (a)(1) of this section.

(i) The system must complete a Level 1 assessment as soon as practical after any trigger in paragraph (a)(1) of this section. In the completed assessment form, the system must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified. The system must submit the completed Level 1 assessment form to the State within 30 days after the system learns that it has exceeded a trigger.

(ii) If the State reviews the completed Level 1 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the State must consult with the system. If the State requires revisions after consultation, the system must submit a revised assessment form to the State on an agreed-upon schedule not to exceed 30 days from the date of the consultation.

(iii) Upon completion and submission of the assessment form by the system, the State must determine if the system has identified a likely cause for the Level 1 trigger and, if so, establish that the system has corrected the problem, or has included a schedule acceptable to the State for correcting the problem.

(4) Level 2 Assessments. A system must ensure that a Level 2 assessment consistent with State requirements is conducted if the system exceeds one of the treatment technique triggers in paragraph (a)(2) of this section. The system must comply with any expedited actions or additional actions required by the State in the case of an *E. coli* MCL violation.

(i) The system must ensure that a Level 2 assessment is completed by the State or by a party approved by the State as soon as practical after any trigger in paragraph (a)(2) of this section. The system must submit a completed Level 2 assessment form to the State within 30 days after the system learns that it has exceeded a trigger. The assessment form must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified.

(ii) The system may conduct Level 2 assessments if the system has staff or management with the certification or qualifications specified by the State unless otherwise directed by the State.

(iii) If the State reviews the completed Level 2 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the State must consult with the system. If the State requires revisions after consultation, the system must submit a revised assessment form to the State on an agreed-upon schedule not to exceed 30 days.

(iv) Upon completion and submission of the assessment form by the system, the State must determine if the system

has identified a likely cause for the Level 2 trigger and determine whether the system has corrected the problem, or has included a schedule acceptable to the State for correcting the problem.

(c) *Corrective Action.* Systems must correct sanitary defects found through either Level 1 or 2 assessments conducted under paragraph (b) of this section. For corrections not completed by the time of submission of the assessment form, the system must complete the corrective action(s) in compliance with a timetable approved by the State in consultation with the system. The system must notify the State when each scheduled corrective action is completed.

(d) *Consultation.* At any time during the assessment or corrective action phase, either the water system or the State may request a consultation with the other party to determine the appropriate actions to be taken. The system may consult with the State on all relevant information that may impact on its ability to comply with a requirement of this subpart, including the method of accomplishment, an appropriate timeframe, and other relevant information.

§ 141.860 Violations.

(a) *E. coli MCL Violation.* A system is in violation of the MCL for *E. coli* when any of the conditions identified in paragraphs (a)(1) through (a)(4) of this section occur.

(1) The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(2) The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(3) The system fails to take all required repeat samples following an *E. coli*-positive routine sample.

(4) The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(b) *Treatment technique violation.* (1) A treatment technique violation occurs when a system exceeds a treatment technique trigger specified in § 141.859(a) and then fails to conduct the required assessment or corrective actions within the timeframe specified in § 141.859(b) and (c).

(2) A treatment technique violation occurs when a seasonal system fails to complete a State-approved start-up procedure prior to serving water to the public.

(c) *Monitoring violations.* (1) Failure to take every required routine or additional routine sample in a compliance period is a monitoring violation.

(2) Failure to analyze for *E. coli* following a total coliform-positive routine sample is a monitoring violation.

(d) *Reporting violations.* (1) Failure to submit a monitoring report or completed assessment form after a system properly conducts monitoring or assessment in a timely manner is a reporting violation.

(2) Failure to notify the State following an *E. coli*-positive sample as required by § 141.858(b)(1) in a timely manner is a reporting violation.

(3) Failure to submit certification of completion of State-approved start-up procedure by a seasonal system is a reporting violation.

§ 141.861 Reporting and recordkeeping.

(a) *Reporting.* (1) *E. coli.*

(i) A system must notify the State by the end of the day when the system learns of an *E. coli* MCL violation, unless the system learns of the violation after the State office is closed and the State does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the State before the end of the next business day, and notify the public in accordance with subpart Q of this part.

(ii) A system must notify the State by the end of the day when the system is notified of an *E. coli*-positive routine sample, unless the system is notified of the result after the State office is closed and the State does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the State before the end of the next business day.

(2) A system that has violated the treatment technique for coliforms in § 141.859 must report the violation to the State no later than the end of the next business day after it learns of the violation, and notify the public in accordance with subpart Q of this part.

(3) A system required to conduct an assessment under the provisions of § 141.859 of this part must submit the assessment report within 30 days. The system must notify the State in accordance with § 141.859(c) when each scheduled corrective action is completed for corrections not completed by the time of submission of the assessment form.

(4) A system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the State within 10 days after the system discovers the violation, and notify the public in accordance with subpart Q of this part.

(5) A seasonal system must certify, prior to serving water to the public, that it has complied with the State-approved start-up procedure.

(b) *Recordkeeping.* (1) The system must maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of those assessments, or other available summary documentation of the sanitary defects and corrective actions taken under § 141.858 for State review. This record must be maintained by the system for a period not less than five years after completion of the assessment or corrective action.

(2) The system must maintain a record of any repeat sample taken that meets State criteria for an extension of the 24-hour period for collecting repeat samples as provided for under § 141.858(a)(1) of this part.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 21. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 22. Section 142.14 is amended by revising paragraph (a)(1)(iii) and adding a new paragraph (a)(10) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(1) * * *

(iii) The analytical results, set forth in a form that makes possible comparison with the limits specified in §§ 141.63, 141.71, and 141.72 of this chapter and with the limits specified in subpart Y of this chapter.

* * * * *

(10) Records of each of the following decisions made pursuant to the provisions of subpart Y of part 141 must be made in writing and retained by the State.

(i) Records of the following decisions or activities must be retained for five years.

(A) Sections 141.858(a), 141.853(c)(2), 141.856(c), and 141.857(c) of this chapter—Any case-by-case decision to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample, or to extend the 24-hour limit for collection of samples following invalidation, or for an unfiltered subpart H system of this part to collect a total coliform sample following a turbidity measurement exceeding 1 NTU.

(B) Sections 141.854(j) and 141.855(f) of this chapter—Any decision to allow a system to waive the requirement for

three routine samples the month following a total coliform-positive sample. The record of the waiver decision must contain all the items listed in those sections.

(C) Section 141.853(c) of this chapter—Any decision to invalidate a total coliform-positive sample. If the decision to invalidate a total coliform-positive sample as provided in § 141.853(c)(1) of this chapter is made, the record of the decision must contain all the items listed in that section.

(D) Section 141.859 of this chapter—Completed and approved subpart Y assessments, including reports from the system that corrective action has been completed as required by § 141.861(a)(2) of this chapter.

(ii) Records of each of the following decisions must be retained in such a manner so that each system's current status may be determined:

(A) Section 141.854(e) of this chapter—Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving 1,000 or fewer people to less than once per quarter, as provided in § 141.854(e) of this chapter, including what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

(B) Section 141.855(d) of this chapter—Any decision to reduce the total coliform monitoring frequency for a community water system serving 1,000 or fewer people to less than once per month, as provided in § 141.855(d) of this chapter, including what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

(C) Section 141.857(d) of this chapter—Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving more than 1,000 persons during any month the system serves 1,000 or fewer people, as provided in § 141.857(d) of this chapter. A copy of the reduced monitoring frequency must be provided to the system.

(D) Section 141.858(b)(2) of this chapter—Any decision to allow a system to forgo *E. coli* testing of a total coliform-positive sample if that system assumes that the total coliform-positive sample is *E. coli*-positive.

* * * * *

■ 23. Section 142.15 is amended by adding paragraph (c)(3) to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(3) *Total coliforms under subpart Y.* A list of systems that the State is allowing to monitor less frequently than once per month for community water systems or less frequently than once per quarter for non-community water systems as provided in §§ 141.855 and 141.854 of this chapter, including the applicable date of the reduced monitoring requirement for each system.

* * * * *

■ 24. Section 142.16 is amended by adding a new paragraph (q) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(q) *Requirements for States to adopt 40 CFR part 141 subpart Y—Revised Total Coliform Rule.* In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart Y, must contain the information specified in this paragraph (q).

(1) In their application to EPA for approval to implement the federal requirements, the primacy application must indicate what baseline and reduced monitoring provisions of 40 CFR part 141, subpart Y the State will adopt and must describe how they will implement 40 CFR part 141, subpart Y in these areas so that EPA can be assured that implementation plans meet the minimum requirements of the rule.

(2) The State's application for primacy for subpart Y must include a written description for each provision included in paragraphs (q)(2)(i) through (viii) of this section.

(i) Sample Siting Plans—The frequency and process used to review and revise sample siting plans in accordance with 40 CFR part 141, subpart Y to determine adequacy.

(ii) Reduced Monitoring Criteria—An indication of whether the State will adopt the reduced monitoring provisions of 40 CFR part 141, subpart Y. If the State adopts the reduced monitoring provisions, it must describe the specific types or categories of water systems that will be covered by reduced monitoring and whether the State will use all or a reduced set of the optional criteria. For each of the reduced monitoring criteria, both mandatory and optional, the State must describe how the criteria will be evaluated to determine when systems qualify.

(iii) Assessments and Corrective Actions—The process for implementing the new assessment and corrective action phase of the rule, including the elements in paragraphs (q)(2)(iii)(A) through (D) of this section.

(A) Elements of Level 1 and Level 2 assessments. This must include an explanation of how the State will ensure that Level 2 assessments provide a more detailed examination of the system (including the system's monitoring and operational practices) than do Level 1 assessments through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices.

(B) Examples of sanitary defects.

(C) Examples of assessment forms or formats.

(D) Methods that systems may use to consult with the State on appropriate corrective actions.

(iv) Invalidation of routine and repeat samples collected under 40 CFR part 141, subpart Y—The criteria and process for invalidating total coliform and *E. coli*-positive samples under 40 CFR part 141, subpart Y. This description must include criteria to determine if a sample was improperly processed by the laboratory, reflects a domestic or other non-distribution system plumbing problem or reflects circumstances or conditions that do not reflect water quality in the distribution system.

(v) Approval of individuals allowed to conduct Level 2 assessments under 40 CFR part 141, subpart Y—The criteria and process for approval of individuals allowed to conduct Level 2 assessments under 40 CFR part 141, subpart Y.

(vi) Special monitoring evaluation—The procedure for performing special monitoring evaluations during sanitary surveys for ground water systems serving 1,000 or fewer people to determine whether systems are on an appropriate monitoring schedule.

(vii) Seasonal systems—How the State will identify seasonal systems, how the State will determine when systems on less than monthly monitoring must monitor, and what start-up provisions seasonal system must meet under 40 CFR part 141, subpart Y.

(viii) Additional criteria for reduced monitoring—How the State will require systems on reduced monitoring to demonstrate:

(A) Continuous disinfection entering the distribution system and a residual in the distribution system.

(B) Cross connection control.

(C) Other enhancements to water system barriers.

(ix) Criteria for extending the 24-hour period for collecting repeat samples.—Under §§ 141.858(a) and 141.853(c)(2) of this chapter, criteria for systems to use in lieu of case-by-case decisions to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample, or to extend the 24-hour limit for collection of samples following invalidation. If the State elects to use only case-by-case waivers, the State does not need to develop and submit criteria.

■ 25. Section 142.63 is amended by revising paragraph (b) to read as follows:

§ 142.63 Variances and exemptions from the maximum contaminant level for total coliforms.

* * * * *

(b) EPA has stayed this section as it relates to the total coliform MCL of § 141.63(a) of this chapter for systems that demonstrate to the State that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This stay is applicable until March 31, 2016, at which time the total coliform MCL is no longer applicable.

[FR Doc. 2012–31205 Filed 2–12–13; 8:45 am]

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 34 and 164

Federal Reserve System

12 CFR Part 226

National Credit Union Administration

12 CFR Part 722

Bureau of Consumer Financial Protection

12 CFR Part 1026

Federal Housing Finance Agency

12 CFR Part 1222

Appraisals for Higher-Priced Mortgage Loans; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 34 and 164

[Docket No. OCC–2012–0013]

RIN 1557–AD62

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1443]

RIN 7100–AD90

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

RIN 3133–AE04

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0031]

RIN 3170–AA11

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1222

RIN 2590–AA58

Appraisals for Higher-Priced Mortgage Loans

AGENCY: Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Final rule; official staff commentary.

SUMMARY: The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are issuing a final rule to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the official interpretation to the regulation. The revisions to Regulation Z implement a new provision requiring appraisals for ''higher-risk mortgages'' that was added to TILA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act). For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the final rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.

DATES: This final rule is effective on January 18, 2014.

FOR FURTHER INFORMATION CONTACT: *Board:* Lorna Neill or Mandie Aubrey, Counsels, Division of Consumer and Community Affairs, at (202) 452–3667, or Carmen Holly, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, at (202) 973–6122, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Bureau: Owen Bonheimer, Counsel, or William W. Matchneer, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20552, at (202) 435–7000.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Risk Management Section, at (202) 898–3640, Sumaya A. Muraywid, Examination Specialist, Risk Management Section, at (573) 875–6620, Glenn S. Gimble, Senior Policy Analyst, Division of Consumer Protection, at (202) 898–6865, Sandra S. Barker, Senior Policy Analyst, Division of Consumer Protection, at (202) 898–3615, Mark Mellon, Counsel, Legal Division, at (202) 898–3884, or Kimberly Stock, Counsel, Legal Division, at (202) 898–3815, or 550 17th St. NW., Washington, DC 20429.

FHFA: Susan Cooper, Senior Policy Analyst, (202) 649–3121, Lori Bowes, Policy Analyst, Office of Housing and Regulatory Policy, (202) 649–3111, Ming-Yuen Meyer-Fong, Assistant General Counsel, Office of General Counsel, (202) 649–3078, or Sharron P.A. Levine, Associate General Counsel, Office of General Counsel, (202) 649–3496, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC, 20024.

NCUA: John Brolin and Pamela Yu, Staff Attorneys, or Frank Kressman, Associate General Counsel, Office of General Counsel, at (703) 518–6540, or Vincent Vieten, Program Officer, Office of Examination and Insurance, at (703) 518–6360, or 1775 Duke Street, Alexandria, Virginia, 22314.

OCC: Robert L. Parson, Appraisal Policy Specialist, (202) 649–6423, G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649–7152, Carolyn B. Engelhardt, Bank Examiner (Risk Specialist—Credit), (202) 649–6404, Charlotte M. Bahin, Senior Counsel or Mitchell Plave, Special Counsel, Legislative & Regulatory Activities Division, (202) 649–5490, Krista LaBelle, Special Counsel, Community and Consumer Law Division, (202) 649–6350, or 250 E Street SW., Washington DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

In general, the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. For most types of creditors, TILA directs the Bureau to prescribe regulations to carry out the purposes of the law and specifically authorizes the Bureau to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purposes of TILA, or prevent circumvention or evasion of TILA.[1] 15 U.S.C. 1604(a). For most types of creditors and most provisions of the statute, TILA is implemented by the Bureau's Regulation Z. *See* 12 CFR part 1026. Official Interpretations provide guidance to creditors in applying the rules to specific transactions and interpret the requirements of the regulation. *See* 12 CFR part 1026, Supp. I. However, as explained in the section-by-section analysis of this **SUPPLEMENTARY INFORMATION,** the new appraisal section of TILA addressed in this final rule (TILA section 129H, 15 U.S.C. 1639h) is implemented not only for all affected creditors by the Bureau's Regulation Z, but also, for creditors overseen by the OCC and the Board, respectively, by OCC regulations and the Board's Regulation Z. *See* 12 CFR parts 34 and 164 (OCC regulations) and part 226 (the Board's Regulation Z). The Bureau's, the OCC's and the Board's versions of the appraisal rules and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA are adopting the

[1] For motor vehicle dealers as defined in section 1029 of the Dodd-Frank Act, TILA directs the Board to prescribe regulations to carry out the purposes of TILA and authorizes the Board to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, or prevent circumvention or evasion of TILA. 15 U.S.C. 5519; 15 U.S.C. 1604(a).

Bureau's version of the regulations under this final rule.

The Dodd-Frank Act[2] was signed into law on July 21, 2010. Section 1471 of the Dodd-Frank Act's Title XIV, Subtitle F (Appraisal Activities), added a new TILA section 129H, 15 U.S.C. 1639h, which establishes appraisal requirements that apply to ''higher-risk mortgages.'' Specifically, new TILA section 129H prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the property.
- Obtaining an additional appraisal from a different certified or licensed appraiser if the higher-risk mortgage finances the purchase or acquisition of a property from a seller at a higher price than the seller paid, within 180 days of the seller's purchase or acquisition. The additional appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

A creditor of a ''higher-risk mortgage'' must also:

- Provide the applicant, at the time of the initial mortgage application, with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Provide the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three (3) days prior to the transaction closing date.

New TILA section 129H(f) defines a ''higher-risk mortgage'' with reference to the annual percentage rate (APR) for the transaction. A higher-risk mortgage is a ''residential mortgage loan''[3] secured by a principal dwelling with an APR that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set—

- By 1.5 or more percentage points, for a first lien residential mortgage loan with an original principal obligation amount that does not exceed the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454);
- By 2.5 or more percentage points, for a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454); or
- By 3.5 or more percentage points, for a subordinate lien residential mortgage loan.

The definition of ''higher-risk mortgage'' expressly excludes ''qualified mortgages,'' as defined in TILA section 129C, and ''reverse mortgage loans that are qualified mortgages,'' as defined in TILA section 129C. 15 U.S.C. 1639c.

New TILA section 103(cc)(5) defines the term ''residential mortgage loan'' as any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan. 15 U.S.C. 1602(cc)(5).

New TILA section 129H(b)(4)(A) requires the Agencies jointly to prescribe regulations to implement the property appraisal requirements for higher-risk mortgages. 15 U.S.C. 1639h(b)(4)(A). The Dodd-Frank Act requires that final regulations to implement these provisions be issued within 18 months of the transfer of functions to the Bureau pursuant to section 1062 of the Act, or January 21, 2013.[4] These regulations are to take effect 12 months after issuance.[5]

The Agencies published proposed regulations on September 5, 2012, that would implement these higher-risk mortgage appraisal provisions. 77 FR 54722 (Sept. 5, 2012). The comment period closed on October 15, 2012. The Agencies received more than 200 comment letters regarding the proposal from banks, credit unions, other creditors, appraisers, appraisal management companies, industry trade associations, consumer groups, and others.

II. Summary of the Final Rule

Loans Covered

To implement the statutory definition of ''higher-risk mortgage,'' the final rule uses the term ''higher-priced mortgage loan'' (HPML), a term already in use under the Bureau's Regulation Z with a meaning substantially similar to the meaning of ''higher-risk mortgage'' in the Dodd-Frank Act. In response to commenters, the Agencies are using the term HPML to refer generally to the loans that could be subject to this final rule because they are closed-end credit and meet the statutory rate triggers, but the Agencies are separately exempting several types of HPML transactions from the rule. The term ''higher-risk mortgage'' encompasses a closed-end consumer credit transaction secured by a principal dwelling with an APR exceeding certain statutory thresholds. These rate thresholds are substantially similar to rate triggers that have been in use under Regulation Z for HPMLs.[6] Specifically, consistent with TILA section 129H, a loan is a ''higher-priced mortgage loan'' under the final rule if the APR exceeds the APOR by 1.5 percent for first-lien conventional or conforming loans, 2.5 percent for first-lien jumbo loans, and 3.5 percent for subordinate-lien loans.[7]

Consistent with the statute, the final rule exempts ''qualified mortgages'' from the requirements of the rule. Qualified mortgages are defined in § 1026.43(e) of the Bureau's final rule implementing the Dodd-Frank Act's ability-to-repay requirements in TILA section 129C (2013 ATR Final Rule).[8] 15 U.S.C. 1639c.

In addition, the final rule excludes the following classes of loans from coverage of the higher-risk mortgage appraisal rule:

(1) Transactions secured by a new manufactured home;

(2) transactions secured by a mobile home, boat, or trailer;

(3) transactions to finance the initial construction of a dwelling;

(4) loans with maturities of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling; and

(5) reverse mortgage loans.

For reasons discussed more fully in the section-by-section analysis of

[2] Public Law 111–203, 124 Stat. 1376 (Dodd-Frank Act).

[3] *See* Dodd-Frank Act, § 1401; TILA section 103(cc)(5), 15 U.S.C. 1602(cc)(5) (defining ''residential mortgage loan'').

[4] *See* Dodd-Frank Act, section 1400(c)(1).

[5] *See id.*

[6] Added to Regulation Z by the Board pursuant to the Home Ownership and Equity Protection Act of 1994 (HOEPA), the HPML rules address unfair or deceptive practices in connection with subprime mortgages. *See* 73 FR 44522, July 30, 2008; 12 CFR 1026.35.

[7] The existing HPML rules apply the 2.5 percent over APOR trigger for jumbo loans only with respect to a requirement to establish escrow accounts. *See* 12 CFR 1026.35(b)(3)(v).

[8] The Bureau released the 2013 ATR Final Rule on January 10, 2013, under Docket No. CFPB–2011–0008, CFPB–2012–0022, RIN 3170–AA17, at *http://consumerfinance.gov/Regulations.*

§ 1026.35(a)(1), below, the proposal included a request for comments on an alternative method of determining coverage based on the ''transaction coverage rate'' or TCR, rather than the APR. Unlike the APR, the TCR would exclude all prepaid finance charges not retained by the creditor, a mortgage broker, or an affiliate of either.[9] This change was proposed to address a possible expansion of the definition of ''finance charge'' used to calculate the APR, proposed by the Bureau in its rulemaking to integrate mortgage disclosures (2012 TILA–RESPA Proposal [10]). Accordingly, the proposal defined ''higher-risk mortgage loan'' (termed ''higher-priced mortgage loan'' in this final rule) in the alternative as calculated by either the TCR or APR, with comment sought on both approaches.

As explained more fully in the section-by-section analysis of § 1026.35(a)(1), below, the final rule requires creditors to determine whether a loan is an HPML by comparing the APR to the APOR. The Agencies are not at this time adopting the proposed alternative of replacing the APR with the TCR and comparing the TCR to the APOR. The Agencies will consider the merits of any modifications to this approach and public comments on this matter if and when the Bureau adopts the more inclusive definition of finance charge proposed in the 2012 TILA–RESPA Proposal.

Finally, based on public comments, the Agencies intend to publish a supplemental proposal to request comment on possible exemptions for ''streamlined'' refinance programs and small dollar loans, as well as to seek comment on whether application of the HPML appraisal rule to loans secured by certain other property types, such as existing manufactured homes, is appropriate.

Requirements That Apply to All Appraisals Performed for Non-Exempt HPMLs

Consistent with the statute, the final rule allows a creditor to originate an HPML that is not otherwise exempt from the appraisal rules only if the following conditions are met:

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser; and
- The appraiser conducts a physical property visit of the interior of the property.

Also consistent with the statute, the following requirements also apply with respect to HPMLs subject to the final rule:

- At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense; and
- The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three (3) business days before consummation.

Requirement To Obtain an Additional Appraisal in Certain HPML Transactions

In addition, the final rule implements the Act's requirement that the creditor of a ''higher-risk mortgage'' obtain an additional written appraisal, at no cost to the borrower, when the ''higher-risk mortgage'' will finance the purchase of the consumer's principal dwelling and there has been an increase in the purchase price from a prior sale that took place within 180 days of the current sale. TILA section 129H(b)(2)(A), 15 U.S.C. 1639(b)(2)(A). In the final rule, using their exemption authority, the Agencies are setting thresholds for the increase that will trigger an additional appraisal. An additional appraisal will be required for an HPML (that is not otherwise exempt) if either:

- The seller is reselling the property within 90 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 10 percent; or
- The seller is reselling the property within 91 to 180 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 20 percent.

The additional written appraisal, from a different licensed or certified appraiser, generally must include the following information: an analysis of the difference in sale prices (*i.e.,* the sale price paid by the seller and the acquisition price of the property as set forth in the consumer's purchase agreement), changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

III. Legal Authority

As noted above, TILA section 129H(b)(4)(A), added by the Dodd-Frank Act, requires the Agencies jointly to prescribe regulations implementing section 129H. 15 U.S.C. 1639h(b)(4)(A). In addition, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

IV. Section-by-Section Analysis

For ease of reference, unless otherwise noted, the **SUPPLEMENTARY INFORMATION** refers to the section numbers of the rules that will be published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c).[11] As explained further in the section-by-section analysis of § 1026.35(c)(7), the rules are being published separately by the OCC, the Board, and the Bureau. No substantive difference among the three sets of rules is intended. The NCUA and FHFA adopt the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), by cross-referencing these rules in 12 CFR 722.3 and 12 CFR Part 1222, respectively. The FDIC adopts the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), but does not cross-reference the Bureau's Regulation Z.

Section 1026.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

The final rule is incorporated into Regulation Z's existing section on prohibited acts or practices in connection with HPMLs, § 1026.35. As revised, § 1026.35 will consist of four subsections—(a) Definitions; (b) Escrows for higher-priced mortgage loans; (c) Appraisals for higher-priced mortgage loans; and (d) Evasion; open-end credit. As explained in more detail in the Bureau's final rule on escrow requirements for HPMLs (2013 Escrows Final Rule) [12] (finalizing the Board's proposal to implement the Act's escrow account requirements under TILA section 129D, 15 U.S.C. 1639d (2011 Escrows Proposal) [13]), the subsections on repayment ability (existing § 1026.35(b)(1)) and prepayment penalties (existing § 1026.35(b)(2)) will be deleted because the Dodd-Frank Act addressed these matters in other ways. Accordingly, repayment ability and prepayment penalties are now

[9] *See* 75 FR 58539, 58660–62 (Sept. 24, 2010); 76 FR 11598, 11609, 11620, 11626 (March 2, 2011).

[10] *See* 77 FR 51116 (Aug. 23, 2012).

[11] The final rule was issued by the Bureau on January 18, 2013, in accordance with 12 CFR 1074.1.

[12] The Bureau released the 2013 Escrows Final Rule on January 10, 2013, under Docket No. CFPB–2013–0001, RIN 3170–AA16, at *http://consumerfinance.gov/Regulations.*

[13] 76 FR 11598, 11612 (March 2, 2011).

addressed in the Bureau's final ability-to-repay rule (2013 ATR Final Rule) and high-cost mortgage rule (2013 HOEPA Final Rule).[14] *See* §§ 1026.32(d)(6) and 1026.43(c), (d), (f), and (g).

35(a) Definitions

35(a)(1) Higher-priced mortgage loan

TILA section 129H(f) defines a ''higher-risk mortgage'' as a residential mortgage loan secured by a principal dwelling with an APR that exceeds the APOR for a comparable transaction by a specified percentage as of the date the interest rate is set. 15 U.S.C. 1639(f). New TILA section 103(cc)(5) defines the term ''residential mortgage loan'' as ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan.'' 15 U.S.C. 1602(cc)(5).

Consistent with TILA sections 129H(f) and 103(cc)(5), the proposal provided that a ''higher-risk mortgage loan'' is a closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the APOR for a comparable transaction as of the date the interest rate is set by 1.5 percentage points for first-lien conventional mortgages, 2.5 percentage points for first-lien jumbo mortgages, and 3.5 percentage points for subordinate-lien mortgages.

The Agencies noted in the proposal that the statutory definition of higher-risk mortgage, though similar to that of the regulatory term ''higher-priced mortgage loan,'' differs from the existing regulatory definition of higher-priced mortgage loan in some important respects. First, the statutory definition of higher-risk mortgage expressly excludes loans that meet the definition of a ''qualified mortgage'' under TILA section 129C. In addition, the statutory definition of higher-risk mortgage includes an additional 2.5 percentage point threshold for first-lien jumbo mortgage loans, while the definition of higher-priced mortgage loan has contained this threshold only for purposes of applying the requirement to establish escrow accounts for higher-priced mortgage loans. *Compare* TILA section 129H(f)(2), 15 U.S.C. 1639h(f)(2), with 12 CFR 1026.35(a)(1) and 1026.35(b)(3). The Agencies requested comment on whether the concurrent use of the defined terms ''higher-risk mortgage loan'' and ''higher-priced mortgage loan'' in different portions of Regulation Z may confuse industry or consumers and, if so, what alternative approach the Agencies could take to implementing the statutory definition of ''higher-risk mortgage loan'' consistent with the requirements of TILA section 129H. 15 U.S.C. 1639h.

The final rule adopts the proposed definition, but replaces the term ''higher-risk mortgage loan'' with the term ''higher-priced mortgage loan'' or HPML. *See* existing § 1026.35(a)(1). The final rule also makes certain changes to the existing definition of HPML, discussed in detail below.

Public Comments on the Proposal

Several credit unions, banks, and an individual commenter believed that the definition of ''higher-risk mortgage loan'' did not adequately capture loans that were truly ''high risk.'' Several of these commenters stated that the definition should account not only for the cost of the loan, but also for other risk factors, such as debt to income ratio, loan amounts, and credit scores and other measures of a consumer's creditworthiness. A bank commenter believed that the interest rate thresholds in the definition were ambiguous and arbitrary and asserted that, for example, 1.5 percent was not an exceptionally high interest margin in comparison with interest margins for credit cards and other financing. A credit union commenter believed the rule would apply to consumers who were in fact a low credit risk.

Most commenters on the definition expressly supported using the existing term HPML rather than the new term ''higher-risk mortgage loan.'' Commenters including, among others, a mortgage company, bank, credit union, financial holding company, credit union trade association, and banking trade association, asserted that the use of two terms with similar meanings would be confusing to the mortgage credit industry. Some asserted that consumers would be confused by this as well. Some of these commenters noted that Regulation Z also already used the term ''high-cost mortgage'' with different requirements and believed this third term would further compound consumer and industry confusion. Of commenters who expressed a preference for the term that should be used, most recommended using the term HPML because this term has been used by industry for some time.

Some commenters on this issue also advocated making the rate triggers and overall definition the same for existing HPMLs and ''higher-risk mortgages'' regardless of the terms used. They argued that this would reduce compliance burdens and confusion and ease costs associated with developing and managing systems. One commenter believed that developing a single standard would also avoid creating unnecessary delay and additional cost for consumers in the origination process.

A few commenters acknowledged key differences between the statutory meaning of ''higher-risk mortgage'' and the regulatory term HPML, and suggested ways of harmonizing the two definitions. For example, these commenters noted that ''higher-risk mortgages'' do not include qualified mortgages, whereas HPMLs do. To address this difference, one commenter suggested, for example, that the appraisal requirements should apply to HPMLs as currently defined, except for qualified mortgages. Other commenters suggested that the basic definition of HPML be understood to refer solely to the rate thresholds and suggested that the exemption for qualified mortgages from the appraisal rules be inserted as a separate provision. They did not discuss how to address additional variances in the types of transactions excluded from HPML and ''higher-risk mortgage,'' respectively, such as the exclusion from the meaning of HPML but not the statutory definition of ''higher-risk mortgage'' for construction-only and bridge loans.

Other commenters also acknowledged that the current definition of HPML includes only two rate thresholds—one for first-lien mortgages (APR exceeds APOR by 1.5 percentage points) and the other for subordinate-lien mortgages (APR exceeds APOR by 3.5 percentage points). By contrast, the statutory definition of ''higher-risk mortgage'' has an additional rate tier for first-lien jumbo mortgages (APR exceeds APOR by 2.5 percentage points). The HPML requirements in Regulation Z apply a rate threshold of 2.5 percentage points above APOR to jumbo loans only for purposes of the requirement to escrow. The commenters who noted this distinction held the view that the ''middle tier'' threshold would not have a practical advantage for lenders or consumers. Instead, they recommended adopting a final rule with a single APR trigger of 1.5 percentage points above APOR for all first-lien loans.

Discussion

In the final rule, the Agencies use the term HPML rather than the proposed term ''higher-risk mortgage loan'' to refer generally to the loans covered by the appraisal rules. In a separate

[14] The Bureau released the 2013 HOEPA Final Rule on January 10, 2013, under Docket No. CFPB–2012–0029, RIN 3170–AA12, at *http://consumerfinance.gov/Regulations.*

subsection of the final rule (§ 1026.35(c)(2), discussed in the section-by-section analysis below), the Agencies exempt several types of transactions from coverage of the HPML appraisal rules.

On January 10, 2013, the Bureau published the 2013 Escrows Final Rule, its final rule to implement Dodd-Frank Act amendments to TILA regarding the requirement to escrow for certain consumer mortgages.[15] *See* TILA section 129D, 15 U.S.C. 1639d. These rules are to take effect in May 2013, before the effective date of this final rule (January 18, 2014).

Thus, consistent with TILA sections 129H(f) and 103(cc)(5) and the proposal, the final rule in § 1026.35(a)(1) follows the Bureau's 2013 Escrows Final Rule in defining an HPML as a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

- By 1.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
- By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; and
- By 3.5 or more percentage points, for a loan secured by a subordinate lien.

The Agencies acknowledge that some commenters have concerns about the rate thresholds; however, these rate thresholds are prescribed by statute. *See* TILA section 129H(f)(2), 15 U.S.C. 1639h(f)(2); *see also* 15 U.S.C. 1602(cc)(5).

The Bureau in the 2013 Escrows Final Rule adopted a definition of HPML that is consistent for both TILA's escrow requirement and TILA's appraisal requirements for ''higher-risk mortgages.'' TILA sections 129D and 129H, 15 U.S.C. 1639d and 1639h. This definition incorporates the APR thresholds for loans covered by these rules as prescribed by Dodd-Frank Act amendments to TILA and also reflects that both sets of rules apply only to closed-end mortgage transactions. TILA sections 129D(b)(3) and 129H(f), 15 U.S.C. 1639d(b)(3) and 1639h(f). Overall, the revised definition of HPML adopted in the 2013 Escrows Final Rule reflects only minor changes from the current definition of HPML in existing 12 CFR 1026.35(a). For clarity, the Agencies are re-publishing the definition published earlier in the 2013 Escrows Final Rule.[16] The incorporation by reference in § 1026.35(c) of the term HPML in § 1026.35(a) and the re-publishing of § 1026.35(a) in this final rule are not intended to subject § 1026.35(a) to the joint rulemaking authority of the Agencies under TILA section 129H.

Consistent with the proposal, the final rule uses the phrase ''a closed-end consumer credit transaction secured by the consumer's principal dwelling'' in place of the statutory term ''residential mortgage loan'' throughout § 1026.35(a)(1). As also proposed, the Agencies have elected to incorporate the substantive elements of the statutory definition of ''residential mortgage loan'' into the definition of HPML rather than using the term itself to avoid inadvertent confusion of the term ''residential mortgage loan'' with the term ''residential mortgage transaction,'' which is an established term used throughout Regulation Z and defined in § 1026.2(a)(24). *Compare* 15 U.S.C. 1602(cc)(5) (defining ''residential mortgage loan'') with 12 CFR 1026.2(a)(24) (defining ''residential mortgage transaction''). Accordingly, the final regulation text differs from the express statutory language, but with no intended substantive change to the scope of TILA section 129H.

Annual Percentage Rate (APR) Versus Transaction Coverage Rate (TCR)

The Agencies are not at this time adopting an alternative method of determining coverage based on the ''transaction coverage rate'' or TCR. The proposal included a request for comments on a proposed amendment to the method of calculating the APR that was proposed as part of other mortgage-related proposals issued for comment by the Bureau. In the Bureau's proposal to integrate mortgage disclosures (2012 TILA–RESPA Proposal), the Bureau proposed to adopt a more simple and inclusive finance charge calculation for closed-end credit secured by real property or a dwelling.[17] The more-inclusive finance charge definition would affect the APR calculation because the finance charge is integral to the APR calculation. The Bureau therefore also sought comment on whether replacing APR with an alternative metric might be warranted to determine whether a loan is a ''high-cost mortgage'' covered by the Bureau's proposal to implement the Dodd-Frank Act provision related to ''high-cost mortgages'' (2012 HOEPA Proposal),[18] as well as by the proposal to implement the Dodd-Frank Act's escrow requirements in TILA section 129D (2011 Escrows Proposal).[19] The alternative metric would have implications for the 2013 ATR Final Rule as well. One possible alternative metric discussed in those proposals is the ''transaction coverage rate'' (TCR), which would exclude all prepaid finance charges not retained by the creditor, a mortgage broker, or an affiliate of either.[20]

The new rate triggers for both ''high-cost mortgages'' and ''higher-risk mortgages'' under the Dodd-Frank Act are based on the percentage by which the APR exceeds APOR. Given this similarity, the Agencies sought comment in the higher-risk mortgage proposal on whether a modification should be considered for this final rule as well and, if so, what type of modification. Accordingly, the proposal defined ''higher-risk mortgage loan'' (termed HPML in this final rule) in the alternative as calculated by either the TCR or APR, with comment sought on both approaches. The Agencies relied on their exemption authority under section 1471 of the Dodd-Frank Act to propose this alternative definition of higher-risk mortgage. TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

On September 6, 2012, the Bureau published notice in the **Federal Register** that the comment period for public comments on the more inclusive definition of ''finance charge'' in the 2012 TILA–RESPA Proposal and the use of the TCR in the 2012 HOEPA Proposal would be extended to November 6, 2012.[21] The Bureau explained that it believed that commenters needed additional time to evaluate the proposed more inclusive finance charge in light of

[15] The Bureau released the 2013 Escrows Final Rule on January 10, 2013, under Docket No. CFPB–2013–0001, RIN 3170–AA16, at *http://consumerfinance.gov/Regulations.*

[16] In their respective publications of the final rule, the Board is publishing the definition of HPML at 12 CFR 226.43(a)(3) and the OCC is including a cross-reference to the definition of HPML at 12 CFR 34.202(b).

[17] *See* 2012 TILA–RESPA Proposal, 77 FR 51116, 51143–46, 51277–79, 51291–93, 51310–11 (Aug. 23, 2012).

[18] *See* 2012 HOEPA Proposal, 77 FR 49090, 49100–07, 49133–35 (Aug. 15, 2012).

[19] 15 U.S.C. 1639d; 76 FR 11598 (March 2, 2011).

[20] *See* 75 FR 58539, 58660–62 (Sept. 24, 2010); 76 FR 11598, 11609, 11620, 11626 (March 2, 2011).

[21] 77 FR 54843 (Sept. 6, 2012); 77 FR 54844 (Sept. 6, 2012).

the other proposals affected by the more inclusive finance charge proposal and the Bureau's request for data on the effects of a more inclusive finance charge. The Bureau stated that it did not expect to address any proposed changes to the definition of finance charge or methods of reconciling an expanded definition of finance charge with APR coverage tests until it finalizes the disclosures in the 2012 TILA–RESPA Proposal. A final TILA–RESPA disclosure rule is not expected to be issued until sometime after January of 2013.

For this reason, this final rule requires creditors to determine whether a loan is an HPML by comparing the APR to the APOR and is not at this time finalizing the proposed alternative of replacing the APR with the TCR and comparing the TCR to the APOR. The Agencies will consider the merits of any modifications to this approach that might be necessary and public comments on this matter if and when the Bureau adopts the more inclusive definition of finance charge proposed in the 2012 TILA–RESPA Proposal.

Existing Definition of HPML Versus New Definition of HPML

The new definition of HPML differs from the definition of HPML in existing § 1026.35(a)(1) in several respects.

First, the new definition of HPML incorporates an additional rate threshold for determining coverage for first-lien loans—an APR trigger of 2.5 percentage points above APOR for first-lien jumbo mortgage loans. The definition retains the APR triggers of 1.5 percentage points above APOR for first-lien conforming mortgages and 3.5 percentage points above APOR for subordinate-lien loans.

By statute, this additional APR threshold of 2.5 percentage points above APOR applies in determining coverage of both the escrow requirements in revised § 1026.35(b) and the appraisal requirements in revised § 1026.35(c). *See* TILA section 129D(b)(3)(B), 15 U.S.C. 1639d(b)(3)(B) (escrow rules); TILA section 129H(f)(2)(B), 15 U.S.C. 1639h(f)(2)(B) (appraisal rules). The APR trigger for first-lien jumbo loans has applied to the requirement to establish escrow accounts for HPMLs under Regulation Z since April 1, 2011. *See* existing § 1026.35(b)(3)(i) and (v); 76 FR 11319 (March 2, 2011).

Under the existing HPML rules in § 1026.35, the APR threshold of 2.5 percentage points above APOR applies only to the requirement to escrow HPMLs in § 1026.35(b)(3). *See* § 1026.35(b)(3)(v). Due to amendments to TILA mandated by the Dodd-Frank Act, however, existing HPML rules on repayment ability (§ 1026.35(b)(1)) and prepayment penalties (§ 1026.35(b)(2)) will be eliminated from the HPML rules in § 1026.35. New rules on repayment ability and prepayment penalties are incorporated into the Bureau's 2013 ATR Final Rule and final rules on ''high-cost'' mortgages. *See* § 1026.32(b)(6) and (d)(6), § 1026.43(b)(10), (c), (e).

Thus, as revised, § 1026.35 will have only two sets of rules for HPMLs—the escrow requirements in revised § 1026.35(b) and the appraisal requirements in new § 1026.35(c). The APR test of 2.5 percentage points above APOR applies, as noted, to both sets of rules, so is now folded into the general definition of HPML in § 1026.35(a)(1). Accordingly, the definition of ''jumbo'' loans in preexisting § 1026.35(b)(3)(v) is being removed.

A second change is that the revised HPML definition adds the qualification that an HPML is a ''closed-end'' consumer credit transaction. This change is not substantive; instead, it merely replaces text previously in § 1026.35(a)(3), that excludes from the definition of HPML ''a home-equity line of credit subject to section 1026.5b.'' Other exemptions from the current definition of HPML listed in existing § 1026.35(a)(3) are moved into the specific provisions setting forth exemptions for certain types of HPMLs from coverage of the escrow rules and appraisal rules, respectively. *See* section-by-section analysis of § 1026.35(c)(2). Thus, the final rule eliminates § 1026.35(a)(3), but with no substantive change intended.

Third, with no substantive change intended, the language used to describe the HPML rate triggers has been revised from preexisting § 1026.35(a)(1) to conform to the language used in the proposed ''higher-risk mortgage'' appraisal rule, which in turn conforms more closely to the statutory language used to describe the rate triggers for ''higher-risk mortgages'' and similar statutory rate triggers for application of the escrow requirements. *See* TILA section 129D(B)(3), 15 U.S.C. 1639d(b)(3) (escrow rules); TILA section 129H(f)(2), 15 U.S.C. 1639h(f)(2) (appraisal rules).

Finally, the Official Staff Interpretations are reorganized with no substantive change intended. Specifically, comments 35(a)(2)–1 and –3, clarifying the terms ''comparable transaction'' and ''rate set,'' respectively, are moved to comments 35(a)(1)–1 and 35(a)(1)–2. This modification reflects that the terms ''comparable transaction'' and ''rate set'' occur in the definition of ''higher-priced mortgage loan'' in § 1026.35(a)(1).

Comparable Transaction

As comment 35(a)(1)–1 indicates, the table of APORs published by the Bureau will provide guidance to creditors in determining how to use the table to identify which APOR is applicable to a particular mortgage transaction. The Bureau publishes on the internet, currently at *http://www.ffiec.gov/ratespread/newcalc.aspx*, in table form, APORs for a wide variety of mortgage transaction types based on available information. For example, the Bureau publishes a separate APOR for at least two types of variable rate transactions and at least two types of non-variable rate transactions. APORs are estimated APRs derived by the Bureau from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk credit characteristics. Currently, the Bureau calculates APORs consistent with Regulation Z (*see* 12 CFR 1026.22 and appendix J to part 1026), for each transaction type for which pricing terms are available from a survey, and estimates APORs for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. However, data are not available for some types of mortgage transactions, including reverse mortgages. In addition, the Bureau publishes on the internet the methodology it uses to arrive at these estimates.

Rate Set

Comment 35(a)(1)–2 clarifies that a transaction's APR is compared to the APOR as of the date the transaction's interest rate is set (or ''locked'') before consummation. The comment notes that sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. Accordingly, under the final rule, for purposes of § 1026.35(a)(1), the creditor should use the last date the interest rate for the mortgage is set before consummation.

Average Prime Offer Rate

The Agencies are not separately publishing the definition of the term ''average prime offer rate'' in § 1026.35(a)(2). The meaning of this term is determined by the Bureau and is published and explained in the Bureau's 2013 Escrows Final Rule. Consistent with the proposal, in the Board's publication of this final rule, the term APOR is defined to have the same

meaning as in § 1026.35(a)(2). *See* 12 CFR 226.43(a)(3)(Board). The OCC's publication of this final rule cross-references the definition of HPML, which incorporates the term APOR as defined in § 1026.35(a)(2). *See* 12 CFR 34.202(b). The OCC's and the Board's versions of Official Staff Interpretations to the final rule cross-reference comments to § 1026.35(a)(2) that explain the meaning of average prime offer rate as described below. *See* 12 CFR 34.202, comment 1 (OCC); 12 CFR 226.43, comment 2. Comment 35(a)(2)–1 clarifies that APORs are APRs derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. Currently, to obtain APORs, the Bureau uses a survey of creditors that both meets the criteria of § 1026.35(a)(2) and provides pricing terms for at least two types of variable rate transactions and at least two types of non-variable rate transactions. The Freddie Mac Primary Mortgage Market Survey® is an example of such a survey, and is the survey currently used to calculate APORs.

Principal Dwelling

As in the proposal, the final versions of the OCC's and the Board's publication of the definition of ''higher-priced mortgage loan'' rules cross-reference the Bureau's Regulation Z and Official Staff Interpretations for the meanings of ''principal dwelling,'' ''average prime offer rate,'' ''comparable transaction,'' and ''rate set.'' *See* 12 CFR 34.202, comments 1 (OCC); 12 CFR 226.43(a)(3), comments 1, 2, 3, and 4 (Board). The Regulation Z comments to which the OCC's and Board's rules cross-reference regarding the meaning of ''average prime offer rate,'' ''comparable transaction,'' and ''rate set'' are described above. *See* 12 CFR 34.202, comment1 (OCC); 12 CFR 226.43(a)(3), comments 2, 3, and 4 (Board). A proposed comment cross-referencing the Bureau's Regulation Z for the meaning of the term ''principal dwelling'' is not adopted in the Bureau's version of the final rule because the meaning of ''principal dwelling'' in new § 1026.35(a)(1) is understood to be consistent within the Bureau's Regulation Z. The OCC's version of this final rule also does not include the proposed comment specifically cross-referencing the meaning of ''principal dwelling'' in the Bureau's Regulation Z because the OCC is adopting the Bureau's definition of HPML, which the Bureau's definition of ''principal dwelling.'' *See* 12 CFR 34.202(b); *see also* 12 CFR 34.202, comment 1. The proposed comment is, however, adopted in the Board's publication of the rule. *See* 12 CFR 226.43(a)(3), comment 1. Consistent with the proposal, in the final rule, the term ''principal dwelling'' has the same meaning as in § 1026.2(a)(24) and is further explained in existing comment 2(a)(24)–3. Consistent with comment 2(a)(24)–3, a vacation home or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the comment clarifies that the new dwelling is considered the principal dwelling.

Threshold for ''Jumbo'' Loans

Comment 35(a)(1)–3 explains that § 1026.35(a)(1)(ii) provides a separate threshold for determining whether a transaction is a higher-priced mortgage loan subject to § 1026.35 when the principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac (a ''jumbo'' loan). The comment further explains that FHFA establishes and adjusts the maximum principal obligation pursuant to rules under 12 U.S.C. 1454(a)(2) and other provisions of Federal law. The comment clarifies that adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a ''jumbo'' loan to which the separate coverage threshold in § 1026.35(a)(1)(ii) applies.

The Board's publication of the definition of ''higher-priced mortgage loan'' rule in this final rule cross-references this comment in the Bureau's Official Staff Interpretations. *See* 12 CFR 226.43(a)(3), comment 3 (Board). The OCC's version of the final rule adopts this comment in 12 CFR 34.202, comment 1.

35(c) Appraisals for Higher-Priced Mortgage Loans

New § 1026.35(c) implements the substantive appraisal requirements for ''higher-risk mortgages'' in TILA section 129H. 15 U.S.C. 1639h. The OCC's and the Board's versions of these rules are substantively identical to the rules in § 1026.35(c). *See* 12 CFR 34.201 *et seq.* (OCC) and 12 CFR 226.43 (Board); s*ee also* section-by-section analysis of § 1026.35(c)(7).

35(c)(1) Definitions

As discussed above, revised § 1026.35(a) contains the definitions of HPML and APOR, which are used in both the HPML escrow rules in § 1026.35(b) and the HPML appraisal rules in new § 1026.35(c). Definitions specific to the substantive appraisal requirements of § 1026.35(c) are segregated in new § 1026.35(c)(1) and described below, along with applicable public comments.

35(c)(1)(i) Certified or Licensed Appraiser

TILA section 129H(b)(3) defines ''certified or licensed appraiser'' as a person who ''(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and (B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.'' 15 U.S.C. 1639h(b)(3). Consistent with the statute, the Agencies proposed to define ''certified or licensed appraiser'' as a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA title XI) (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification.

The proposed definition of ''certified or licensed appraiser'' generally mirrors the statutory language in TILA section 129H(b)(3) regarding State licensing and certification. However, the Agencies proposed to use the defined term ''State agency'' to clarify that the appraiser must be certified or licensed by a State agency that meets the standards of FIRREA title XI. The proposal defined the term ''State agency'' to mean a ''State appraiser certifying and licensing agency'' recognized in accordance with section 1118(b) of FIRREA title XI (12 U.S.C. 3347(b)) and any implementing

regulations.[22] *See* section-by-section analysis of § 1026.35(c)(1)(iv), below.

As discussed below, the Agencies are adopting the proposed definition of ''certified or licensed appraiser'' without change.

Uniform Standards of Professional Appraisal Practice (USPAP). Consistent with the statutory definition of ''certified or licensed appraiser,'' the proposal incorporated into the proposed definition the requirement that, to be a ''certified or licensed appraiser'' under the appraisal rules, the appraiser has to perform the appraisal in conformity with the ''Uniform Standards of Professional Appraisal Practice.'' A comment was proposed to clarify that USPAP refers to the professional appraisal standards established by the Appraisal Standards Board of the ''Appraisal Foundation,'' as defined in FIRREA section 1121(9). 12 U.S.C. 3350(9). The Agencies believe that this terminology is appropriate for consistency with the existing definition in FIRREA title XI and adopt the definition and comment as proposed. *See* § 1026.35(c)(1)(i) and comment 35(c)(1)(i)–1.

In addition, TILA section 129H(b)(3) requires that the appraisal be performed in conformity with USPAP ''as in effect on the date of the appraisal.'' 15 U.S.C. 1639h(b)(3). The Agencies proposed to incorporate this concept in the definition of ''certified or licensed appraiser'' and to include a comment clarifying that the ''date of the appraisal'' is the date on which the appraiser signs the appraiser's certification. Again, the Agencies adopt the definition and comment as proposed. *See* § 1026.35(c)(1)(i) and comment 35(c)(1)(i)–1. Thus, the relevant edition of USPAP is the one in effect at the time the appraiser signs the appraiser's certification.

Appraiser's certification. The proposal also included a comment to clarify that the term ''appraiser's certification'' refers to the certification that must be signed by the appraiser for each appraisal assignment as specified in USPAP Standards Rule 2–3.[23] The final rule adopts this clarification without change. *See* comment 35(c)(1)(i)–2.

FIRREA title XI and implementing regulations. As noted, TILA section 129H(b)(3) defines ''certified or licensed appraiser'' as a person who is certified or licensed as an appraiser and ''performs each appraisal in accordance with [USPAP] and title XI of [FIRREA], and the regulations prescribed under such title, as in effect on the date of the appraisal.'' 15 U.S.C. 1639h(b)(3). Section 1110 of FIRREA directs each Federal financial institutions regulatory agency[24] to prescribe ''appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality.'' 12 U.S.C. 3339. These rules must require, at a minimum—(1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation; and (2) that such appraisals shall be written appraisals. 12 U.S.C. 3339(1) and (2).

The Dodd-Frank Act added a third requirement—that real estate appraisals be subject to appropriate review for compliance with USPAP—for which the Federal financial institutions regulatory agencies must prescribe implementing regulations. FIRREA section 1110(3), 12 U.S.C. 3339(3). FIRREA section 1110 also provides that each Federal banking agency may require compliance with additional standards if the agency determines in writing that additional standards are required to properly carry out its statutory responsibilities. 12 U.S.C. 3339. Accordingly, the Federal financial institutions regulatory agencies have prescribed appraisal regulations implementing FIRREA title XI that set forth, among other requirements, minimum standards for the performance of real estate appraisals in connection with ''federally related transactions,'' which are defined as real estate-related financial transactions that a Federal banking agency engages in, contracts for, or regulates, and that require the services of an appraiser.[25] 12 U.S.C. 3339, 3350(4).

The Agencies' proposal provided that the relevant provisions of FIRREA title XI and its implementing regulations are those selected portions of FIRREA title XI requirements ''applicable to appraisers,'' in effect at the time the appraiser signs the appraiser's certification. While the Federal financial institutions regulatory agencies' requirements in FIRREA also apply to an institution's ordering and review of an appraisal, the Agencies proposed that the definition of ''certified or licensed appraiser'' incorporate only FIRREA title XI's minimum standards related to the appraiser's performance of the appraisal. Accordingly, a proposed comment clarified that the relevant standards ''applicable to appraisers'' are found in regulations prescribed under FIRREA section 1110 (12 U.S.C. 3339) ''that relate to an appraiser's development and reporting of the appraisal,'' and that paragraph (3) of FIRREA, which relates to the review of appraisals, is not relevant. The Agencies are adopting these proposals as § 1026.35(c)(1)(i) and comment 35(c)(1)(i)–3.

The Agencies also noted that FIRREA title XI applies by its terms to ''federally related transactions'' involving a narrower category of loans and institutions than the group of loans and lenders that fall within TILA's definition of ''creditor.''[26] For example, the FIRREA title XI regulations do not apply to transactions of $250,000 or less.[27] They also do not apply to non-depository institutions.[28] However, the Agencies believe that Congress, by including the higher-risk mortgage appraisal rules in TILA, which applies to all creditors, demonstrated its intention that all creditors that extend higher-risk mortgage loans, such as independent mortgage companies, should obtain appraisals from appraisers who conform to the standards in FIRREA related to the development and reporting of the appraisal. The Agencies also believe that, by placing this rule in TILA, Congress did not intend to limit its application to loans over $250,000. The Agencies adopt this broader interpretation in the final rule.

In the proposed rule, the Agencies did not identify specific FIRREA regulations that relate to the appraiser's development and reporting of the appraisal. The Agencies requested

[22] If the Appraisal Subcommittee of the Federal Financial Institutions Examination Council issues certain written findings concerning, among other things, a State agency's failure to recognize and enforce FIRREA title XI standards, appraiser certifications and licenses issued by that State are not recognized for purposes of title XI and appraisals performed by appraisers certified or licensed by that State are not acceptable for federally-related transactions. 12 U.S.C. 3347(b).

[23] *See* Appraisal Standards Bd., Appraisal Fdn., Standards Rule 2–3, USPAP (2012–2013 ed.) at U–29, *available at http://www.uspap.org.*

[24] The Federal financial institutions regulatory agencies are the Board, the FDIC, the OCC, and the NCUA.

[25] *See* OCC: 12 CFR Part 34, Subpart C; Board: 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; and NCUA: 12 CFR part 722.

[26] TILA section 103(g), 15 U.S.C. 1602(g) (implemented by § 1026.2(a)(17)). *See also* 12 U.S.C. 3350(4) and OCC: 12 CFR 34.42(f); Board: 12 CFR 225.62(f); FDIC: 12 CFR 323.2(f); and NCUA: 12 CFR 722.2(e) (defining ''federally related transaction'').

[27] *See* OCC: 12 CFR 34.43(a)(1); Board: 12 CFR 225.63(a)(1); FDIC: 12 CFR 323.3(a)(1); and NCUA: 12 CFR 722.3(a)(1).

[28] *See* 12 U.S.C. 3339, 3350(4) (defining ''federally related transaction,'' (6) (defining ''federal financial institutions regulatory agencies'') and (7) (defining ''financial institution'').

comment on whether the final rule should address any particular FIRREA requirements applicable to appraisers that related to the development and reporting of the appraisal. Consistent with the proposal, the final rule does not identify specific FIRREA regulations that relate to the appraiser's development and reporting of the appraisal.

Public Comments on the Proposal

Appraiser trade associations, a housing advocate, and a credit union commenter agreed that the rule should apply to all qualifying mortgage loans, and not only the subset of the higher-risk mortgage loans already covered by FIRREA, including those loans with a transaction value of $250,000 or less. The appraiser trade associations and the housing advocate commenters believed that all higher-risk mortgages must be included in the rule to ensure that consumers receive the protections offered by appraisals. The housing advocate commenter also believed that including all higher-risk mortgages would reduce risk to all parties involved in the financing and servicing of mortgages and would ensure equal access to credit. This commenter specifically requested that the Agencies at least require an interior appraisal by licensed appraisers for all residential mortgages above $50,000, regardless of whether they are originated or insured by the private sector, Fannie Mae, Freddie Mac, or the Federal Housing Administration (FHA).

A banking trade association and a credit union commenter, however, believed that Congress intended the FIRREA requirements to apply only to a subset of higher-risk mortgages that are already covered by FIRREA. The banking trade association commenter believed the Agencies should not require the rule to apply to loans held in portfolio or loans with a value of $250,000 or less, because a bank holding a loan in portfolio has strong incentive to ensure that the property sale is legitimate and the property is properly valued. The commenter also believed the statute intended to apply the rules only to the subset of higher-risk mortgages with a value of over $250,000, as is provided in the Federal financial institutions regulatory agencies' regulations implementing FIRREA. The banking trade association and a bank commenter noted that many community banks, particularly in rural areas, limit costs to consumers by not requiring appraisals on mortgages held in portfolio of $250,000 or less as permitted under FIRREA title XI or by performing cheaper, in-house evaluations of property.

On whether the final rule should identify specific FIRREA regulations that relate to the development and reporting of the appraisal, the Agencies received one comment letter from appraiser trade associations. These commenters requested that the Agencies specify that creditors must use certified rather than licensed appraisers. The comment is discussed in more detail in the discussion of the use of ''certified'' versus ''licensed'' appraisers, below.

Discussion

As discussed in the proposal, the Agencies believe that, by referencing FIRREA requirements in the context of defining ''certified or licensed appraiser,'' the statute intended to limit FIRREA's requirements to those that apply to the *appraiser's* development and reporting of performance of the appraisal, rather than the FIRREA requirements that apply to a creditor's ordering and review of the appraisal. TILA section 129H(b)(3), 15 U.S.C. 1639h(b)(3). The Agencies also did not propose to interpret ''certified or licensed appraiser'' to include requirements related to appraisal review under FIRREA section 1110(3) because these requirements relate to an institution's responsibilities after receiving the appraisal, rather than to how the certified or licensed appraiser performs the appraisal. Comment 35(c)(1)(i)–3 is consistent with the proposal in this regard. Accordingly, as proposed, the final rule includes a comment clarifying that the requirements of FIRREA section 1110(3) that relate to the ''appropriate review'' of appraisals are not relevant for purposes of whether an appraiser is a certified or licensed appraiser under the proposal. *See* comment 35(c)(1)(i)–3.

At the same time and in light of public comments, the Agencies reviewed the relevant statutory provisions and confirmed their conclusion that applying the FIRREA requirements related to an appraiser's performance of an appraisal broadly—to transactions originated by creditors and transaction types not necessarily subject to FIRREA (such as loans of $250,000 or less)—is wholly consistent with the consumer protection purpose of title XIV of the Dodd-Frank Act, as well as specific language of the appraisal provisions. For example, the Agencies believe that if Congress intended to limit application of the FIRREA requirements to mortgage loans covered by FIRREA, such as loans of over $250,000 made by Federally-regulated depositories, Congress would have expressly done so. Instead, Congress placed the appraisal requirements, including the definition of ''certified and licensed appraiser'' referencing FIRREA, in TILA, which applies to loans made by all types of creditors. Moreover, limiting coverage of the Dodd-Frank Act higher-risk mortgage appraisal rules to loans of over $250,000 would eliminate protections for most higher-risk mortgage consumers.[29] From a practical standpoint, the Agencies believe that the most reasonable interpretation of the statute is that all mortgage loans meeting the definition of ''higher-risk mortgage'' are subject to a uniform set of rules, regardless of the type of creditor. This creates a level playing field and ensures the same protections for all consumers of ''higher-risk mortgages.'' For these reasons, consistent with the proposal, the final rule applies the FIRREA requirements to appraisals for all HPMLs that are not exempt from the regulation. *See* § 1026.35(c)(2).

''Certified'' versus ''licensed'' appraiser. Neither TILA section 129H nor the proposed rule defined the individual terms ''certified appraiser'' and ''licensed appraiser,'' or specified when a certified appraiser or a licensed appraiser must be used. Instead, the proposed rule required that creditors obtain an appraisal performed by ''a certified or licensed appraiser.'' 15 U.S.C. 1639h(b)(1), (b)(2). The Agencies noted in the proposal that certified appraisers generally differ from licensed appraisers based on the examination, education, and experience requirements necessary to obtain each credential. The proposal also stated that existing State and Federal law and regulations require the use of a certified appraiser rather than a licensed appraiser for certain types of transactions. The Agencies requested comment on whether the final rule should address the issue of when a creditor must use a certified appraiser rather than a licensed appraiser.

Consistent with the proposal, the final rule does not separately define ''certified'' appraiser or ''licensed'' appraiser, or specify when a creditor

[29] According to HMDA data, mean loan size for purchase-money HPMLs in 2011 was $141,600 (median $109,000) and for refinance HPMLs in 2011, mean loans size was $141,600 (median $104,000). In 2010, mean loan size for purchase-money HPMLs was $140,400 (median $100,000) and for refinance HPMLs, mean loan size was $138,600 (median $95,000). *See* Robert B. Avery, Neil Bhutta, Kenneth B. Brevoort, and Glenn Canner, ''The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' FR Bulletin, Vol. 98, no. 6 (Dec. 2012) *http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf.*

should use a ''certified'' rather than a ''licensed'' appraiser.

Public Comments on the Proposal

Several national and State credit union trade associations believed that the Agencies should not specify when a creditor must use a certified appraiser rather than a licensed appraiser and requested that the Agencies provide creditors with flexibility to make that determination. Some of these commenters noted that State requirements for certified or licensed appraisers may vary significantly; some states may not issue licenses for appraisers, and some may issue different certified appraiser credentials based on the type of property. A financial holding company commenter, on the other hand, requested that the Agencies clarify circumstances under which a lender must use a certified or a licensed appraiser to facilitate compliance.

On the other hand, appraiser trade association commenters believed that creditors should be required to use only certified appraisers, because the certification is more rigorous than licensure. These commenters stated that the FHA requires newly-eligible appraisers to be certified, and noted that many states have phased out, or are in the process of phasing out, the licensing of appraisers rather than certification. The commenters further stated that when collateral property is complex, the Agencies should require a certified appraiser who is also credentialed by a recognized professional appraisal organization. Similarly, a realtor trade association commenter believed that using certified appraisers was preferable. The commenter believed that the rule should define appraisals for higher-risk mortgages as ''complex,'' thus requiring that only certified appraisers may perform the appraisals.

Discussion

As noted above, several commenters confirmed the Agencies' concerns that State requirements for certified or licensed appraisers may vary significantly and are evolving. Overall, the Agencies believe that imposing specific requirements in this rule about when a certified or licensed appraiser is required goes beyond the scope of the statutory ''higher-risk mortgage'' appraisal provisions in TILA section 129h. 15 U.S.C. 1639h. The Agencies do not believe that this rule is an appropriate vehicle for guidance on standards for use of a State certified or licensed appraiser that may change over time and vary by jurisdiction. Although the FIRREA appraisal regulations specifically require a ''certified'' appraiser for certain types of mortgage transactions, the Agencies do not believe that these FIRREA rules are incorporated into the higher-risk mortgage appraisal rules applicable to all creditors. *See* section-by-section analysis of § 1026.35(c)(1)(i) (defining ''certified or licensed appraiser'' to incorporate FIRREA requirements related to the development and reporting of the appraisal, not appraiser selection or review). Thus, the final rule need not clarify these rules for entities not subject to the FIRREA appraisal regulations; entities subject to the FIRREA appraisal regulations are familiar with them.

Appraiser competency. In the proposed rule, the Agencies also noted that, in selecting an appraiser for a particular appraisal assignment, creditors typically consider an appraiser's experience, knowledge, and educational background to determine the individual's competency to appraise a particular property and in a particular market. The proposed rule did not specify competency standards, but the Agencies requested comment on whether the rule should address appraiser competency. In keeping with the proposal, the final rule does not specify competency standards for appraisers.

Public Comments on the Proposal

A realtor trade association commenter suggested that the rule incorporate guidance from the Interagency Appraisal and Evaluation Guidelines [30] regarding creditors' criteria for selecting, evaluating, and monitoring the performance of appraisers. However, a banking trade association, a financial holding company, appraiser trade association, and several national and State credit union trade association commenters stated that the Agencies should not require creditors to apply specific competency standards for appraisers. Several commenters asserted that competency standards would result in increased regulatory burden and cost, and a banking trade association expressed concern that requiring creditors to implement subjective competency standards could raise conflict of interest issues with respect to appraiser independence.

Appraiser trade association commenters suggested that instead of setting forth competency standards, the Agencies should require a creditor to ensure that the engagement letter properly lays out the required scope of work, that the appraiser is independent, and that the appraiser possesses the appropriate experience to perform the assignment including, when necessary, geographic competency. The financial holding company commenter suggested that the rule should reference FIRREA and require creditors to ensure that appraisers are in good standing. The banking trade association commenter believed that the Agencies should include a reference to USPAP to create a uniform competency standard. One State credit union association believed that the Agencies should permit creditors to rely on appraisers' representations regarding licensing and certification.

Discussion

The Agencies believe that the many aspects of appraiser competency are beyond the scope of TILA's ''higher-risk mortgage'' provisions defining ''certified or licensed appraiser,'' which do not mention competency. Appraiser competency is addressed in a number of regulations and guidelines for Federally-regulated depositories, which are expected to know and follow rules and guidance under FIRREA regarding appraiser competency. [31]

35(c)(1)(ii) Manufactured Home

As discussed in in the section-by-section analysis of § 1026.35(c)(2)(ii), below, the final rule exempts a transaction secured by a new manufactured home from the appraisal requirements of § 1026.35(c). Accordingly, § 1026.35(c)(1)(ii) adds a definition of manufactured home, clarifying that, for the purposes of this section, the term manufactured home has the same meaning as in HUD regulation 24 CFR 3280.2.

35(c)(1)(iii) National Registry

As discussed in § 1026.35(c)(3)(ii)(B) below, to qualify for the safe harbor provided in the final rule, a creditor must verify through the ''National Registry'' that the appraiser is a certified or licensed appraiser in the State in which the property is located as of the date the appraiser signs the appraiser's certification. Under FIRREA section 1109, the Appraisal Subcommittee of the FFIEC is required to maintain a registry of State certified and licensed appraisers eligible to perform appraisals in connection with federally related

[30] 75 FR 77450, 77465–68 (Dec. 10, 2010).

[31] *See, e.g., id.* at 77465–68 (Dec. 10, 2010). Appraiser competency is critical to the quality and accuracy of residential mortgage appraisals. As a commenter noted, the federal banking agencies provide guidance in the Interagency Appraisal and Evaluation Guidelines regarding creditors' criteria for selecting, evaluating, and monitoring the performance of appraisers. *See id.*

transactions. 12 U.S.C. 3338. For purposes of qualifying for the safe harbor, the final rule requires that a creditor must verify that the appraiser holds a valid appraisal license or certification through the registry maintained by the Appraisal Subcommittee. Thus, as proposed, § 1026.35(c)(1)(iii) in the final rule provides that the term ''National Registry'' means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the FFIEC.

35(c)(1)(iv) State Agency

TILA section 129H(b)(3)(A) provides that, among other things, a certified or licensed appraiser means a person who is certified or licensed by the ''State'' in which the property to be appraised is located. 15 U.S.C. 1639h(b)(3)(A). As discussed above, a certified or licensed appraiser means a person certified or licensed by the ''State agency'' in the State in which the property that secures the transaction is located. Under FIRREA section 1118, the Appraisal Subcommittee of the FFIEC is responsible for recognizing each State's appraiser certifying and licensing agency for the purpose of determining whether the agency is in compliance with the appraiser certifying and licensing requirements of FIRREA title XI. 12 U.S.C. 3347. In addition, FIRREA section 1120(a) prohibits a financial institution from obtaining an appraisal from a person the financial institution knows is not a State certified or licensed appraiser in connection with a federally related transaction. 12 U.S.C. 3349(a). Accordingly, as proposed, § 1026.35(c)(1)(iv) in the final rule defines the term ''State agency'' as a ''State appraiser certifying and licensing agency'' recognized in accordance with section 1118(b) of FIRREA and any implementing regulations.

35(c)(2) Exemptions

The Agencies proposed to exclude from the definition of ''higher-risk mortgage loan,'' and thus from coverage of TILA's ''higher-risk mortgage'' appraisal rules entirely, the following types of loans: (1) Qualified mortgage loans as defined in § 1026.43(e); (2) reverse-mortgage transactions subject to § 1026.33(a); and (3) loans secured solely by a residential structure. These exclusions were proposed consistent with the express language of TILA section 129H(f) and pursuant to the Agencies' exemption authority in TILA section 129H(b)(4)(B), which authorizes the Agencies to exempt from coverage of the appraisal rules a class of loans if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B) and (f).

The Agencies requested comment on these proposed exemptions. In addition, the Agencies requested comment on whether the final rule should exempt the following types of loans:

- Loans to finance new construction of a dwelling;
- Temporary or ''bridge'' loans, typically used to purchase a new dwelling where the consumer plans to sell the consumer's current dwelling; and
- Loans secured by properties in ''rural'' areas. For this last exemption, the Agencies requested comment on how to define ''rural''; specifically, whether to define it as the Board did in its proposal to implement Dodd-Frank Act ability-to-repay requirements under TILA section 129C. *See* 15 U.S.C. 1639c; 76 FR 27390 (May 11, 2011) (2011 ATR Proposal) (and also in the 2011 Escrows Proposal), discussed in more detail below.

Finally, the Agencies requested comment on whether commenters believed that any other types of loans should be exempt from the final rule.

The final rule adopts two of the proposed exemptions: qualified mortgages and reverse mortgages. *See* § 1026.35(c)(2)(i) and (vi). The final rule also adopts exemptions for loans secured by new manufactured homes and by mobile homes, boats, or trailers, which replace the proposed exemption for loans secured solely by a residential structure. *See* § 1026.35(c)(2)(ii) (new manufactured homes) and (iii) (mobile homes, boats, or trailers). In addition, the final rule exempts the two types of loans on which the Agencies specifically requested comment: new construction loans and bridge loans. *See* § 1026.35(c)(2)(iv) (construction loans) and (v) (bridge loans).

In addition, based on public comments, the Agencies intend to publish a supplemental proposal to request comment on possible exemptions for ''streamlined'' refinance programs and small dollar loans, as well as to seek comment on whether application of the HPML appraisal rule to loans secured by certain other property types, such as existing manufactured homes, is appropriate.

Exemptions from the HPML appraisal rules of § 1026.35(c) are set out in new § 1026.35(c)(2). The structure of the final rule differs from that of the proposed rule. The proposed rule excluded certain loan types from the definition of ''higher-risk mortgage loan'' and thereby excluded these loan types from coverage of all of the ''higher-risk mortgage'' appraisal rules. By contrast, the final rule defines a general term—HPML—and incorporates exemptions from the appraisal rules in a separate subsection, § 1026.35(c)(2). As discussed, the general term HPML applies also to loans covered by the revised escrow rules in § 1026.35(b), with exemptions specific to those rules enumerated separately in § 1026.35(b)(2).

Thus, exemptions that are the same in both the escrow rules in § 1026.35(b) and the appraisal rules in § 1026.35(c) are stated separately in the ''exemptions'' sections for each set of rules. *See* § 1026.35(b)(2) and (c)(2). The following exemptions are generally the same for both the HPML escrow rules and the HPML appraisal rules: new construction loans, bridge loans, and reverse mortgages. The intent of this structure is to make clear that the Agencies jointly have authority to exempt transactions from the appraisal rules, whereas only the Bureau has authority to exempt transactions from the escrow rules.

These exemptions and related public comments are discussed in detail below.

35(c)(2)(i)

Qualified Mortgages

TILA section 129H(f) expressly excludes from the definition of higher-risk mortgage any loan that is a qualified mortgage as defined in TILA section 129C and a reverse mortgage loan that is a qualified mortgage as defined in TILA section 129C. 15 U.S.C. 1639(f). Rather than implement one exclusion for qualified mortgages and a separate exclusion for any reverse mortgage loans that may be defined by the Bureau as qualified mortgages, the Agencies proposed to provide a single exclusion for a qualified mortgage as that term would be defined in the Bureau's final rule implementing TILA section 129C. 15 U.S.C. 1639c.

Before authority regarding TILA section 129C transferred to the Bureau under the Dodd-Frank Act, the Board issued the 2011 ATR Proposal, which, among other things, would have defined a ''qualified mortgage'' in a new subsection of Regulation Z. 12 CFR 226.43(e). *See* 76 FR 27390, 27484–85 (May 11, 2011). During the proposal period for the ''higher-risk mortgage'' rule, the Bureau had not yet issued final rules implementing TILA section 129C's definition of ''qualified mortgage.'' Since that time, the Bureau has issued rules defining ''qualified mortgage.'' *See* 2013 ATR Final Rule, § 1026.43(e). Consistent with the proposed definition of ''qualified mortgage,'' the Bureau's

final rule defines ''qualified mortgage'' as generally including loans characterized by the absence of certain features considered risky, such as negative amortization and balloon payments.

The Agencies adopt the exemption for ''qualified mortgages'' as proposed, with a cross-reference to the Bureau's final rules defining this class of loans in 12 CFR 1026.43(e).

Public Comments on the Proposal

All commenters—including national and State credit union trade associations, as well as national and State banking trade associations—supported this exemption. Some banking trade associations believed the exemption was appropriate because qualified mortgages, by definition, are safe and sound transactions. Other banking and credit union trade associations expressed concern that they could not comment specifically on the exemption, because the term was not yet defined by the Bureau.

Discussion

The final rule incorporates the exemption for ''qualified mortgages'' as proposed because the exemption is prescribed by statute and widely supported by commenters. The Agencies note that some commenters requested that the final rule also exempt ''qualified residential mortgages,'' which the Dodd-Frank Act exempts from the risk retention rules prescribed by the Act. *See* Dodd-Frank Act section 941, section 15G of the Securities Exchange Act of 1934, 15 U.S.C. 780–11(c)(1)(C)(iii). A qualified residential mortgage, however, is by statute to be defined by regulation as ''no broader than'' the definition of qualified mortgage prescribed by the Bureau in its 2013 ATR Final Rule. *See id.* at sec. 780–11(e)(4)(C). Therefore, the exemption for qualified mortgages will capture all qualified residential mortgages and a separate exemption is not necessary.

35(c)(2)(ii)

Transactions Secured by a New Manufactured Home

The Agencies proposed to exclude from coverage of the higher-risk mortgage appraisal rules any loan secured solely by a residential structure, such as a manufactured home.[32] The Agencies believed that requiring appraisals performed by certified or licensed appraisers was not appropriate, because such transactions typically more closely resemble titled vehicle loans. At the same time, based on outreach, the Agencies believed that for loans for residential structures, such as manufactured homes that are secured by both the home and the land to which the home is attached, appraisals performed by certified or licensed appraisers are feasible. Such transactions were therefore covered by the proposed rule. The Agencies believed the exemption for a loan secured solely by a residential structure was appropriate pursuant to the exemption authority under TILA section 129H(b)(4)(B). 15 U.S.C. 1026.35(b)(4)(B).

The Agencies requested comment on whether the proposed exclusion was appropriate, and if not, reasonable methods by which creditors could comply with the requirements of this proposed rule when providing loans secured solely by a residential structure. The Agencies also requested comment on whether some alternative standards for valuing residential structures securing higher-risk mortgage loans might be feasible and appropriate to include as part of the final rule, in lieu of an appraisal performed by a certified or licensed appraiser.

Public Comments on the Proposal

Commenters, including national and State credit union trade associations, a manufactured housing industry consultant, manufactured housing trade associations, a realtor trade association, a lender specializing in manufactured housing financing, and national and State banking trade associations, submitted comments regarding the exemption for loans secured ''solely by a residential structure,'' but limited their comments to the exemption as applied to manufactured homes. The commenters supported exempting loans secured solely by manufactured homes. Banking trade association commenters believed that the statute was intended to apply only to loans secured at least in part by real property. A manufactured housing industry consultant, a manufactured housing lender, and manufactured housing trade association commenters concurred that traditional appraisals were not appropriate for these transactions for a variety of reasons, including: (1) A lack of qualified and trained appraisers to appraise such transactions, especially in rural areas; (2) a lack of comparable sales and limited sales volume; (3) the high expense of appraisals relative to the cost of the transaction; and (4) inaccurate valuations resulting from traditional appraisals. The manufactured housing industry consultant suggested that an exemption was necessary in part because these loans were unlikely to qualify for the qualified mortgage exemption due to their small size, which would in turn increase the likelihood that they would exceed the points and fees thresholds defining qualified mortgages. *See* § 1026.43(e)(3).

Some of the commenters believed the Agencies should expand the exemption to include financing for both real estate and manufactured homes, known as ''land home'' financing. Manufactured housing trade association commenters argued that traditional appraisals are not appropriate for these transactions for many of the same reasons cited for excluding loans secured solely by a residential structure. One of these manufactured housing trade associations also expressed the view that appraisals are not appropriate because the cost of the home itself is readily known to consumers through other means. In addition, the commenter stated that in rural areas, the cost of the land is small compared to the overall value of the transaction.[33] This commenter recommended that if the Agencies did not exclude all land home transactions, the Agencies in the alternative should at least exclude those land home transactions that are under $125,000 or that are in a rural area.

One commenter also questioned the feasibility of appraisals for such transactions. A lender specializing in manufactured housing financing stated that, in land home transactions, the land on which manufactured homes will be located is often not identified until well after the time appraisals are typically ordered. Moreover, the commenter stated that manufactured homes are typically not available for an interior visit until after closing, regardless of whether the transaction is secured solely by the home itself or by land and home together. As an alternative, the commenter suggested different regulatory language for the exclusion, which would expand the exemption to

[32] The Agencies proposed to exclude from the definition of ''higher-risk mortgage loan'' any loans secured solely by a ''residential structure,'' as that term is used in Regulation Z's definition of ''dwelling.'' *See* 12 CFR 1026.2(a)(19). The provision was intended to exclude loans that are not secured in whole or in part by land. Thus, for example, loans secured by manufactured homes that are not also secured by the land on which they are sited were proposed to be excluded from the definition of higher-risk mortgage loan, regardless of whether the manufactured home itself is deemed to be personal property or real property under applicable State law.

[33] Note, however, that another manufactured housing trade association commenter stated that the majority of manufactured homes are not considered an improvement or enhancement of the real property on which they are sited.

land home transactions and would incorporate an existing definition of ''manufactured home'' to clearly eliminate site-built manufactured homes from the exemption.

Discussion

Public commenters generally confirmed Agencies' concerns regarding the application of the appraisal rules to loans secured by certain manufactured homes. Accordingly, the Agencies are excluding certain manufactured homes from coverage under the final rule. However, in the final rule, the Agencies are modifying the exemption. The proposed rule would have exempted loans ''secured solely by a residential structure,'' which was intended to exempt manufactured homes and other types of dwellings when the loan was not secured at least in part by land. The language in the final rule is tailored to exempt transactions secured by specific types of dwellings. Accordingly, the final rule exempts transactions secured by a new manufactured home, regardless of whether the structure is attached to land or considered real property, and also exempts transactions secured by a mobile home, boat, or trailer.

The Agencies believe that the manufactured home exemption should be based on whether the manufactured home securing the transaction is a new home, regardless of whether land also secures the transaction. Upon further consideration, the Agencies believe that TILA section 129H is intended to apply to certain transactions without regard to whether a transaction is secured by land.[34] Thus, the approach in the final rule is focused on the feasibility and utility of requiring certified or licensed appraisers to perform appraisals for particular manufactured home transactions.

The Agencies believe that an exemption for new manufactured homes regardless of whether the loan for such a home is also secured by land more precisely excludes from the rule those transactions that should not be subject to the new appraisal requirements. Based on further outreach, the Agencies understand that for loans secured by both new manufactured homes and land, a valuation is often performed by combining the manufactured home invoice price with the value of the land, rather than by a traditional appraisal that is based on the collective value of the structure and the land on which it is sited.

The Agencies believe that requiring traditional appraisals with interior inspections for transactions secured by a new manufactured home would add very little value to the consumer beyond existing valuation methods. Moreover, because it may be difficult or impossible to retain qualified appraisers to perform such appraisals, the rule could result in some creditors declining to extend loans for manufactured homes. Exempting new manufactured homes from the rule is, therefore, in the public interest. The Agencies believe that such an exemption also promotes the safety and soundness of creditors, because creditors will be able to continue relying on standardized valuations that are more conducive to pricing new manufactured homes than are appraisals performed by a certified or licensed appraiser.

Accordingly, in § 1026.35(c)(2)(ii), the Agencies are exempting from the appraisal requirements of § 1026.35(c) a transaction secured by a new manufactured home. Comment 35(c)(2)(ii)–1 in the final rule clarifies that a transaction secured by a new manufactured home, regardless of whether the transaction is also secured by the land on which it is sited, is not a ''higher-priced mortgage loan'' subject to the appraisal requirements of § 1026.35(c).

35(c)(2)(iii)

Transaction Secured by Mobile Home, Boat, or Trailer

Section 1026.35(c)(2)(iii) of the final rule also specifically exempts transactions secured by a mobile home, boat, or trailer. This is consistent with the proposal, which would have exempted these transactions because they are secured ''solely by a residential structure.'' The Agencies note that this exemption applies even if the transaction is also secured by land. Comment 35(c)(2)(iii)–1 clarifies that, for purposes of the exemption in § 1026.35(c)(2)(iii), a mobile home does not include a manufactured home, as defined in § 1026.35(c)(1)(ii).

The Agencies believe the exemption is in the public interest, because requiring an appraisal with an interior property visit for these transactions would offer limited value due to existing pricing tools, such as new product invoices and publicly-available pricing guides. The Agencies further believe, for purposes of safety and soundness, that creditors would be better served by using other valuation methods geared specifically for mobile homes, boats, and trailers.

35(c)(2)(iv)

Construction Loans

In the proposal, the Agencies asked for comment on whether to exempt from the higher-risk mortgage appraisal rules transactions that finance the construction of a new home. The Agencies recognized that for loans that finance the construction of a new home, an interior visit of the property securing the loan is generally not feasible because the homes are proposed to be built or are in the process of being built. At the same time, the Agencies recognized that construction loans that meet the pricing thresholds for higher-risk mortgage loans could pose many of the same risks to consumers as other types of loans meeting those thresholds. The Agencies therefore requested comment on whether to exclude construction loans from the definition of higher-risk mortgage loan. The Agencies also sought comment on whether, if an exemption for initial construction loans were not adopted in the final rule, creditors needed any additional compliance guidance for applying TILA's ''higher-risk mortgage'' appraisal rules to construction loans. Alternatively, the Agencies requested comment on whether construction loans should be exempt only from the requirement to conduct an interior visit of the property, and be subject to all other appraisal requirements under the proposed rule.

The final rule adopts an exemption from all of the HPML appraisal requirements for a ''transaction that finances the initial construction of a dwelling.'' This exemption mirrors an existing exemption from the current HPML rules. *See* existing § 1026.35(a)(3), also retained in the 2013 Escrows Final Rule, § 1026.35(b)(2)(i)(B).

Public Comments on the Proposal

Appraiser trade association commenters believed that new construction loans should not be exempted because consumers needed the protection of the appraisal rules. However, all other commenters—including national and State credit union trade associations, national and State banking trade associations, banks,

[34] The Agencies note that the definition of ''higher-risk mortgage loan'' in TILA section 129H incorporates the definition of ''residential mortgage loan.'' TILA section 129H(f). A residential mortgage loan is defined, in part, to include loans involving certain types of dwellings that are non-real estate residences. TILA section 103(cc)(5). For example, cooperatives are specifically described as dwellings under TILA section 103(w). Moreover, although TILA section 129H requires appraisals that conform to FIRREA title XI, the Agencies do not believe that TILA section 129H is limited to transactions subject to FIRREA title XI or other Federal regulations. Thus, the Agencies believe the statute intended to apply the appraisal requirements to some loans that are not secured by land.

a mortgage company, a financial holding company, a home builder trade association, and a loan origination software company—supported the proposed exemption.

Commenters that supported an exemption for new construction loans had varying views on the risks associated with these loans, all supporting the commenters' request for an exemption for such loans. A loan origination software company and a bank commenter asserted that new construction loan interest rates and fees are often high because the loans, which are short-term, have inherently greater risk. Thus, the appraisal rules would be over-inclusive because they would apply even when extended to prime borrowers. Similarly, a banking association commenter argued that new construction loans are not those that Congress intended to target in the appraisal rules, which the commenter viewed as loans priced higher due to the relative credit risk of the borrower. The home builder trade association, however, supported an exemption because the commenter believed that new construction loans are not as risky as the loans targeted by Congress in the ''higher-risk mortgage'' appraisal rules because these loans require close coordination between a bank, home builder, and consumer.

The financial holding company, mortgage company, banking association, and loan origination software company commenters supported an exemption for new construction loans because they are temporary. One of these commenters noted that most mortgage-related regulations, such as those in Regulation X and Z, make accommodations for temporary loans. Others noted that the property securing the new construction loan ultimately will be subject to an appraisal under TILA's ''higher-risk mortgage'' appraisal rules if the permanent financing replacing the new construction loan is a ''higher-risk mortgage.''

Several commenters supporting an exemption cited concerns about the feasibility and utility of performing interior inspection appraisals during the construction phase. A bank commenter stated that an exemption was needed because a home under construction is not available for a physical inspection. Similarly, credit union association and banking association commenters stated that an interior visit would not be feasible during the construction phase. Moreover, the commenter believed an appraisal was unlikely to yield sufficient information about the condition of the property to justify the expense to the consumer. A banking association commenter further asserted that the usual value of a new construction loan is the value ''at completion,'' so an appraisal performed during construction would not assess the value of a completed home.

A State banking association commenter asserted that failing to exempt new construction loans from the final rule would result in operational difficulties and that an interior inspection appraisal would be of little value to consumers in these circumstances. A bank commenter requested guidance on how to comply with the rules for these loans, if the Agencies did not exempt them from the rule.

Discussion

In § 1026.35(c)(2)(iv), the Agencies are using their exemption authority to exempt from the final rule a ''transaction to finance the initial construction of a dwelling.'' Unlike the exemption for ''bridge'' loans that the Agencies are also adopting (*see* section-by-section analysis of § 1026.35(c)(2)(v), below), the exemption for new construction loans is not limited to loans of twelve months or less. This is because the Agencies recognize that new construction might take longer than twelve months and that therefore new construction loans might be for terms of longer than twelve months. This aspect of the exemption adopted in the final rule also reflects the existing exemption for new construction loans from the current HPML rules. *See* § 1026.35(a)(3).

The Agencies' decision to exempt these types of transactions is consistent with wide support for this exemption received from commenters, which largely confirmed the Agencies' concerns about the drawbacks of subjecting these transactions to the new HPML appraisal requirements, particularly the requirement for an interior inspection, USPAP-compliant appraisal. The Agencies also believe that this exemption is important to ensure consistency across mortgage rules, and thus to facilitate compliance. In addition to noting the existing exemption for new construction loans from the current HPML requirements, the Agencies also note the exemption for these loans from the new Dodd-Frank Act ability-to-repay and ''high-cost'' mortgage rules issued by the Bureau. *See* 2013 ATR Final Rule, § 1026.43(a)(3)(ii), and 2013 HOEPA Final Rule, § 1026.32(a)(2)(ii).[35]

Due to their temporary nature and for other reasons, these loans tend to have higher rates and thus more of them would be subject to the HPML appraisal rules without an exemption. Applying the HPML appraisal rules to these products might subject them to rules with which creditors might not in fact be able to comply. The Agencies therefore believe that this exemption will help ensure that a useful credit vehicle for consumers remains available to build and revitalize communities. The Agencies also recognize that new construction loans can be an important product for many creditors, enabling them to strengthen and diversify their lending portfolios. The Agencies are also not aware of, and commenters did not offer, evidence of widespread valuation abuses in loans to finance new construction. Thus, the Agencies find that the exemption is both in the public interest and promotes the safety and soundness of creditors. *See* TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

The Agencies also wished to clarify in the final rule the treatment of ''construction to permanent'' loans, consisting of a single loan that transforms into permanent financing at the end of the construction phase. For this reason, the commentary of the final rule includes guidance on the application of various rules in Regulation Z to these loans that parallels guidance provided in commentary for the new ''high-cost'' mortgage rules. *See* 2013 HOEPA Final Rule, comment 32(a)(2)(ii)–1. Specifically, comment 35(c)(2)(iv)–1 clarifies that the exclusion for loans to finance the initial construction of a dwelling applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. The comment further clarifies that the HPML appraisal rules in § 1026.35(c) do apply if the permanent financing qualifies as an HPML under § 1026.35(a)(1) and is not otherwise exempt from the rules under § 1026.35(c)(2).

The comment also provides guidance on the application of Regulation Z's general closed-end mortgage loan disclosure requirements to construction-to-permanent loans. To this end, the comment states that, when a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit (§ 1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases

[35] Moreover, the existing ''high-cost'' mortgage rules contain a longstanding exemption for construction loans from the limitation on balloon payments. *See* existing § 1026.32(d)(1)(i).

as though they were two separate transactions. *See* § 1026.17(c)(6)(ii) and comment 17(c)(6)–2. The comment explains that § 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-to-permanent transaction, and that which disclosure option a creditor elects under § 1026.17(c)(6)(ii) does not affect whether the permanent phase of the transaction is subject to § 1026.35(c). The comment further explains that, when the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 1026.35(c). The comment also explains that, when the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with § 1026.35 and appendix D to part 1026. The comment also clarifies that the APR must be compared to the APOR for a transaction that is comparable to the permanent financing to determine coverage under § 1026.35(c). If the transaction is determined to be an HPML that is not otherwise exempt under § 1026.35(c)(2), only the permanent phase is subject to the HPML appraisal requirements of § 1026.35(c).

35(c)(2)(v)

Bridge Loans

In the proposal, the Agencies also requested comment on whether the appraisal rules of TILA section 129H should apply to temporary or ''bridge'' loans with a term of 12 months or less. 15 U.S.C. 1639h. If such an exemption were not adopted, the Agencies sought comment on whether any additional compliance guidance would be needed for applying the new appraisal rules to bridge loans. The Agencies stated concerns about the burden to both creditors and consumers of imposing the rule's requirements on such loans and questioned whether such requirements would be useful for many consumers.

As explained in the proposal, bridge loans are short-term loans typically used when a consumer is buying a new home before selling the consumer's existing home. Usually secured by the existing home, a bridge loan provides financing for the new home (often in the form of the down payment) or mortgage payment assistance until the consumer can sell the existing home and secure permanent financing. Bridge loans normally carry higher interest rates, points and fees than conventional mortgages, regardless of the consumer's creditworthiness.

In § 1026.35(c)(2)(v), the final rule adopts an exemption from the new HPML appraisal rules for a ''loan with a maturity of 12 months or less, if the purpose of the loan is a 'bridge' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.''

Public Comments on the Proposal

Almost all commenters—including national and State banking associations, national and State credit union associations, a mortgage company, a financial holding company, a loan origination software company, a home builder trade association, and a bank—supported an exemption for bridge loans for many of the same reasons that commenters supported exempting construction loans. Several commenters emphasized that these loans are temporary, and some further pointed out that imposing appraisal requirements was unnecessary because bridge loans are ultimately converted to permanent financing that will be subject to the appraisal rules. Other commenters argued that the protections of the appraisal rules were not needed because bridge loans' higher rates are generally unrelated to a consumer's creditworthiness; they argued that TILA's new ''higher-risk mortgage'' appraisal rules were intended for loans made to more vulnerable, less creditworthy consumers without other credit options.

Some commenters asserted that failing to exempt these loans would result in operational difficulties and would be of little value to consumers. In this regard, one commenter discussed the difficulties of comparing an APR to a ''comparable'' APOR for these loans. One credit union association commenter believed that without an exemption, consumers' access to bridge loans would be reduced. Some commenters requested that the Agencies exempt all types of temporary loans. Appraiser trade association commenters believed that the Agencies should not allow an exemption unless there was a compelling policy reason to do so.

Discussion

The Agencies are adopting an exemption for ''bridge'' loans of 12 months or less that are connected with the acquisition of a dwelling intended to become the consumer's principal dwelling for several reasons. First, the Agencies believe that with this exemption, the consumer would still be afforded the protection of the appraisal rules. This is because bridge loans used in connection with the acquisition of a new home are typically secured by the consumer's existing home to facilitate the purchase of a new home. Thus, the consumer would be afforded the protections of the appraisal rules on the permanent financing secured by the new home. This would include the protections of § 1026.35(c)(4)(i) regarding properties that are potentially fraudulent flips.

Second, commenters generally confirmed the Agencies' concerns expressed in the proposal about the burden to both creditors and consumers of imposing TILA section 129H's heightened appraisal requirements on short-term financing of this nature. As noted in the proposal, the Agencies recognize that rates on short-term bridge loans are often higher than on long-term home mortgages, so these loans may be more likely to meet the ''higher-risk mortgage loan'' triggers. As also noted in the proposal and echoed by commenters, ''higher-risk mortgages'' under TILA section 129H would generally be a credit option for less creditworthy consumers, who may be more vulnerable than others and in need of enhanced consumer protections, such as TILA section 129H's special appraisal requirements. However, a bridge loan consumer could be subject to rates that would exceed the higher-risk mortgage loan thresholds even if the consumer would qualify for a non-higher-risk mortgage loan when seeking permanent financing. The Agencies do not believe that Congress intended TILA section 129H to apply to loans simply because they have higher rates, regardless of the consumer's creditworthiness or the purpose of the loan.

Further, the Agencies recognize that the exemption can help facilitate compliance by generally ensuring consistency across residential mortgage rules. Such consistency can reduce compliance-related burdens and risks, thereby promoting the safety and soundness of creditors. The Agencies also believe that consistency across the rules can reduce operational risk and support a creditor's ability to offer these loans, which can enable creditors to strengthen and diversify their lending portfolios.

In particular, the Agencies note the current exemption for ''temporary or 'bridge' loans of twelve months or less from the existing HPML rules (retained in the 2013 Escrows Final Rule, § 1026.35(b)(2)(i)(C)), but also a similar exemption from TILA's new ability-to-repay requirements. *See* existing

§ 1026.35(a)(3). *See* TILA section 129C(a)(8), 15 U.S.C. 1639c(a)(8); 2013 ATR Final Rule, § 1026.43(a)(3)(ii).[36] In addition, longstanding HOEPA rules have included an exception from the balloon payment prohibition for ''loans with maturities of less than one year, if the purpose of the loan is a 'bridge' loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.'' § 1026.32(d)(1)(ii). The final HOEPA rules adopted by the Bureau contain the same exception with minor changes for conformity across mortgage rules. *See* 2013 HOEPA Final Rule, § 1026.32(d)(1)(ii)(B) (revising the exception to cover bridge loans of 12 months or less, rather than less than one year).

Like the HOEPA exception from the balloon payment prohibition, the final HPML appraisal rule does not exempt all loans with terms of 12 months or less. Only bridge loans of 12 months or less that are made in connection with the acquisition of a consumer's principal dwelling are exempted. (Construction loans are separately exempted under § 1026.35(c)(2)(iv), discussed in the corresponding section-by-section analysis above.) The Agencies believe that the HPML appraisal rule might be appropriately applied to other types of temporary financing, particularly temporary financing that does not result in the consumer ultimately obtaining permanent financing covered by the appraisal rule.

Finally, as with new construction loans, the Agencies are not aware of, and commenters did not offer, evidence of widespread valuation abuses in bridge loans of twelve months or less used in connection with the acquisition of a consumer's principal dwelling. For all these reasons, the Agencies find that the exemption is both in the public interest and promotes the safety and soundness of creditors. *See* TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

35(c)(2)(vi)

Reverse Mortgage Transactions

The Agencies proposed to exempt reverse mortgage transactions subject to § 1026.33(a) from the definition of ''higher-risk mortgage loan.'' The Agencies proposed this exemption in part because the proprietary (private) reverse mortgage market is effectively nonexistent, thus the vast majority of reverse mortgage transactions made in the United States today are insured by FHA as part of the U.S. Department of Housing and Urban Development's (HUD) Home Equity Conversion Mortgage (HECM) Program.[37] The Agencies stated that TILA's new ''higher-risk mortgage'' appraisal rules are arguably unnecessary because HECM creditors must adhere to specific standards designed to protect both the creditor and the consumer, including robust appraisal rules.[38] In addition, a methodology for determining APORs for reverse mortgage transactions does not currently exist, so creditors would be unable to determine whether the APR of a given reverse mortgage transaction exceeded the rate thresholds defining a ''higher-risk mortgage loan'' (HPML in the final rule).

At the same time, the Agencies expressed concern that providing a permanent exemption for all reverse mortgage transactions, both private and HECM products, could deny key protections to consumers who rely on reverse mortgages. However, the Agencies proposed the exemption on at least a temporary basis, asserting that avoiding any potential disruption of this segment of the mortgage market in the near term would be in the public interest and promote the safety and soundness of creditors.

The Agencies requested comment on the appropriateness of this exemption. The Agencies also sought comment on whether available indices exist that track the APR for reverse mortgages and could be used by the Bureau to develop and publish an APOR for these transactions, or whether such an index could be developed, noting, for example, information published by HUD on HECMs, including the contract rate.[39]

As discussed further below, in § 1026.35(c)(2)(vi) of the final rule, the Agencies are adopting the proposed exemption for a ''reverse-mortgage transaction subject to § 1026.33(a).''

Public Comments on the Proposal

National and State credit union trade associations, as well as a State banking trade association, supported the proposed exemption. However, appraiser trade association commenters generally believed that excluding appraisal protections would harm consumers, particularly senior citizens, and is contrary to public policy. Appraiser trade association, realtor trade association, and reverse mortgage lending trade association commenters suggested that any exemption should be limited to reverse mortgages under the FHA HECM program and not extended to proprietary products, because HECM consumers are afforded a comprehensive and mandatory set of appraisal protections. The reverse mortgage lending trade association also suggested circumstances under which reverse mortgages should be deemed qualified mortgages and, thus, qualify for an exemption on that basis. *See* section-by-section analysis of § 1026.35(c)(2)(i).

No commenters offered suggestions on an appropriate approach for developing an APOR for reverse mortgages. Appraiser trade associations, who only supported an exemption for HECMs, believed that the rules should apply to reverse mortgages even though indices do not currently exist. A reverse mortgage lending trade association believed that benchmark indices for reverse mortgages could be developed, but, supporting the proposed exemption, questioned whether one should be.

Discussion

The Agencies are adopting the proposed exemption for a ''reverse-mortgage transaction subject to § 1026.33'' for the same basic reasons discussed in the proposal, which were affirmed by most commenters. The Agencies share concerns expressed by some commenters about the risks to consumers of reverse mortgages generally, and of proprietary reverse mortgage loans in particular. Proprietary reverse mortgage loans are not insured by FHA or any other government entity, so payments are not guaranteed by the U.S. government to either consumers or creditors. By contrast, HECMs are insured by FHA and subject to a number of rules and restrictions designed to reduce risk to both consumers and creditors, including appraisal rules. *See* TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

As noted in the proposal, however, there is little to no market for proprietary reverse mortgages, and prospects for the reemergence of this market in the near-term are remote.[40] HECMs comprise virtually the entire reverse mortgage market and are subject

[36] The exemption for ''temporary or 'bridge' loans of twelve months or less'' in TILA's ability-to-repay rules codifies an exemption from the current ''high-cost'' and HPML repayment ability requirements. *See* existing §§ 1026.34(a)(4)(v), 1026.35(a)(3) and (b)(1).

[37] *See* Bureau, *Reverse Mortgages: Report to Congress* 14, 70–99 (June 28, 2012), available at *http://www.consumerfinance.gov/reports/reverse-mortgages-report* (Bureau Reverse Mortgage Report).

[38] *See* HUD Handbook 4235.1, ch. 3.

[39] *See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/oe/rpts/hecm/hecmmenu* (''Home Equity Conversion Mortgage Characteristics'').

[40] Bureau Reverse Mortgage Report at 137–38.

to FHA's extensive HECM rules, which include appraisal requirements.[41] In addition, the Agencies believe that unwarranted creditor liability and operational risk could arise if the rule were applied to loans that a creditor cannot definitively determine are in fact subject to the rule, as is the case here, where no rate benchmark exists for measuring whether a reverse mortgage loan is an HPML. Thus, without an exemption for reverse mortgages, creditors would be susceptible to risks that could negatively affect their safety and soundness.

In reevaluating the proposed exemption, the Agencies also focused more attention on the fact that TILA's ''higher-risk mortgage'' appraisal rules apply only to closed-end products. Many (and historically most) reverse mortgages are open-end products. The Agencies are concerned about creating anomalies in the market and compliance confusion among creditors by applying one set of rules to closed-end reverse mortgages and another to open-end reverse mortgages. The Agencies note that compliance confusion among creditors can create burden and operational risk that can have a negative impact on the safety and soundness of the creditors. The Agencies are concerned that this bifurcation of the rule's application could also hinder creditors from offering a range of reverse mortgage product choices that support the creditors' loan portfolios while also benefitting consumers. In short, questions remain for the Agencies about whether this rule is the appropriate vehicle for addressing appraisal issues in the reverse mortgage market.

The Agencies remain concerned about the potential for abuse related to appraisals even with HECMs, which are subject to appraisal rules. Indeed, evidence exists that problems of property value inflation and fraudulent flipping occur even in the HECM market.[42] The Agencies plan to continue monitoring the reverse mortgage market closely and address appraisal issues as needed, including through consultations with the Bureau regarding any initiatives to revisit previously-issued reverse mortgage proposals (76 FR 58539, 53638–58659 (Sept. 24, 2012)).

For all these reasons, the Agencies have concluded that an exemption for all reverse mortgages at this time from this rule is in the public interest and promotes the safety and soundness of creditors.[43]

35(c)(3) Appraisals Required for Higher-Priced Mortgage Loans

35(c)(3)(i) In General

Consistent with TILA section 129H(a) and (b)(1), the proposal provided that a creditor shall not extend a higher-risk mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction. 15 U.S.C. 1639h(a) and (b)(1). In new § 1026.35(c)(3)(i), the final rule adopts this proposal without change.

35(c)(3)(ii) Safe Harbor

In the proposed rule, the Agencies proposed a safe harbor that would establish affirmative steps creditors can follow to ensure that they satisfy statutory obligations under TILA section 129H(a) and (b)(1). 15 U.S.C. 1639h(a) and (b)(1). This was done to address compliance uncertainties, which are discussed in more detail below.

The Agencies are adopting the final rule substantially as proposed. Specifically, under new § 1026.35(c)(3)(ii), a creditor would be deemed to have obtained a written appraisal that meets the general appraisal requirements now adopted in § 1026.35(c)(3)(i) if the creditor:

- Orders the appraiser to perform the appraisal in conformity with USPAP and FIRREA title XI, and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification (§ 1026.35(c)(3)(ii)(A));
- Verifies through the National Registry that the appraiser who signed the appraiser's certification holds a valid appraisal license or certification in the State in which the appraised property is located as of the date the appraisal is signed (§ 1026.35(c)(3)(ii)(B));
- Confirms that the elements set forth in appendix N to part 1026 are addressed in the written appraisal (§ 1026.35(c)(3)(ii)(C)); and
- Has no actual knowledge to the contrary of facts or certifications contained in the written appraisal (§ 1026.35(c)(3)(ii)(D)).

The Agencies are also adopting proposed comments to the safe harbor. In particular, comment 35(c)(3)(ii)–1 clarifies that a creditor that satisfies the safe harbor conditions in § 1026.35(c)(3)(ii)(A)–(D) will be deemed to have complied with the general appraisal requirements of § 1026.35(c)(3)(i). This comment further clarifies that a creditor that does not satisfy the safe harbor conditions in § 1026.35(c)(3)(ii)(A)–(D) does not necessarily violate the appraisal requirements of § 1026.35(c)(3)(i).

Consistent with the proposal, appendix N to part 1026 provides that, to qualify for the safe harbor, a creditor must check to confirm that the written appraisal:

- Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
- Indicates whether the contract price was analyzed.
- Addresses conditions in the property's neighborhood.
- Addresses the condition of the property and any improvements to the property.
- Indicates which valuation approaches were used, and included a reconciliation if more than one valuation approach was used.
- Provides an opinion of the property's market value and an effective date for the opinion.
- Indicates that a physical property visit of the interior of the property was performed.
- Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of USPAP.
- Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of FIRREA title XI, as amended, and any implementing regulations.

As discussed in the proposal, other than the certification for compliance with FIRREA title XI, the items in appendix N were derived from the Uniform Residential Appraisal Report (URAR) form used as a matter of practice in the residential mortgage industry. The final rule incorporates without change a proposed comment clarifying that a creditor need not look beyond the face of the written appraisal and the appraiser's certification to confirm that the elements in appendix N are included in the written appraisal.

[41] *See* HUD Handbook 4235.1, ch. 3.

[42] Bureau Reverse Mortgage Report at 154, 157.

[43] By statute, the term ''higher-risk mortgage'' excludes any ''qualified mortgage'' and any ''reverse mortgage loan that is a qualified mortgage.'' 15 U.S.C. 1639h(f). The Bureau was authorized by the Dodd-Frank Act to define the term ''qualified mortgage'' and has done so in its 2013 ATR Final Rule. However, the 2013 ATR Final Rule does not define the types of reverse mortgage loans that should be considered ''qualified mortgages'' because, by statute, TILA's ability-to-repay rules do not apply to reverse mortgages. *See* TILA section 129C(a)(8), 15 U.S.C. 1639c(a)(8). Thus the Agencies are not able to implement the precise statutory exemption for ''reverse mortgage loans that are qualified mortgages.'' Instead, the exemption for reverse mortgages is based on the Agencies' express authority to exempt from TILA's ''higher-risk mortgage'' appraisal rules ''a class of loans,'' if the exemption ''is in the public interest and promotes the safety and soundness of creditors.'' TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

See § 1026.35(c)(3)(ii)(C)–1. However, as also provided in the proposal, the final rule provides that the safe harbor does not apply if the creditor has actual knowledge to the contrary of facts or certifications contained in the written appraisal. *See* § 1026.35(c)(3)(ii)(D).

Public Comments on the Proposal

The Agencies collectively received 17 comments from 13 trade groups, three financial institutions, and one bank holding company that addressed the proposed safe harbor. Of these, 14 commenters unequivocally supported the safe harbor. Several commenters requested clarification of certain issues. Two commenters recommended that the Agencies clarify that a lender has not necessarily violated the appraisal requirements when an appraisal does not meet the safe harbor's requirements. Another commenter recommended the final rule provide that a creditor may outsource the safe harbor requirements to a third party and that the creditor would be permitted to rely upon the third party's certification. The commenter also requested confirmation that creditors could use automated processes for checking whether the safe harbor's criteria were met.

The same commenter stated that the safe harbor did not indicate whether the creditor could rely on the face of the written appraisal report and the appraiser's certification. One commenter stated that the safe harbor was not clear regarding the scope and type of information that was required for some of the criteria. One commenter requested that the Agencies eliminate the certification for compliance with FIRREA.

Two commenters questioned implementation of the safe harbor and the creditor's responsibility under the safe harbor standard. These commenters recommended that the Agencies should use the same appraisal review standards that exist in FIRREA and the Interagency Appraisal and Evaluation Guidelines. One of the commenters questioned whether a creditor was being tasked under the safe harbor with adequate responsibility for review of an appraisal. This commenter noted that the proposal appeared to lower the bar for creditors in connection with appraisal review responsibilities. The commenter strongly opposed allowing creditors to perform appraisal review functions without necessarily using licensed or certified appraisers and recommended requiring lenders to use certified or licensed appraisers to perform any substantive appraisal review functions.

Discussion

As noted, the safe harbor is being adopted to address compliance uncertainties for creditors raised by the general appraisal requirements. Specifically, TILA section 129H(b)(1) requires that appraisals mandated by section 129H be performed by ''a certified or licensed appraiser'' who conducts a physical property visit of the interior of the mortgaged property. 15 U.S.C. 1639h(b)(1). The statute goes on to define a ''certified or licensed'' appraiser in some detail. TILA section 129H(b)(3), 15 U.S.C. 1639h(b)(3). The statute, however, is silent on how creditors should determine whether the written appraisals they have obtained comply with these statutory requirements.

TILA section 129H(b)(3) defines a ''certified or licensed appraiser'' as a person who is (1) certified or licensed by the State in which the property to be appraised is located, and (2) performs each appraisal in conformity with USPAP and the requirements applicable to appraisers in FIRREA title XI, and the regulations prescribed under such title, as in effect on the date of the appraisal. 15 U.S.C. 1639h(b)(3). These two elements of the definition of ''certified or licensed appraiser'' are discussed in more detail below.

Certified or licensed in the State in which the property is located. State certification and licensing of real estate appraisers has become a nationwide practice largely as a result of FIRREA title XI. Pursuant to FIRREA title XI, entities engaging in certain ''federally related transactions'' involving real estate are required to obtain written appraisals performed by an appraiser who is certified or licensed by the appropriate State. 12 U.S.C. 3339, 3341. As noted, to facilitate identification of appraisers meeting this requirement, the Appraisal Subcommittee of the FFIEC maintains an on-line National Registry of appraisers identifying all federally recognized State certifications or licenses held by U.S. appraisers.[44] 12 U.S.C. 3332, 3338.

Performs appraisals in conformity with USPAP and FIRREA. Again, TILA section 129H(b)(3) also defines ''certified or licensed appraiser'' as a person who performs each appraisal in accordance with USPAP and FIRREA title XI, and the regulations prescribed under such title, in effect on the date of the appraisal. 15 U.S.C. 1639h(b)(3). USPAP is a set of standards promulgated and interpreted by the Appraisal Standards Board of the Appraisal Foundation, providing generally accepted and recognized standards of appraisal practice for appraisers preparing various types of property valuations.[45] USPAP provides guiding standards, not specific methodologies, and application of USPAP in each appraisal engagement involves the application of professional expertise and judgment.

FIRREA title XI and the regulations prescribed thereunder regulate entities engaging in real estate-related financial transactions that are engaged in, contracted for, or regulated by the Federal financial institutions regulatory agencies.[46] *See* 12 U.S.C. 3339, 3350.

The statute does not specifically address Congress's intent in referencing USPAP and FIRREA title XI. Congress could have amended FIRREA title XI directly to expand the scope of the statute to subject all creditors to its requirements. Instead, Congress inserted language into TILA requiring that the appraisers who perform appraisals in connection with higher-risk mortgage loans comply with USPAP and FIRREA title XI. The statute is silent, however, as to the extent of creditors' obligations under the statute to evaluate appraisers' compliance.

The Agencies remain concerned that, practically speaking, a creditor might not be able to determine with certainty whether an appraiser complied with USPAP for a residential appraisal. An appraisal performed in accordance with USPAP represents an expert opinion of value. Not only does USPAP require extensive application of professional judgment, it also establishes standards for the scope of inquiry and analysis to be performed that cannot be verified absent substantially re-performing the appraisal. Conclusive verification of FIRREA title XI compliance (which itself incorporates USPAP) poses similar problems. On an even more basic level,

[44] The Agencies proposed to interpret the State certification or licensing requirement under TILA section 129H(b)(3) to mean certification or licensing by a State agency that is recognized for purposes of credentialing appraisers to perform appraisals required for federally related transactions pursuant to FIRREA title XI.

[45] *See* Appraisal Standards Bd., Appraisal Fdn., USPAP (2012–2013 ed.) *available at http://www.uspap.org.*

[46] As discussed above in the section-by-section analysis of the definition of ''certified or licensed appraiser'' (§ 1026.35(c)(1)(i)), under FIRREA title XI, the Federal financial institutions regulatory agencies have issued regulations requiring insured depository institutions and their affiliates, bank holding companies and their affiliates, and insured credit unions to obtain written appraisals prepared by a State certified or licensed appraiser in accordance with USPAP for federally related transactions, including loans secured by real estate, exceeding certain dollar thresholds. *See* OCC: 12 CFR Part 34, Subpart C; FRB: 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; and NCUA: 12 CFR part 722.

it may not be possible for a creditor to determine conclusively whether the appraiser actually performed the interior visit required by TILA section 129H(a). Moreover, TILA subjects creditors to significant liability and risk of litigation, including private actions and class actions for actual and statutory damages and attorneys' fees. TILA section 130, 15 U.S.C. 1640. If TILA section 129H is construed to require creditors to assume liability under TILA for the appraiser's compliance with these obligations, the Agencies also remain concerned that it would unduly increase the cost and restrict the availability of higher-risk mortgage loans. Absent clear language requiring such a construction, the Agencies did not believe that the statute should be construed to intend this result.

As discussed in the proposal, the Agencies continue to be of the opinion that the safe harbor will be particularly useful to consumers, industry, and courts with regard to the statutory requirement that the appraisal be obtained from a ''certified or licensed appraiser'' who conducts each appraisal in compliance with USPAP and FIRREA title XI. While determining whether an appraiser is licensed or certified by a particular State is straightforward, USPAP and FIRREA provide a broad set of professional standards and requirements. The appraisal process involves the application of subjective judgment to a variety of information points about individual properties; thus, application of these professional standards is often highly context-specific. (The Agencies noted in the proposed rule, however, that a certification of USPAP compliance, one of the required safe harbor elements, is already an element of the URAR form used as a matter of practice in the industry.)

Regarding the first element of the safe harbor, that the creditor ''order'' that the appraiser perform the appraisal in conformity with USPAP and FIRREA, the Agencies generally understand that creditors seeking the safe harbor would include this assignment requirement in the engagement letter with the appraiser. *See* § 1026.35(c)(3)(ii)(A). Regarding specific comments received on the proposal, the Agencies note that the proposed staff commentary, now adopted, specifically addresses some of the issues the commenters raised. In particular, comment 35(c)(3)(ii)–1, discussed above, states that a creditor who does not satisfy the safe harbor conditions in § 1026.35(c)(3)(ii) does not necessarily violate the general appraisal requirements of § 1026.35(c)(3)(i). In addition, the Agencies note that another proposed element of the commentary, adopted as comment 35(c)(3)(ii)(C)–1, states a creditor need not look beyond the face of the written appraisal and the appraiser's certification to confirm that the elements in appendix N to this subpart are included in the written appraisal.

Some commenters sought clarification on whether the creditor could rely on the face of the appraisal report, and what scope and type of information is required for the appendix N criteria. As the Agencies discussed in the proposal, compliance with the appendix N safe harbor review requires the creditor to check certain elements of the written appraisal and the appraiser's certification on its face for completeness and internal consistency. The final rule, consistent with the proposed rule, does not require the creditor to make an independent judgment about or perform an independent analysis of the conclusions and factual statements in the written appraisal. As discussed above, the Agencies believe that imposing such obligations on the creditor could effectively require it to re-appraise the property. The Agencies also are retaining the requirement for the safe harbor that the appraiser certify, in the appraisal report, the appraiser's compliance with both USPAP and applicable FIRREA title XI regulations, although one commenter requested eliminating the certification of compliance with FIRREA.[47] This certification reflects that TILA requires creditors to obtain appraisals for ''higher-risk mortgages'' that are performed by the appraiser in conformity with the requirements of USPAP and applicable FIRREA title XI regulations. *See* TILA section 129H(b)(3)(B), 15 U.S.C. 1639h(b)(3)(B).

In response to comments about using third parties for the review of appendix N elements, the Agencies realize that some creditors may want to outsource the appraisal review function to confirm that the elements in appendix N are addressed in the written appraisal. Nonetheless, the Agencies emphasize that while a creditor may outsource this function to a third party as the creditor's agent, the creditor remains responsible for its agent's compliance with these requirements, just as if the creditor had performed the function itself, and the creditor cannot simply rely on the agent's certification. The same principle applies regarding a public comment seeking clarification about the use of automated review processes for the safe harbor; use of automated processes can be appropriate, but the creditor remains responsible for their effectiveness.[48]

As stated in the proposed rule, the Agencies are of the opinion that the safe harbor requirements would provide reasonable protections to consumers and compliance guidance to creditors. For the reasons previously provided and in light of commenters' general support, the Agencies have adopted the safe harbor provision as proposed.

35(c)(4) Additional Appraisal for Certain Higher-Risk Mortgage Loans

35(c)(4)(i) In General

Under TILA section 129H(b)(2), a creditor must obtain a ''second appraisal'' from a ''different'' certified or licensed appraiser if the higher-risk mortgage loan will ''finance the purchase or acquisition of the mortgaged property from a seller within 180 days of the purchase or acquisition of such property by the seller at a price that was lower than the current sale price of the property.'' 15 U.S.C. 1639h(b)(2)(A). In the proposal, the Agencies interpreted this requirement to obtain a ''second appraisal'' to mean that the creditor must obtain an appraisal in addition to the one required under the general ''higher-risk mortgage'' appraisal rules in TILA section 129H(a) and (b)(1). *See* 15 U.S.C. 1639h(a) and (b)(1), implemented at new § 1026.35(b)(1)(i), discussed above. Thus, a creditor would be required to obtain two appraisals before extending a higher-risk mortgage loan to finance a consumer's acquisition of the property.

The Agencies proposed to implement the basic statutory requirement without material change. Thus, in ''higher-risk mortgage loan'' transactions under the proposal, creditors would have to apply additional scrutiny to properties being resold for a higher price within a 180-day period.

Using the exemption authority under TILA section 129H(b)(4)(B), the final rule adopts the proposal, but with substantive changes. 15 U.S.C. 1639h(b)(4)(B). Specifically, under new § 1026.35(c)(4)(i), a creditor may not extend an HPML that is not otherwise

[47] The Agencies are aware that the URAR, currently used widely in the industry, includes a *pro forma* appraiser certification for USPAP compliance, but not for compliance with FIRREA Title XI appraisal regulations. Nonetheless, the URAR form accommodates ''free text'' additions by the appraiser, through which appraisers can add an appropriate FIRREA Title XI certification.

[48] The Agencies also note that the Interagency Appraisal and Evaluation Guidelines provide comprehensive guidance on creditors' use of third parties for appraisal functions for institutions subject to the appraisal regulations under FIRREA title XI. *See Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450, 77463–77464 (Dec. 10, 2010).

exempt from the appraisal requirements (see section-by-section analysis of § 1026.35(c)(2), above, and § 1026.35(c)(4)(vi), below) without obtaining, prior to consummation, two written appraisals, if:

- The seller is reselling the property within 90 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 10 percent; or
- The seller is reselling the property within 91 to 180 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 20 percent.

The Agencies are adopting a proposed comment to clarify that an appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under § 1026.35(c)(4)(i). As discussed in more detail below, the Agencies are also adopting several other proposed comments to this rule without substantive change. *See* comments 35(c)(4)(i)–2 through –6.

Public Comments on the Proposal

The Agencies received over 50 comments concerning the proposal to implement the ''second'' appraisal requirement under TILA section 129H(b)(2) from trade associations, banks, credit unions, mortgage lending corporations, non-profit organizations, government-sponsored enterprises (GSEs), and individuals. The commenters offered responses to some of the questions the Agencies posed in the proposal and made suggestions for exemptions from the additional appraisal requirement. Exemptions and related public comments are discussed in the section-by-section analysis of § 1026.35(c)(4)(vi), below.

In the proposal, the Agencies requested comment on thirteen separate questions concerning the general requirement to obtain an additional appraisal and appropriate exemptions from this requirement. Public comments on proposals related to more specific rules for the additional appraisal are discussed in the section-by-section analysis of § 1026.35(c)(ii)–(v), below. On the general requirements adopted in § 1026.35(c)(4)(i), the Agencies received substantive comments on the following two questions.

Use of the term ''additional appraisal'' rather than ''second appraisal.'' The Agencies used the term ''additional appraisal'' rather than ''second appraisal'' throughout the proposed rule and commentary because the term ''second'' may imply that the additional appraisal must be later in time than the first appraisal. In the proposal, the Agencies asked whether commenters agreed with the proposal's use of the term ''additional appraisal'' instead of the statutory term ''second appraisal.'' The Agencies received six comments on this question. The commenters agreed that the use of the term ''additional'' appraisal is appropriate.

Three commenters requested clarification on how to distinguish between appraisals of different valuations in a lending decision, noting that the proposal did not specify which of the two required appraisals a creditor must rely on in extending a higher-risk mortgage loan if the appraisals provide different opinions of value.

Reliance on appraisal for seller's purchase of the property. The Agencies also requested comment on a proposed comment clarifying that an appraisal previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property cannot be used as one of the two required appraisals under the requirement for two appraisals under TILA section 129H(b)(2). 15 U.S.C. 1639h(b)(2). The Agencies received one comment on this question, which supported the Agencies' approach to this issue.

Discussion

Consistent with the statute and the proposal, new § 1026.35(c)(4)(i) requires a creditor to apply additional scrutiny to the value of properties securing HPMLs when they are being resold for a higher price within a 180-day period. The Agencies believe that the intent of TILA section 129H(b)(2), as implemented in § 1026.35(c)(4)(i), is to discourage fraudulent property ''flipping,'' a practice in which a seller resells a property at an artificially inflated price within a short time period after purchasing it, typically after some minor renovations and frequently relying on an inflated appraisal to support the increase in value.[49] 15 U.S.C. 1639h(b)(2). Consumers who purchase properties at inflated values can be financially disadvantaged if, for example, they incur mortgage debt that exceeds the value of their dwelling at the time of the acquisition. The Agencies recognize that a property may be resold at a higher price within a short timeframe for legitimate reasons, such as when a seller makes valuable improvements to the property or market prices increase. Section 1026.35(c)(4)(i) requires an additional appraisal analyzing the property's resale price to ensure that the increased sales price is appropriate.

In the proposal, the Agencies noted that this approach is generally consistent with rules promulgated by HUD to address property flipping in single-family mortgage insurance programs of the FHA. *See* 24 CFR 203.37a; 68 FR 23370, May 1, 2003; 71 FR 33138, June 7, 2006; 77 FR 71099, Nov. 29, 2012 (FHA Anti-Flipping Rules, or FHA Rules). In general, under the FHA Anti-Flipping Rules, properties that have been resold within 90 days are ineligible as security for FHA-insured mortgage financing. *See* 24 CFR § 237a(b)(2). Properties that have been resold 91 to 180 days from the seller's acquisition date are generally ineligible as security for FHA-insured mortgage financing if the sales price exceeds the seller's price by 100 percent. To obtain FHA insurance in this case, HUD requires additional documentation that must include an additional appraisal. *See* 24 CFR 237a(b)(3).

However, under temporary rules in effect until December 31, 2013, that waive the existing HUD anti-flipping regulations during the first 90-day period described above, FHA insurance may be obtained for a mortgage secured by a property resold within 90 days if certain conditions are met.[50] Among these conditions is a requirement for additional documentation if the sales price exceeds the seller's acquisition cost by more than 20 percent, including ''a second appraisal and/or supporting documentation'' verifying that the seller completed legitimate renovation, repair and rehabilitation work on the property to justify the price increase.[51]

Use of the term ''additional appraisal'' rather than ''second appraisal.'' The Agencies are adopting use of the term ''additional appraisal'' rather than ''second appraisal'' throughout the final rule and commentary, as proposed. The Agencies are concerned that the term ''second'' may imply that the additional appraisal must be later in time than the first appraisal, when in some cases creditors might wish to order both appraisals

[49] *See* U.S. House of Reps., Comm. on Fin. Servs., *Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act,* No. 111–94, 59 (May 4, 2009) (House Report); Federal Bureau of Investigation, *2010 Mortgage Fraud Report Year in Review* 18 (August 2011), *available at http://www.fbi.gov/stats-services/publications/mortgage-fraud-2010/mortgage-fraud-report-2010.*

[50] 77 FR 71099, 71100 (Nov. 29, 2012). The waiver rules were first issued in May 2010 and waived the existing regulations through December 31, 2011. 75 FR 38633 (May 21, 2010). The waiver was subsequently extended through December 31, 2012. 76 FR 81363 (Dec. 28, 2011).

[51] 77 FR 71099, 71100–71101 (Nov. 29, 2012).

simultaneously. In addition, creditors might not be able to identify easily which of the two appraisals is the ''second appraisal'' for purposes of complying with the prohibition on charging the consumer for any ''second appraisal'' under TILA section 129H(b)(2)(B). 15 U.S.C. 1639h(b)(2)(B) (implemented at § 1026.35(c)(4)(v), discussed in the section-by-section analysis of that provision, below). Public commenters supported use of the term ''additional appraisal,'' and the Agencies do not believe that this term changes the substantive requirements of the statute.

Regarding concerns expressed by commenters about which appraisal to use for the credit decision when the two appraisals show different values, the Agencies acknowledge that the introduction of a second appraisal will sometimes place creditors in the position of exercising judgment as to which appraisal reflects the more robust analysis and opinion of property value. The Agencies recognize that creditors ordering two appraisals from different certified or licensed appraisers may likely receive appraisals providing different opinions. The Agencies decline to provide additional guidance on this matter in the final rule, however, because other rules and regulatory guidance address the issue and are more appropriate vehicles for this purpose. TILA section 129H does not require that the creditor use any particular appraisal, and the Agencies believe that a creditor should retain the discretion to select the most reliable valuation, consistent with applicable safety and soundness obligations and prudential regulatory guidance. 15 U.S.C. 1639h.

In particular, the Agencies noted in the proposal that TILA's valuation independence rules permit a creditor to obtain multiple valuations for the consumer's principal dwelling *to select the most reliable valuation.*[52] 12 CFR 1026.42(c)(3)(iv). The Interagency Appraisal and Evaluation Guidelines also acknowledge that an institution may find it necessary to obtain another appraisal or evaluation of a property. In that case, the Guidelines affirm that the creditor is ''expected to adhere to a policy of selecting the most credible appraisal or evaluation, rather than the appraisal or valuation that states the highest [or lowest] value.''[53]

Reliance on appraisal for seller's purchase of the property. In comment 35(c)(4)(i)–1, the Agencies are adopting without change a proposed comment clarifying that an appraisal previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property cannot be used as one of the two required appraisals under the ''additional'' appraisal requirement. The Agencies believe that this clarification is consistent with the statutory purpose of TILA section 129H of mitigating fraud on the part of parties to the transaction. 15 U.S.C. 1639h. As noted, the one commenter who weighed in on this issue supported the Agencies' approach.

Section 1026.35(c)(4)(i) is consistent with the proposal in requiring the creditor to obtain the additional appraisal before consummating the HPML. TILA section 129H(b)(2) does not specifically require that the additional appraisal be obtained prior to consummation of the ''higher-risk mortgage,'' but the Agencies believe that this timing requirement is necessary to effectuate the statute's policy of requiring creditors to apply greater scrutiny to potentially flipped properties that will secure the transaction. 15 U.S.C. 1639h(b)(2).

Section 1026.35(c)(4)(i) is consistent with the proposal in several other respects as well. First, the statute requires an additional appraisal ''if the *purpose* of a higher-risk mortgage loan is *to finance the purchase or acquisition of the mortgaged property,''* among other conditions. TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A) (emphasis added). Accordingly, § 1026.35(c)(4)(i) requires an additional appraisal only when the purpose of the HPML is to finance the acquisition of the consumer's principal dwelling—the requirement does not apply to refinance loans.

In addition, the final rule replaces the statutory term ''mortgaged property'' with the term ''principal dwelling.'' TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). The Agencies have made this change to be consistent with Regulation Z, which elsewhere uses the term ''principal dwelling,'' most notably in the existing definition of HPML. *See* existing § 1026.35(a)(1) and the section-by-section analysis of revised § 1026.35(a)(1). Although a property that the consumer has not yet acquired will not at that time be the consumer's actual dwelling, existing commentary to Regulation Z explains that the term ''principal dwelling'' refers to properties that will become the consumer's principal dwelling within a year. *See* § 1026.2(a)(24) and comment 2(a)(24)–3. *See also* 12 CFR 34.202, comment 1 (OCC) and 12 CFR 226.43(a)(3), comment 1 (Board) (cross-referencing Regulation Z, which contains the Bureau's definition of ''principal dwelling,'' and accompanying Official Staff Interpretations of Regulation Z for purposes of this rule). When referring to the date on which the seller acquired the ''property'' in § 1026.35(c)(4)(i)(A) and (B), however, the Agencies use the more general term ''property'' rather than ''principal dwelling,'' because the subject property may not have been used as a principal dwelling when the seller acquired and owned it. The Agencies intend the term ''principal dwelling'' and ''property'' to refer to the same property.

Criteria for Whether an Additional Appraisal Is Required—Acquisition Dates

As noted, the final rule requires a creditor to obtain two appraisals in two sets of circumstances: first, the seller is reselling the property within 90 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 10 percent (new § 1026.35(c)(4)(i)(A)); and second, the seller is reselling the property within 91 to 180 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 20 percent (new § 1026.35(c)(4)(i)(B)). To determine whether either set of circumstances exists and which price threshold applies, a creditor must determine the date on which the seller acquired the property and the date on which the consumer became obligated to acquire the property from the seller. These aspects of the final rule are discussed below.

Public Comments on the Proposal

The Agencies asked for public comment on several questions regarding the first of these conditions, § 1026.35(c)(4)(i)(A).

Treatment of non-purchase acquisitions and use of the term ''acquisition.'' The proposal generally used the term ''acquisition'' instead of the longer statutory phrase ''purchase or acquisition'' to refer to the events in which the seller purchased or acquired the dwelling at issue. The Agencies proposed to use the sole term ''acquisition'' because this term, as clarified in a proposed comment adopted as comment 35(c)(4)-1, includes acquisition of legal title to the property, including by purchase. In the proposal, the Agencies interpreted ''acquisition'' broadly in order to encompass the broad statutory phrase ''purchase or acquisition.'' Thus, as proposed, the

[52] 75 FR 66554, 66561 (Oct. 28, 2010) (emphasis added).

[53] 75 FR 77450, 77458 (Dec. 10, 2010). The Guidelines refer creditors to the section of the Guidelines on ''Reviewing Appraisals and Evaluations'' for information on determining and documenting the credibility of an appraisal or evaluation. *See id.* at 77458, 77461–77463.

additional appraisal rule would apply to a consumer's purchase of a property previously acquired by the seller through a non-purchase acquisition, such as inheritance, divorce, or gift.

In the proposal, the Agencies asked for comment on whether an additional appraisal should be required for consumer acquisitions where the property had been conveyed to the seller in a non-purchase transaction and where, arguably in the consumer's purchase, that seller may not have the same motive to earn a quick, unreasonable profit on a short-term investment. The Agencies also requested comment on how a creditor should calculate the seller's ''acquisition price'' in non-purchase scenarios. The Agencies offered the example of a case where the seller acquired the property by inheritance. In such a case, the seller's acquisition price could be considered ''zero,'' which could make a subsequent sale offered at any price within 180 days subject to the additional appraisal requirement.

The Agencies also invited comment on whether the term ''acquisition'' might be over-inclusive in describing the consumer's transaction because non-purchase acquisitions by the consumer do not readily appear to trigger the additional appraisal requirement. For example, if the consumer acquired the property by means other than a purchase, he or she likely would not seek a mortgage loan to ''finance'' the acquisition.

Two commenters, national trade associations for appraisers, stated that they had no objections to excluding non-purchase transactions by either the seller or consumer from the additional appraisal requirement. A third commenter, a bank, affirmatively supported an exemption for non-purchase acquisitions, suggesting that such transactions are less likely to involve fraudulent flipping schemes.

The Agencies also asked for comment on whether the term ''acquisition'' is the appropriate term to use in connection with both the seller and mortgage consumer. In addition, the Agencies asked whether the term ''acquisition'' should be clarified to address situations in which a consumer previously held a partial interest in the property, and is acquiring the remainder of the interest from the seller. As noted in the proposal, the Agencies do not expect that fraudulent property flipping schemes would likely occur in this context. The Agencies also noted that existing commentary in Regulation Z clarifies that a ''residential mortgage transaction'' does not include transactions involving the consumer's principal dwelling when the consumer had previously purchased and acquired some interest in the dwelling, even though the consumer had not acquired full legal title, such as when one joint owner purchases the other owner's joint interest. *See* comments 2(a)(24)–5(i) and –5(ii); *see also* section-by-section analysis of § 1026.35(a)(1) (defining HPML and discussing the distinctions between the term ''residential mortgage transaction'' in Regulation Z and ''residential mortgage loan'' in the Dodd-Frank Act).

The Agencies received three comments as well on the appropriateness of using term ''acquisition'' rather than another term such as ''purchase.'' Two commenters endorsed use of this term, without elaboration. A third commenter, a mortgage lending corporation, objected to the term ''acquisition'' and proposed the phrase ''purchase acquisition'' instead. The commenter suggested that consumers who acquire property through inheritance, divorce or other non-purchase means frequently want to sell the property quickly; therefore, application of the additional appraisal requirement is not appropriate and will needlessly delay such transactions.

The Agencies received three comments as well on the question of whether the additional appraisal should apply to partial interests in a transaction. One commenter, a regional trade association for credit unions, supported an exemption to cover a situation in which a consumer holds a partial interest in property and is acquiring the remainder of the interest from the seller. In support of its position, the commenter cited the commentary to Regulation Z mentioned in the proposal (comments 2(a)(24)–5(i) and –5(ii)), which clarifies that a ''residential mortgage transaction'' does not include transactions involving the consumer's principal dwelling when the consumer has a partial interest in the dwelling, such as when one joint owner purchases the other's joint interest. The other two commenters, national trade associations for appraisers, opposed exemptions for partial interest transactions, given what the commenters described as the inherent riskiness of higher-priced loans.

Discussion

Use of the term ''acquisition.'' Consistent with the proposal, the Agencies have decided to adopt the proposal to use the term ''acquisition'' in place of the statutory phrase ''purchase or acquisition'' to refer to acquisitions by both the seller and the consumer. The Agencies are also adopting a proposed comment clarifying that, throughout § 1026.35(c)(4), the terms ''acquisition'' and ''acquire'' refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase. *See* comment 35(c)(4)–1. However, the Agencies are adopting a separate exemption from the additional appraisal requirement for HPMLs that finance the purchase of a property ''[f]rom a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party.'' This exemption and other exemptions from the additional appraisal requirement are discussed in more detail in the section-by-section analysis of § 1026.35(c)(4)(vii), below.

''Acquisition'' by the seller. The final rule generally applies to transactions in which the seller had acquired the property without purchasing it, other than through divorce or inheritance. For example, the Agencies are concerned that fraudulent flipping can easily be accomplished when one party purchases a property and quickly deeds the property to another party (for example, as a gift), who then sells the property to an HPML consumer at an inflated price. If the final rule applied only to instances in which the seller had purchased the property, the consumer's transaction would not trigger the added protections of the requirement to obtain two appraisals. By retaining the broader terms ''acquisition'' and ''acquire,'' rather than a narrower term such as ''purchase,'' the final rule ensures that two appraisals will be required to confirm the property's true value. *See* section-by-section analysis of § 1026.35(c)(4)(vi)(B) (explaining that, when a price paid by the seller for the property cannot be determined, two appraisals are required before an HPML can be extended). The different treatment by the rule for transactions involving seller acquisitions through inheritance or divorce are explained more fully in the section-by-section analysis of § 1026.35(c)(4)(vii), below.

''Acquisition'' by the consumer. The Agencies believe that the terms ''acquisition'' or ''acquire'' to describe the consumer's acquisition of the property as well is desirable for consistency throughout the rule. The Agencies do not anticipate that the rule would apply where the consumer acquires the property without purchasing it. As a practical matter, if the consumer acquired the property by means other than a purchase, the rule would not come into play because he or she likely would not seek a mortgage to

''finance'' the acquisition. Moreover, if the consumer paid a nominal or no amount to acquire the property, the additional appraisal requirement would not likely be triggered—in this case, the consumer's price would rarely if ever exceed the seller's acquisition price, which is a condition for triggering the requirement for two appraisals. *See* § 1026.35(c)(4)(i)(B). In terms of whether and how the rule applies, however, the outcome of these scenarios would not change based on use of the term ''acquisition'' as opposed to a more precise term such as ''purchase.''

Seller. As proposed, the final rule uses the term ''seller'' throughout § 1026.35(c)(4) to refer to the party conveying the property to the consumer. The Agencies use this term to conform to the reference to ''sale price'' in TILA section 129H(b)(2)(A). 15 U.S.C. 1639h(b)(2)(A). Also, as discussed above, the Agencies do not foresee instances in which the rule would apply if the consumer acquired the property other than by a purchase transaction.

Agreement. The final rule follows the proposal in referring to the consumer's ''agreement'' to acquire the property throughout § 1026.35(c)(4). A ''sale price,'' as referenced in TILA section 129H(b)(2)(A), is typically contained in a legally binding agreement or contract between a buyer and a seller. 15 U.S.C. 1639h(b)(2)(A). The commenters did not raise any objections to the use of this term as proposed.

Acquisition timeframe. As described above, TILA section 129H(b)(2)(A) requires creditors to obtain an additional appraisal for ''higher-risk mortgages'' that will finance the consumer's purchase or acquisition if the following two circumstances are present: (1) The consumer is financing the purchase or acquisition of the mortgaged property from a seller within 180 days of the seller's purchase or acquisition of the property; and (2) the current sale price of the property is higher than the price the seller paid for the property. 15 U.S.C. 1639h(b)(2)(A).

For a creditor to determine whether the first condition is met, the creditor has to compare two dates: the date of the consumer's acquisition and the date of the seller's acquisition. However, the statute does not provide specific guidance regarding the dates that a creditor must use to perform this comparison. TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). To implement this provision, the Agencies proposed to require that the creditor compare (1) the date on which the consumer entered into the agreement to acquire the property from the seller, and (2) the date on which the seller acquired the property. A proposed comment provided an illustration in which the creditor determines the seller acquired the property on April 17, 2012, and the consumer's acquisition agreement is dated October 15, 2012; an additional appraisal would not be required because 181 days would have elapsed between the two dates.

The Agencies did not receive public comment on these aspects of the proposal and adopt them without change in § 1026.35(c)(4)(i)(A) and (B), and comment 35(c)(4)(i)(A)–2.

Date the seller acquired the property. Regarding the date of the seller's acquisition, TILA section 129H(b)(2)(A) refers to the date of that person's ''purchase or acquisition'' of the property being financed by the higher-risk mortgage loan. 15 U.S.C. 1639h(b)(2)(A). Accordingly, § 1026.35(c)(4)(i)(A) and (B) refer to the date on which the seller ''acquired'' the property. Comment 35(c)(4)(i)–3, adopted from a proposed comment without change, clarifies that this refers to the date on which the seller became the legal owner of the property under State law, which the Agencies understand to be, in most cases, the date on which the seller acquired title. The Agencies have interpreted TILA section 129H(b)(2)(A) in this manner because the Agencies understand that creditors, in most cases, will not extend credit to finance the acquisition of a property from a seller who cannot demonstrate clear title. 15 U.S.C. 1639h(b)(2)(A). Also, as discussed above, the Agencies have proposed to use the single term ''acquisition'' because this term is generally understood to comprise acquisition of legal title to the property, including by purchase.

To assist creditors in identifying the date on which the seller acquired title to the property, comment 35(c)(4)(i)–3 is intended to clarify that the creditor may rely on records that provide information as to the date on which the seller became vested as the legal owner of the property pursuant to applicable State law. As provided in § 1026.35(c)(4)(vi)(A) and explained in comments 35(c)(4)(vi)(A)–1 through –3, the creditor may determine this date through reasonable diligence, requiring reliance on a written source document. The reasonable diligence standard is discussed further below under the section-by-section analysis of § 1026.35(c)(4)(vi)(A).

Date of the consumer's agreement to acquire the property. Regarding the date of the consumer's acquisition, TILA refers to the date on which the ''higher-risk mortgage'' consumer purchases or acquires the mortgaged property, but does not provide detail on how to define the consumer's acquisition. TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). The Agencies proposed to interpret this provision to refer to ''the date of the consumer's agreement to acquire the property.'' A proposed comment explained that, in determining this date, the creditor should use a copy of the agreement provided by the consumer to the creditor, and use the date on which the consumer and the seller signed the agreement. If the consumer and seller signed on different dates, the creditor should use the date on which the last party signed the agreement.

This comment is incorporated into the final rule without change as comment 35(c)(4)(i)–4. As explained in the proposal, the Agencies believe that use of the date on which the consumer and the seller agreed on the purchase transaction best accomplishes the purposes of the statute. This approach is substantially similar to existing creditor practice under the FHA Anti-Flipping Rule, which uses the date of execution of the consumer's sales contract to determine whether the restrictions on FHA insurance applicable to property resales are triggered. *See* 24 CFR 203.37a(b)(1). The Agencies have not interpreted the date of the consumer's acquisition to refer to the actual date of title transfer to the consumer under State law, or the date of consummation of the HPML, because it would be difficult if not impossible for creditors to determine, at the time that they must order an appraisal or appraisals to comply with § 1026.35(c), when title transfer or consummation will occur. The actual date of title transfer typically depends on whether a creditor consummates financing for the consumer's purchase and the seller delivers the deed to the consumer in exchange for the proceeds from the mortgage loan. Various factors considered in the underwriting decision, including a review of appraisals, will affect whether the creditor extends the loan. In addition, the Agencies are concerned that even if a creditor could identify a date certain by which the loan would be consummated and title would be transferred to the consumer, the creditor could potentially set a date that exceeds the 180-day time period to circumvent the requirements of § 1026.35(c)(4)(i).

Comment 35(c)(4)(i)–4 also clarifies that the date on which the consumer and the seller agreed on the purchase transaction, as evidenced by the date the last party signed the agreement, may not necessarily be the date on which the consumer became contractually

obligated under State law to acquire the property. It may be difficult for a creditor to determine the date on which the consumer became legally obligated under the acquisition agreement as a matter of State law. Using the date on which the consumer and the seller agreed on the purchase transaction, as evidenced by their signatures and the date on the agreement, avoids operational and other potential issues because the Agencies expect that this date would be apparent on its face from the signature dates on the acquisition agreement.

Criteria for Whether an Additional Appraisal Is Required—Acquisition Prices

TILA section 129H(b)(2)(A) requires creditors to obtain an additional appraisal if the seller had acquired the property ''at a price that was lower than the current sale price of the property'' within the past 180 days. 15 U.S.C. 1639h(b)(2)(A). To determine whether this statutory condition has been met, a creditor would have to compare the current sale price with the price at which the seller had acquired the property. Accordingly, the Agencies proposed to implement this requirement by requiring the creditor to compare the price paid by the seller to acquire the property with the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property. Thus, if the price paid by the seller to acquire the property is lower than the price in the consumer's acquisition agreement by a certain amount or percentage to be determined by the Agencies in the final rule, and the seller had acquired the property 180 or fewer days prior to the date of the consumer's acquisition agreement, the creditor would be required to obtain an additional appraisal before extending a higher-risk mortgage loan to finance the consumer's acquisition of the property.[54]

As noted above, the Agencies are adopting the general approach proposed of setting a particular price increase threshold that triggers the additional appraisal requirement, and are specifying the price increase thresholds as follows: A creditor is required to obtain two appraisals in two sets of circumstances—first, when the seller is reselling the property within 90 days of acquiring it at a price that exceeds the seller's acquisition price by more than 10 percent (new § 1026.35(c)(4)(i)(A)); and second, when the seller is reselling the property within 91 to 180 days of acquiring it at a price that exceeds the seller's acquisition price by more than 20 percent (new § 1026.35(c)(4)(i)(B)). This aspect of the final rule and related comments are discussed in greater detail below.

Price at which the seller acquired the property. TILA section 129H(b)(2)(A) refers to a property that the seller previously purchased or acquired ''at a price.'' 15 U.S.C. 1639h(b)(2)(A). The proposal also referred to the ''price'' at which the seller acquired the property; a proposed comment clarified that the seller's acquisition price refers to the amount paid by the seller to acquire the property. The proposed comment also explained that the price at which the seller acquired the property does not include the cost of financing the property. This comment was intended to clarify that the creditor should consider only the price of the property, not the total cost of financing the property.

The Agencies are adopting these aspects of the proposal without substantive change in § 1026.35(c)(4)(i)(A) and (B), and comment 35(c)(4)(i)–5.

Public Comments on the Proposal

The Agencies asked for comment on whether additional clarification was needed regarding how a creditor should identify the price at which the seller acquired the property. In particular, the Agencies also requested comment on how a creditor would calculate the price paid by a seller to acquire a property as part of a bulk sale that is later resold to a higher-risk mortgage consumer. The Agencies understand that, in bulk sales, a sales price might be assigned to individual properties for tax or accounting reasons, but asked for public input on whether guidance may be needed for determining the sales price of a property for purposes of determining whether an additional appraisal is required. The Agencies also asked for comment on any operational challenges that might arise for creditors in determining purchase prices for homes purchased as part of a bulk sale transaction, as well as for views on whether any challenges presented could impede neighborhood revitalization in any way, and, if so, whether the Agencies should consider an exemption from the additional appraisal requirement for these types of transactions altogether.

An appraiser trade association stated that an appraiser's expertise is important in valuing properties that are part of a bulk sale. No other commenters commented on this question. In view of the value that appraisers can add in valuing properties as part of a bulk sale, and in the absence of requests or suggestions for additional guidance, the Agencies are adopting the rule as proposed with no additional provisions or clarifications regarding the purchase price of properties purchased in bulk sales.

Price the consumer is obligated to pay to acquire the property. TILA section 129H(b)(2)(A) refers to the ''current sale price of the property'' being financed by a higher-risk mortgage loan. 15 U.S.C. 1639h(b)(2)(A). The proposal referred to ''the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller.'' The final rule adopts this language in § 1026.35(c)(4)(i)(A) and (B). The final rule also adopts a proposed comment clarifying that the price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property that is signed and dated by both the consumer and the seller. *See* comment 35(c)(4)(i)–6. In keeping with the proposal, comment 35(c)(4)(i)–6 also explains that the price at which the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property to clarify that a creditor should only consider the sale price of the property as reflected in the consumer's acquisition agreement.

In addition, the comment refers to comment 35(c)(4)(i)–4 (providing guidance on the ''date of the consumer's agreement to acquire the property,'' as discussed above). The intention of this cross-reference is to indicate that the document on which the creditor may rely to determine the consumer's acquisition price will be the same document on which a creditor may rely to determine the date of the consumer's agreement to acquire the property. Also tracking the proposal, comment 35(c)(4)(i)–6 further explains that the creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. The Agencies expect that the price the consumer is obligated to pay to acquire the property will be apparent from the consumer's acquisition agreement.

[54] The Agencies proposed a trigger for the additional appraisal requirement, adopted and revised in new § 1026.35(c)(4)(i)(B), as follows: ''The price at which the seller acquired the property was lower than the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller, by an amount equal to or greater than *XX.*'' 77 FR 54722, 54772 (Sept. 5, 2012).

Public Comments on the Proposal

The Agencies requested comment on whether the price at which the consumer is obligated to pay to acquire the property, as reflected in the consumer's acquisition agreement, provides sufficient clarity to creditors on how to comply while providing consumers adequate protection. The Agencies did not receive comments on this issue, and is adopting the proposal's use of the phrase ''the price the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller.''

35(c)(4)(i)(A) and (B)

TILA section 129H(b)(2)(A) provides that an additional appraisal is required when the price at which the seller had purchased or acquired the property was ''lower'' than the current sale price and the resale occurs within 180 days of the seller's acquisition. 15 U.S.C. 1639h(b)(2)(A). TILA does not define the term ''lower.'' Thus, as written, the statute would require an additional appraisal for any price increase above the seller's acquisition price, if the resale occurred within 180 days of the seller's acquisition. As discussed in more detail below, the Agencies do not believe that the public interest or the safety and soundness of creditors would be served if the law is implemented to require an additional appraisal for any increase in price. Accordingly, the Agencies proposed an exemption to the additional appraisal requirement for some threshold increase in the price. As described above, the proposal contained a placeholder for the amount by which the resale price would have to have exceeded the price at which the seller had acquired the property.

In § 1026.35(c)(4)(i)(A) and (B), the Agencies are adopting a tiered approach to the proposed exemption for certain price increases. Specifically:

- Section 1026.35(c)(4)(i)(A) exempts from the additional appraisal requirement HPMLs that finance the consumer's purchase of a property within 90 days of the seller's acquisition of the property at a price that does not exceed 10 percent of the seller's acquisition purchase price.
- Section 1026.35(c)(4)(i)(B), exempts from the additional appraisal requirement HPMLs that finance the consumer's purchase of a property within 91 to 180 days of the seller's acquisition of the property at a price that does not exceed 20 percent of the seller's acquisition price.

Public Comments on the Proposal

The Agencies solicited comment on potential exemptions for mortgage transactions that have a sale price that exceeds the seller's purchase price by a relatively small amount or by a certain percentage. The Agencies requested comment on whether a fixed dollar amount, a fixed percentage, or some alternate approach should be used to determine an exempt price increase, and what specific price threshold would be appropriate.

The Agencies received a large number of comments on these questions. The commenters generally endorsed the proposed exemption, based either on a dollar amount, or a percentage of the seller's acquisition price. Four commenters (a bank holding company, two national trade associations for mortgage lending companies and consumer and small-business lenders, and a large mortgage lending company) suggested that a 10 percent price increase exception would be appropriate. One of these commenters argued that 10 percent is a customary standard in the industry because it represents typical realtor and other closing costs.

A national trade association for community banks suggested a minimum of 15 percent. Two commenters, a regional trade association for credit unions and a community bank, argued that the exception should be at least 25 percent. One large national bank suggested a threshold of 5 percent. Another commenter, a credit union, suggested that an exemption be for the greater of three percent or a $10,000 increase in the price. A GSE suggested that the Agencies exempt from the second appraisal requirement sales that are subject to an ''anti-flipping'' clause. When an investor purchases a property in short sales from the GSEs, for example, certain clauses in the sales contract prohibit the investor from reselling that property for the first 30 days after the short sale purchase. The investor is then prohibited from reselling the property without justification and permission from the GSE for the next 31 to 90 days for a price that exceeds the seller's price by more than 20 percent.[55] Identical resale restrictions apply to investors purchasing property through a short sale under the Home Affordable Foreclosure Alternatives (HAFA) program.[56] Some commenters suggested that the Agencies incorporate FHA's regime as the standard for the higher-risk mortgage rule.

Discussion

As noted, the Agencies are adopting a tiered approach to the proposed exemption from the additional appraisal requirement of TILA section § 1026.35(c)(4)(i) for HPMLs that finance the resale of properties that do not exceed certain price increases from the prior sale. Specifically, § 1026.35(c)(4)(i)(A) exempts from the additional appraisal requirement HPMLs that finance the consumer's purchase of a property within 90 days of the seller's acquisition of the property where the resale price does not exceed 10 percent of the seller's acquisition price. Section 1026.35(c)(4)(i)(B), exempts from the additional appraisal requirement HPMLs that finance the consumer's purchase of a property within 91 to 180 days of the seller's acquisition of the property where the resale price does not exceed 20 percent of the seller's acquisition price. In developing this approach, the Agencies reviewed public comments as well as other government standards and rules designed to curb harmful flipping in residential mortgage transactions. These included short sale reselling restrictions imposed by Fannie Mae, Freddie Mac and the U.S. Treasury Department,[57] as well as HUD's Anti-Flipping Rules—both HUD's existing regulations (24 CFR 203.37a(b)) and HUD rules currently in effect that temporarily ''waive'' existing regulations and replace them with other standards.[58]

The Agencies believe that short sale reselling restrictions of the GSEs and Treasury are instructive. Like these rules, the final rule incorporates a bifurcated approach to addressing fraudulent flipping, based on the number of days between the seller's purchase and the consumer's purchase.[59] The Agencies are not adopting an exemption for HPMLs financing sales subject to an anti-flipping clause, however. The Agencies

[55] *See* Fannie Mae Single Family Servicing Guide Announcement SVC 2012–19, page 13; and Freddie Mac Single Family Seller Servicer Guide, Chapter B65.40(i).

[56] *See* U.S. Dept. of Treasury, Supplemental Directive 12–07 (Nov. 1, 2012).

[57] *See* Fannie Mae Single Family Servicing Guide Announcement SVC 2012–19, page 13; and Freddie Mac Single Family Seller Servicer Guide, Chapter B65.40(i); U.S. Dept. of Treasury, Supplemental Directive 12–07 (Nov. 1, 2012).

[58] *See, e.g.,* 77 FR 71099 (Nov. 29, 2012).

[59] As noted earlier, the GSE and Treasury short sale rules ban resales outright for 30 days after the short sale and also ban them if the sales price increases by more than 20 percent for resales in the next 31 to 90 days. *See* Fannie Mae Single Family Servicing Guide Announcement SVC 2012–19, page 13; and Freddie Mac Single Family Seller Servicer Guide, Chapter B65.40(i); U.S. Dept. of Treasury, Supplemental Directive 12–07 (Nov. 1, 2012).

are concerned that such an exemption would not be sufficiently protective of the HPML consumers the statute was intended to protect. If such an exemption covered only loans subject to GSE and Treasury anti-flipping clauses, HPML consumers purchasing homes from investors who acquired them from GSEs or Treasury would not receive the protection of the additional appraisal requirement. Meanwhile, HPML consumers purchasing homes from investors who acquired them from other creditors or investors would receive the protection of the additional appraisal requirement. It is unclear why HPML consumers in the latter case should receive these protections and consumers in the former case should not. In addition, the purpose of the additional appraisal requirement in the final rule is to ensure a second opinion on the value of a purchased home; the purpose of anti-flipping clauses generally is to restrict the transaction entirely. Thus, these clauses may be instructive, but should not necessarily determine who receives the protection of this rule.

If an exemption for HPMLs financing sales subject to an anti-flipping clause covered loans subject to anti-flipping clauses more generally, the Agencies would be concerned about more HPML consumers not receiving the protections of the statute. Moreover, if creditors were concerned that the additional appraisal requirement might impede disposal of their distressed properties, they could devise ''anti-flipping'' clauses that would impose only minimal restrictions on the resale of those properties, simply to take advantage of the exemption. The Agencies recognize the importance to creditors and investors of being able to sell distressed properties in a timely manner to decrease losses. The Agencies further understand that restrictions on the resale of distressed properties purchased from creditors and investors can affect how quickly creditors and investors can dispose of these properties, and that creditors and investors design resale restrictions accordingly. However, the appraisal requirement under this final rule is not a restriction on resale by the seller; it is a requirement for additional documentation regarding the value of homes purchased by a certain subset of consumers who finance the transaction with an HPML.

The Agencies view the FHA Anti-Flipping Rules as also instructive for the final rule. In the preamble to its original Anti-Flipping Final Rule and waiver notices after it, HUD states that ''fraudulent property flipping involves the rapid re-sale, often within days, of a recently acquired property.'' [60] HUD also states in its original final rule that ''resales executed within 90 days imply pre-arranged transactions that often prove to be among the most egregious examples of predatory lending.'' [61] Thus, under existing HUD regulations, FHA insurance is not available for loans that finance the purchase of a property within 90 days of the previous sale. *See* 24 CFR 203.37a(b)(2). HUD's rule is based on the conclusion that 90 days is a reasonable waiting period to ensure that legitimate rehabilitation and repairs of a property have occurred.[62]

HUD has also stated that a 180-day ban on eligibility for FHA insurance would have provided a disincentive to legitimate contractors who improve houses—thus increasing the stock of affordable housing.[63] Therefore, for transactions involving resales in the 91–180 day period, HUD will insure resales at any price, but requires additional documentation, which must include a second appraisal, if the price increase exceeds the seller's acquisition price by 100 percent. *See* 24 CFR 203.37a(b)(3).

The Agencies believe that HUD's basic approach—the use of more restrictive conditions for 90 days, followed by somewhat lesser restrictions for the next 90 days—has merit as an approach to combatting the kind of flipping with which Congress seemed concerned.[64] The Agencies recognize that, since issuing the regulation in 24 CFR 203.37a(b)(3), HUD has issued rules that temporarily replace its existing regulations, with the goal of encouraging investors to rehabilitate homes and thus help ''stabilize real estate prices as well as neighborhoods and communities where foreclosure activity has been high.'' [65] Under these temporary rules, FHA insurance is now available for loans that finance property resales within 90 days of the previous sale, as long as certain conditions are met. One condition is that ''a second appraisal and/or supporting documentation'' is required if the sales price exceeds the seller's acquisition price by more than 20 percent.[66] However, the Agencies recognize that these rules are designed to address a temporary market condition; the Agencies believe that the HPML appraisal rules must be designed to address property flipping beyond a temporary market condition.

At the same time, the Agencies believe that the approach adopted with respect to the additional appraisal requirement resembles the FHA waiver rules in some important ways that mitigate concerns about chilling investment. Like the FHA waiver rules, the final rule does not prohibit HPML financing of resales within 90 days (by contrast, the existing FHA regulations ban FHA insurance on resales within 90 days). Rather, the final rule imposes an additional condition on the transaction—namely, that the creditor must obtain a second appraisal for the creditor's use in considering the loan application and, more specifically, the collateral value of the dwelling that will secure the mortgage. The Agencies believe that this protection is consistent with congressional intent to provide additional protections for borrowers of loans considered by Congress to pose higher risks to those borrowers. Consistent with the views expressed by some commenters, however, the Agencies have determined that consumer protection is not served by requiring a second appraisal in circumstances where the increase generally is not indicative of a seller attempting to profit on a flip. The Agencies believe it is reasonable to expect a seller, faced with circumstances dictating resale of a dwelling that the seller very recently acquired, to seek to recoup the seller's transaction costs on the purchase and resale, in addition to the seller's acquisition price. These costs may include fees from the seller's acquisition, such as mortgage application fees, origination points, escrow and attorney's fees, transfer taxes and recording fees, title search charges and title insurance premiums, as well as fees incurred in the resale, such as real estate commissions, seller-

[60] *See, e.g.,* 68 FR 23370 (May 1, 2003); 77 FR 71099 (Nov. 29, 2012).

[61] 68 FR 23370, 23372 (May 1, 2003).

[62] *See id.*

[63] *See id.*

[64] *See* U.S. House of Reps., Comm. on Fin. Servs., *Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act,* No. 111–94, 59 (May 4, 2009) (House Report); Federal Bureau of Investigation, *2010 Mortgage Fraud Report Year in Review* 18 (August 2011), *available at http://www.fbi.gov/stats-services/publications/mortgage-fraud-2010/mortgage-fraud-report-2010. See also* 71 FR 33138, 33141–33142 (June 7, 2006); HUD, Mortgagee Letter 2006–14 (June 8, 2006) (''FHA's policy prohibiting property flipping eliminates the most egregious examples of predatory flips of properties within the FHA mortgage insurance programs.'').

[65] 77 FR 71099 (Nov. 29, 2012).

[66] *See id.* at 71100. A property inspection is also required. *See id.* at 71100–71101. For loans financing resales within 90 days where the sales price does not exceed the seller's acquisition price by more than 20 percent, FHA insurance is conditioned on the transactions being ''arms-length, with no identity of interest between the buyer and seller or other parties participating in the sales transaction.'' *Id.* at 71100. HUD provides several examples of ways that lenders can ensure that there is no inappropriate collusion or agreement between parties. *Id.*

paid points, and other sales concessions on the resale. These costs will vary to some extent by State and by transaction. However, the Agencies believe that providing an allowance of 10 percent over the seller's acquisition price reasonably accommodates these transaction costs and strikes an appropriate balance with respect to ease of administration for purposes of the rule.

Regarding HPMLs that occur within 91 to 180 days, the final rule provides that an additional appraisal is required only if the property price increased by more than 20 percent of the seller's acquisition price. *See* § 1026.35(c)(4)(i)(B). In this way, the final rule provides a modest additional 10 percent allowance for legitimate repairs, and builds in a 90-day period in the interest of ensuring enough time to allow such repairs to be made. At the same time, the approach preserves added consumer protections in the first 90 days, when predatory flipping is most likely to occur. The Agencies recognize that this element of the final rule differs from the FHA Anti-Flipping Rules, which require additional documentation for a resale from 91 to 180 days only if the price increases by 100 percent of the seller's acquisition price. However, FHA insurance applies to HPMLs and non-HPMLs alike, and the Agencies believe that Congress intended special protections to apply to HPML consumers.

The Agencies believe that requiring an additional appraisal for HPMLs financing the purchase of a home being resold within a 180-day period, regardless of the amount of the price increase, could restrict home sales to HPML consumers, because investors might be less likely to sell properties to them. The additional appraisal rules could potentially affect the safety and soundness of creditors holding properties as a result of foreclosure or deed-in-lieu of foreclosure. This might arise if potential application of the two-appraisal requirement makes the properties less desirable for investors to purchase from financial institutions and rehabilitate for resale, out of investor concerns about the potential scope of the HPML requirement as applied to the pool of likely purchasers for their investment properties. This could create additional losses for creditors holding these properties. The Agencies do not believe that these potential negative impacts would be outweighed by consumer protections afforded by the additional appraisal requirement. The Agencies believe that the approach adopted by the final rule strikes the appropriate balance between allowing legitimate resales without undue restrictions and providing HPML consumers with additional protections from fraudulent flipping. For these reasons, the Agencies have concluded that the exemptions from the additional appraisal requirement reflected in § 1026.35(c)(4)(i)(A) and (B) are in the public interest and promote the safety and soundness of creditors.

35(c)(4)(ii) Different Certified or Licensed Appraisers

Under the proposed rule, the two appraisals required under the proposed paragraph now adopted as § 1026.35(c)(4)(i) could not be performed by the same certified or licensed appraiser. This proposal was consistent with TILA section 129H(b)(2)(A), which expressly requires that the additional appraisal must be performed by a ''different'' certified or licensed appraiser than the appraiser who performed the other appraisal for the ''higher-risk mortgage'' transaction. 15 U.S.C. 1639h(b)(2)(A).

As discussed in the proposal, during informal outreach conducted by the Agencies, some participants suggested that the Agencies impose additional requirements regarding the appraiser performing the second appraisal for the higher-risk mortgage loan, such as a requirement that the second appraiser not have knowledge of the first appraisal. Outreach participants indicated that this requirement would minimize undue pressure to value the property at a price similar to the value assigned by the first appraiser.

The Agencies explained that they did not propose any additional conditions on what it means to obtain an appraisal from a ''different'' certified or licensed appraiser because the Agencies expect that existing valuation independence requirements would be sufficient to ensure that the second appraiser performs an independent valuation. Rules to ensure that appraisers exercise their independent judgment in conducting appraisals exist under TILA (§ 1026.42), as well as FIRREA title XI.[67] In addition, the USPAP Ethics Rule requires that appraisers ''perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests,'' and includes several examples of forbidden conduct related to this rule.[68] However, the Agencies requested comment on whether the rule should include additional conditions on what it means for the additional appraisal to be performed by a ''different'' appraiser. Specifically, the Agencies sought comment on whether the final rule should prohibit creditors from obtaining two appraisals by appraisers employed by the same appraisal firm, or who received the assignments from same appraisal management company (AMC).

The final rule follows the proposal and the statute in requiring that the additional appraisal must be performed by a ''different'' certified or licensed appraiser than the appraiser who performed the other appraisal for the HPML transaction. *See* § 1026.35(c)(4)(ii). In the final rule, the Agencies also adopt a new comment clarifying what it means to obtain an appraisal from a ''different'' certified or licensed appraiser, discussed below.

Public Comments on the Proposal

The Agencies received approximately 36 comments relating to requirements that (1) the additional appraisal be performed by a ''different'' certified or licensed appraiser, discussed immediately below; (2) the additional appraisal include analysis of the sales price differences between the prior and current home sale transaction (*see* section-by-section analysis of § 1026.35(c)(4)(iv), below); and (3) the creditor may not charge the consumer for the additional appraisal (*see* section-by-section analysis of § 1026.35(c)(4)(v), below). These comments were submitted by banks and bank holding companies, credit unions, bank and credit union trade associations, and appraisal, realtor, and mortgage industry trade associations.

Of the commenters addressing the requests for comment on whether additional conditions should apply regarding the requirement that a ''different'' appraiser perform the additional appraisal, most urged that the rule allow a creditor to obtain two appraisals from the same appraisal firm or AMC, provided that they are performed by separate appraisers. Commenters favoring this approach suggested that allowing a creditor to use a single appraisal firm or AMC would reduce costs, ease compliance burdens, and mitigate concerns regarding the availability of appraisers, particularly in rural or sparsely populated areas. Several commenters noted that the use of a single appraisal firm or AMC would not weaken the different appraiser requirement since each appraisal is subject to USPAP and appraisal independence requirements. One commenter, however, stated the rule

[67] *See* OCC: 12 CFR 34.45; Board: 12 CFR 225.65; FDIC: 12 CFR 323.5; NCUA: 12 CFR 722.5.

[68] Appraisal Standards Board, Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice,* 2012–2013 Ed., pp. U–7 through U–9.

should prohibit a creditor from hiring appraisers from the same valuation firm and, with respect to AMCs, a creditor should be prohibited from hiring two appraisers through the same AMC if the AMC is an affiliate of the creditor.

Discussion

Consistent with the proposal, new § 1026.35(c)(4)(ii) provides that the two appraisals required under § 1026.35(c)(4)(i) may not be performed by the same certified or licensed appraiser. The Agencies are also adopting new comment 35(c)(4)(ii)–1, clarifying that the requirements that a creditor obtain two separate appraisals (§ 1026.35(c)(4)(i)), and that each appraisal be conducted by a ''different'' licensed or certified appraiser (§ 1026.35(c)(4)(ii)), indicate that the two appraisals must be conducted independently of each other. The comment explains that, if the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

As discussed in the proposal, the Agencies believe that the appraisal independence requirements of TILA (implemented at § 1026.42) help ensure that the two appraisals reflect valuation judgments that are independent of the creditor's loan origination interests and not biased by an appraiser's personal or business interest in the property or the transaction. TILA section 129E, 15 U.S.C. 1639e. In addition, FIRREA title XI includes rules to ensure that appraisers exercise their independent judgment in conducting appraisals, such as requirements that federally-regulated depositories separate appraisers from the lending, investment, and collection functions of the institution, and that the appraiser have ''no direct or indirect interest, financial or otherwise, in the property.'' [69] As noted, USPAP's Ethics Rule, which applies to appraisers, also requires that appraisers ''perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests,'' and includes several examples of prohibited conduct related to this rule.[70] As discussed in the section-by-section analysis of § 1026.35(c)(1)(a), compliance with USPAP is a condition of being a ''certified or licensed appraiser'' under TILA's ''higher-risk mortgage'' appraisal rules implemented in this final rule. TILA section 129H(b)(3), 15 U.S.C. 1639h(b)(3); § 1026.35(c)(1)(a).

Requirements for valuation independence for consumer credit transactions secured by the consumer's principal dwelling were adopted under amendments to TILA in the Dodd-Frank Act in 2010 and have been in effect since April of 2011. *See* 12 CFR 1026.42; 75 FR 66554 (Oct. 28, 2010), implementing TILA section 129E, 15 U.S.C. 1639e. The requirements in TILA, which carry civil liability, were designed to ensure that real estate appraisals used to support creditors' underwriting decisions are based on the appraiser's independent professional judgment, free of any influence or pressure that may be exerted by parties that have an interest in the transaction.

Existing appraisal independence requirements expressly prohibit appraisers, AMCs, or appraisal firms (all providers of settlement services) from having an interest in the property or transaction or from causing the value assigned to a consumer's principal dwelling to be based on any factor other than the independent judgment of the person preparing the appraisal. Material misstatements of the value are also prohibited for these parties, as is having a direct or indirect interest in the transaction, which prohibits these parties from being compensated based on the outcome of the transaction.

The Agencies understand that, in light of these rules, a principal reason that creditors contract with third-party AMCs and appraisal firms is to ensure that the appraisal function is independent from the loan origination function, as required by law. In addition, the creditor remains responsible for compliance with the appraisal requirements of § 1026.35(c), and both the creditor and the creditor's third party agent risk liability for violations of TILA's appraisal independence requirements.

At the same time, the Agencies have concerns about whether the unbiased appraiser independence will always be fully realized if, for example, the two appraisals are performed by appraisers employed by the same company. The Agencies recognize that in some cases, obtaining two appraisals from different appraisal firms might not be feasible, and moreover that appraisers working for the same company are cognizant of their independence, and indeed might not even interact at all. Thus, the rule is intended to allow flexibility in ordering the two appraisals from the same entity. However, as underscored in comment 35(c)(4)(ii)–1, in all cases the two appraisers should function independently of each other to ensure that in fact two separate and independent judgments of the property value are reflected in the required appraisals. If the creditor knows of facts or circumstances about the performance of the additional appraisal by the same firm indicating that the additional appraisal was not performed independently, the creditor should refrain from extending credit, unless the creditor obtains another appraisal.

35(c)(4)(iii) Relationship to General Appraisal Requirements

The proposed rule required that the additional appraisal meet the requirements of the first appraisal, including the requirements that the appraisal be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the mortgaged property. *See* new § 1026.35(c)(3)(i). The Agencies expressed in the proposal the belief that this approach best effectuates the purposes of the statute. TILA section 129H(b)(1) provides that, ''[s]ubject to the rules prescribed under paragraph (4), an appraisal of property to be secured by a higher-risk mortgage does not meet the requirements of this section unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.'' 15 U.S.C. 1639h(b)(1). The ''second appraisal'' required under TILA section 129H(b)(2)(A) is ''an appraisal of property to be secured by a higher-risk mortgage'' under TILA section 129H(b)(1). 15 U.S.C. 1639h(b)(1), (b)(2)(A). Therefore, to meet the requirements of TILA section 129H, the additional appraisal would be required to be ''performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.'' TILA section 129H(b)(1), 15 U.S.C. 1639h(b)(1).

In addition, under TILA section 129H(b)(2)(A), the additional appraisal must analyze several elements, including ''any improvements made to the property between the date of the previous sale and the current sale.'' 15 U.S.C. 1639h(b)(2)(A). The Agencies believe that the purposes of the statute would be best implemented by requiring the second appraiser to perform a physical interior property visit to analyze any improvements made to the property. Without an on-site visit, the second appraiser would have difficulty confirming that any improvements

[69] *See* OCC: 12 CFR 34.45; Board: 12 CFR 225.65; FDIC: 12 CFR 323.5; and NCUA: 12 CFR 722.5.

[70] Appraisal Standards Board, Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice,* 2012–2013 Ed., pp. U–7 through U–9.

identified by the seller or the first appraiser were made.

In § 1026.35(c)(4)(iii), the Agencies are adopting the proposed requirement that, if the conditions requiring an additional appraisal are present (*see* new § 1026.35(c)(4)(i)), the creditor must obtain an additional appraisal that meets the requirements of the first appraisal, as provided in § 1026.35(c)(3)(i). In response to some commenters who expressed confusion about whether the creditor could rely on the safe harbor under § 1026.35(c)(3)(ii) in satisfying the general appraisal requirements under § 1026.35(c)(3)(i) for the additional appraisal, the Agencies are adopting a new comment. New comment 35(c)(4)(iii)–1 clarifies that when a creditor is required to obtain an additional appraisal under § 1026(c)(4)(i), the creditor must comply with the requirements of both § 1026.35(c)(3)(i) and § 1026.35(c)(4)(ii)–(v) for that appraisal. If the creditor meets the safe harbor criteria in § 1026.35(c)(3)(ii) for the additional appraisal, the creditor complies with the requirements of § 1026.35(c)(3)(i) for that appraisal.

35(c)(4)(iv) Required Analysis in the Additional Appraisal

The proposed rule required that the additional appraisal include an analysis of the difference between the price at which the seller acquired the property and the price the consumer is obligated to pay to acquire the property, as specified in the consumer's acquisition agreement. The proposal specified that the changes in market conditions and improvements made to the property must be analyzed between the date of the seller's acquisition of the property and the date of the consumer's agreement to acquire the property. These proposed requirements are consistent with the statute, which requires that the additional appraisal ''include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.'' TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A).

A proposed comment clarified that guidance on identifying the date the seller acquired the property could be found in the proposed comment now adopted as comment 35(c)(4)(i)(A)–3. This comment further stated that guidance on identifying the date of the consumer's agreement to acquire the property could be found in the proposed comment adopted as comment 35(c)(4)(i)(A)–2. The comment also stated that guidance on identifying the price at which the seller acquired the property could be found in the proposed comment adopted as comment 35(c)(4)(i)(B)–1 and that guidance on identifying the price the consumer is obligated to pay to acquire the property could be found in the proposed comment adopted as comment 35(c)(4)(i)(B)–2.

The Agencies requested comment on these proposed requirements for the additional appraisal, including the appropriateness of listing the requirement to analyze the difference in sales prices separately from the other two analytical requirements.

In § 1026.35(c)(4)(iii) and comment 35(c)(4)(iii)–1, the final rule adopts the proposed regulation text and comment with only one non-substantive change: for clarification about the subject of this subsection of the rule, the title of the subsection has been changed from ''Requirements for the additional appraisal'' to ''Required analysis in the additional appraisal.''

Public Comments on the Proposal

Two commenters addressed this issue. Of these, one commenter fully supported the proposed requirements for the additional appraisal, noting they are consistent with USPAP. The other commenter, however, suggested that the additional appraisal should not be required to include an analysis of the sale price paid by the seller and the acquisition price as set forth in the borrower's purchase agreement and improvements made to the property by the seller. The commenter argued that value should be based solely on the current market value of the property at the time of the appraisal and sale, of which the first appraisal should be determinative.

The Agencies also requested comment on the appropriateness of using, as prices that the additional appraisal must analyze, the terms ''price at which seller acquired property'' and ''price consumer is obligated to pay to acquire property, as specified in consumer's agreement to acquire property from seller.'' Further, the Agencies asked for comment on the appropriateness of using, as the dates the additional appraisal must analyze in considering changes in market conditions and improvements to property, the terms ''date seller acquired property'' and ''date of consumer's agreement to acquire property.'' No comments were received on this issue.

Discussion

After consideration of public comments, the Agencies believe that the proposal is appropriate to adopt without substantive change, as discussed above. Regarding the comment that the additional appraisal should not include an analysis of the property price increase between the seller's price and the consumer's price, but that market value as reflected in the first appraisal should be determinative, the Agencies point out that the analysis in the additional appraisal required under new § 1026.35(c)(4)(iii) is mandated by statute. Moreover, the Agencies believe that the intent of these requirements is to ensure that creditor, in considering the value of the collateral in connection with its lending decision, is presented with information focused specifically on factors that reasonably increase collateral value in a relatively short period, such as market changes and property improvements. These statutory requirements are designed to serve as a backstop for consumers against fraud in flipped transactions and thus are implemented largely unchanged in the final rule.

35(c)(4)(v) No Charge for the Additional Appraisal

Under the proposed rule, if a creditor must obtain a second appraisal, it may charge the consumer for only one of the appraisals. The Agencies proposed a comment clarifying that this rule means that the creditor would be prohibited from imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-risk mortgage loan. The proposal was designed to implement TILA section 129H(b)(2)(B), which provides that ''[t]he cost of the second appraisal required under subparagraph (A) may not be charged to the applicant.'' 15 U.S.C. 1639h(b)(2)(B).

The Agencies requested comment on this proposed approach, and whether there might be particular ways that the creditor could identify the appraisal for which the consumer may not be charged in cases where, for example, the appraisals are ordered simultaneously.

The proposed rule and clarifying comment are adopted without change in § 1026.35(c)(4)(v) and comment 35(c)(4)(v)–1.

Public Comments on the Proposal

Most commenters were strongly opposed to requiring the additional appraisal to be obtained at the creditor's expense. While a number of commenters acknowledged that the requirement is statutorily mandated under Dodd-Frank they were nevertheless critical of it, cautioning that the requirement would ultimately limit the availability of credit to

consumers. Many commenters indicated that the cost of an additional appraisal would make the loan too costly or unprofitable, leading creditors to cease offering higher-risk mortgage loans to riskier borrowers. Several commenters argued it is unfair for creditors to bear the cost responsibility of a second appraisal, where the applicant has no incentive to go forward with the loan and there is no guarantee that the loan will be consummated. Commenters urged the Agencies to exercise their exemption authority to permit creditors to charge consumers a reasonable fee for the additional appraisal. Alternatively, one comment letter recommended that creditors be prohibited from charging a direct cost for the additional appraisal but not an indirect cost.

Discussion

As noted, TILA section 129H(b)(2)(B) provides that ''[t]he cost of the second appraisal required under subparagraph (A) may not be charged to the applicant.'' 15 U.S.C. 1639h(b)(2)(B). Consistent with the statute and the proposal, § 1026.35(c)(4)(v) provides that ''[i]f the creditor must obtain two appraisals under paragraph (c)(4)(i) of this section, the creditor may charge the consumer for only one of the appraisals.'' As clarified in comment 35(c)(4)(v)–1, adopted without change from the proposal, the creditor would be prohibited from imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-risk mortgage loan (now HPML).

The proposed comment adopted in the final rule also explains that the creditor would be prohibited from charging the consumer for the ''performance of one of the two appraisals required under § 1026.35(c)(4)(i).'' This comment is intended to clarify that the prohibition on charging the consumer under § 1026.35(b)(4)(v) applies to the cost of providing the consumer with a copy of the appraisal, not to charges for the cost of performing the appraisal. As implemented by new § 1026.35(c)(6)(iv), TILA section 129H(c) prohibits the creditor from charging the consumer for one copy of each appraisal conducted pursuant to the higher-risk mortgage rule. 15 U.S.C. 1639h(c); *see also* section-by-section analysis of § 1026.35(c)(6)(iv), below. As in the proposal, the final rule does not use the statutory term ''second'' appraisal, but instead refers to the ''additional'' appraisal because, in practice, a creditor ordering two appraisals at the same time may not know which of the two appraisals would be the ''second'' appraisal. The Agencies understand that the additional appraisal could be separately identified because it must contain an analysis of elements in proposed § 1026.35(c)(4)(iv). The Agencies also understand that appraisers may perform such an analysis as a matter of routine, and that it may be difficult to distinguish the two appraisals on that basis.[71]

In addition, the final rule also tracks the proposal in prohibiting the creditor from charging ''the consumer,'' rather than, as in the statute, the ''applicant.'' The Agencies believe that use of the broader term ''consumer'' is necessary to clarify that the creditor may not charge the consumer for the cost of the additional appraisal after consummation of the loan.

Regarding commenters' requests that creditors be permitted to charge the consumer for the additional appraisal, the Agencies point out that they do not jointly have authority to provide for adjustments and exceptions to TILA under TILA section 105(a), which belongs to the Bureau alone. 15 U.S.C. 1604(a). The prohibition on charging the consumer for the additional appraisal is mandated by statute. The Agencies have implemented this statutory prohibition with certain clarifications appropriate to carry out the statutory mandate consistently with their general authority to interpret the statute—specifically clarifying in commentary that the creditor is prohibited from imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-risk mortgage loan. *See* § 1026.35(c)(4)(v) and comment 35(c)(4)(v)–1.

The Agencies recognize that neither the statute's plain language nor the final rule precludes a creditor from spreading costs of additional appraisals over a large number of loans and products. The Agencies believe, however, that Congress clearly intended to ensure that the consumer offered an HPML, who may have limited credit options, not be exclusively affected by having to bear this cost in full. The Agencies further believe that the final rule is consistent with this statutory purpose.

35(c)(4)(vi) Creditor's Determination of Prior Sale Date and Price

35(c)(4)(vi)(A) Reasonable Diligence

The Agencies proposed to require that the creditor have exercised reasonable diligence to support any determination that an additional appraisal under § 1026.35(c)(4)(i) is not required. (For a discussion of the factors triggering the requirement, see the section-by-section analysis of § 1026.35(c)(4)(i)(A) and (B), above.) Absent an exemption (*see* § 1026.35(c)(2) and (c)(4)(vii)), an additional appraisal would always be required for an HPML where the creditor elected not to conduct reasonable diligence, could not find the relevant sales price and sales date information, or where the information found led to conflicting conclusions about whether an additional appraisal were required. *See* section-by-section analysis of § 1026.35(c)(4)(vi)(B), below.

To help creditors meet the proposed reasonable diligence standard, the Agencies proposed that creditors be able to rely on written source documents that are generally available in the normal course of business. Accordingly, a proposed comment clarified that a creditor has acted with reasonable diligence to determine when the seller acquired the property and whether the price at which the seller acquired the property is lower than the price reflected in the consumer's acquisition agreement if, for example, the creditor bases its determination on information contained in written source documents, as discussed below.

The proposed comment provided a list of written source documents, not intended to be exhaustive, that the creditor could use to perform reasonable diligence as follows: A copy of the recorded deed from the seller; a copy of a property tax bill; a copy of any owner's title insurance policy obtained by the seller; a copy of the RESPA settlement statement from the seller's acquisition (*i.e.,* the HUD–1 or any successor form[72]); a property sales history report or title report from a third-party reporting service; sales price data recorded in multiple listing services; tax assessment records or transfer tax records obtained from local governments; a written appraisal, including a signed appraiser's

[71] *See, e.g.,* USPAP Standards Rule 1–5(b) (requiring an appraiser to ''analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal''); USPAP Standards Rule 1–4(a) (stating that ''an appraiser must analyze such comparable sales data as are available to indicate a value conclusion'') and USPAP Standards Rule 1–4(f) (stating that ''when analyzing anticipated public or private improvements * * * an * * * appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.''

[72] As explained in a footnote in the proposed comment, the Bureau's 2012 TILA–RESPA Proposal contains a proposed successor form to the RESPA settlement statement. *See* § 1026.38 (Closing Disclosure Form) of the Bureau's 2012 TILA–RESPA Proposal, 77 FR 51116 (Aug. 23, 2012).

certification stating that the appraisal was performed in conformity with USPAP, that shows any prior transactions for the subject property; a copy of a title commitment report; or a property abstract.

The proposed comment contained a footnote explaining that a ''title commitment report'' is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. The footnote also explained that the document is issued by the title insurance company prior to the company's issuance of an actual title insurance policy to the property's transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred to by different terms, such as a title commitment, title binder, title opinion, or title report.

An additional proposed comment explained that reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, do not constitute reasonable diligence. The Agencies explained in the proposal that they do not believe that creditors should be permitted to rely on oral statements offered by parties to the transaction because they may be engaged in the type of fraud the statutory provision was designed to prevent.

In new § 1026.35(c)(4)(vi) and Appendix O, the Agencies are adopting the reasonable diligence standard and proposed comments discussed above without material change. Certain technical changes to the regulation text and corresponding comments have been made for clarity, without substantive change intended. The Agencies are also adding a new comment providing guidance on written source documents that show only an estimated or assumed value for the seller's acquisition price. Specifically, this new comment clarifies that, if a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property. *See* comment (c)(4)(vi)(A)–1.

The reasons for the final rule and revisions to the proposal are discussed in more detail below.

Public Comments on the Proposal

The Agencies requested comment on a number of aspects of the reasonable diligence standard and accompanying comments. Specifically, comment was requested on whether the list of written source documents now adopted in comment 35(c)(4)(vi)–1 would provide reliable information about a property's sales history and could be relied on in making the additional appraisal determination, provided they indicate the seller's acquisition date or the seller's acquisition price.

The Agencies also requested comment on whether a creditor should be permitted to rely on a signed USPAP-compliant written appraisal prepared for the transaction to determine the seller's acquisition date and price, and whether a creditor could take any specific measures to ensure that the appraiser is reporting prior sales accurately. The Agencies indicated particular interest in commenters' view on whether, for creditors that are required to select an independent appraiser, such as creditors subject to the Federal financial institutions regulatory agencies' FIRREA title XI rules, the creditor's selection of an independent appraiser is sufficient to address the concern that the appraiser may be colluding with a seller in perpetrating a fraudulent flipping scheme.

Noting that public documents listed might not include the requisite information and that there might be risks inherent in allowing reliance on seller-provided documents, the Agencies also asked whether non-public information sources are likely to be more easily available or more accurate than public ones.

Finally, the Agencies requested comment on the proposed clarification that reliance on oral statements alone would not be sufficient to satisfy the reasonable diligence standard, specifically on whether circumstances exist in which oral statements offered by parties to the transaction could be considered reliable if documented appropriately, and how such statements should be documented to ensure greater reliability.

General comments on the list of source documents. Four commenters responded to general questions about whether the list of source documents was appropriate. Several of these commenters affirmed the Agencies' understanding that some jurisdictions have a lengthy delay between the time a purchase and sale transaction is closed and the recording of the deed. In those cases, these commenters averred, that delay would preclude using the deed as a source document since it would not be available to the creditor for its due diligence.

One commenter suggested that the seller be required to provide the source documents rather than the creditor having to obtain them from the public records, although recognizing the possibility that the seller may intentionally alter the documents to his needs. Appraiser trade associations concurred with the proposal's ''flexible approach'' to due diligence sources in allowing use of seller-provided documents. This commenter believed that this approach would mitigate the possibility that a lack of access to or availability of source documents would result in a ''chilling effect'' on mortgage lending. Another commenter noted that the borrower's creditor would have difficulty obtaining copies of documents from the seller. This commenter recommended that the rule provide that, where none of the source documents provides the required information, the creditor may provide a certified or attested document signed by the parties as sufficient evidence of ''reasonable diligence.''

Use of the first appraisal in the transaction. All three comments relating to the question of whether the final rule should allow creditors to use and rely on the entire contents of USPAP-compliant appraisals prepared by certified and licensed appraisers supported allowing this. Nevertheless, commenters noted that oversight of appraisal services by users and regulators would be necessary, as would vigorous enforcement if appraisers violate the requirements. One commenter recommended that creditors use data from multiple listing services captured by the appraisal to obtain prior sales price information. That commenter also requested clarification in the rule that where multiple listing documents have different sales price data, that the creditor is deemed to have complied with the rule if it chooses to use any one.

Additional comments from appraiser trade associations agreed with allowing creditors to rely on appraisal information relating to sellers' acquisition dates but only so far as that information is available to the appraiser in the normal course of business, which is all that is required of an appraiser under USPAP. These commenters urged the Agencies to be careful not to impose requirements on appraisers relating to information, data, and analysis that are not required of appraisers in a typical USPAP-compliant report.

Use of seller-provided and other non-public documents. Several commenters recognized that sometimes creditors have no other reliable sources than seller-provided or other non-public documents. Appraiser association commenters proposed that the Agencies consider a ''good-faith'' exception that would allow creditors to rely on non-traditional sources of information when more reliable ones are not available. These commenters reasoned that this exception would balance the underlying public policy of supporting ''higher-risk mortgage loans'' (now HPMLs) when no other loan product is available or feasible, against the risk that creditors will rely on bad information.

Reliability of oral statements. No commenters opposed the proposed comment, adopted as comment 35(c)(4)(vi)–2, clarifying that reliance on oral statements alone would not satisfy the reasonable diligence standard. Appraiser trade associations generally shared the Agencies' concern about the potential risk of relying on information presented by interested parties.

Discussion

As noted, the Agencies are adopting the proposed reasonable diligence standard and associated comments without material change. The Agencies believe that this standard is important to facilitate compliance because it may be difficult in some cases for a creditor to know with absolute certainty that the criteria triggering the additional appraisal requirement have been met. *See* § 1026.35(c)(4)(i)(A) and (B). Similarly, a creditor may have difficulty knowing whether it relied on the ''best information'' available in making the determination, which could require that creditors perform an exhaustive review of every document that might contain information about a property's sales history and unduly limit the availability of credit to higher-risk mortgage consumers.

Regarding the proposed list of source documents on which creditors may appropriately rely, now adopted in Appendix O, the Agencies note that the first four listed items would be voluntarily provided directly or indirectly by the seller, rather than collected from publicly available sources. As did commenters, the Agencies recognize that permitting the use of these documents presents the risk that the creditor would be presented with altered copies. Balanced against this risk, however, is the concern that no information sources are publicly available in non-disclosure jurisdictions and jurisdictions with significant lag times before public land records are updated to reflect new transactions.[73] The Agencies are concerned that, unless the creditor can rely on other sources, such as sources provided by the seller, the higher-risk mortgage transaction may not proceed at all, or could proceed only with an additional appraisal containing a limited form of the analysis that would be required by TILA section 129H(b)(2)(A). 15 U.S.C. 1639h(b)(2)(A). The proposed footnote explaining the term ''title commitment report'' (Item 9), described above, is moved in the final rule to new comment 1 of Appendix O.

As noted, new comment 35(c)(4)(vi)(A)–1 clarifies that, if a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

Regarding a commenter's recommendation that a creditor be permitted to provide a certified or attested document signed by the parties as sufficient evidence of ''reasonable diligence,'' the Agencies believe that this allowance could easily be abused and would not constitute sufficient diligence. Instead, as discussed in the section-by-section analysis of § 1026.35(c)(4)(vi)(B) below, the Agencies believe that the consumer protection purposes of the statute are better served by simply requiring two appraisals where reliable written documentation of the sales price and date are unavailable. Similarly, regarding questions about multiple listing documents that have different sales price data, the Agencies believe that in cases of conflicting listing price information, the consumer protection purposes of the statute are best served if the creditor obtains better information from other sources through the exercise of reasonable diligence and, failing that, obtains a second appraisal. *See* section-by-section analysis of § 1026.35(c)(4)(vi)(B), below.

On the recommendation that the Agencies consider a ''good-faith'' exception that would allow creditors to rely on non-traditional sources of information, the Agencies believe that the ''reasonable diligence'' standard alone is more appropriate and addresses the commenters' concerns. Under this standard, a broad array of widely used public and non-public documents, set forth in the non-exhaustive list under comment 35(c)(4)(vi)–1, could be relied on by creditors. In short, the Agencies expect that, with the parameters established in this comment, the rule will appropriately balance the need to assure access to HPML credit against the risk that creditors will rely on bad information.

Regarding reliance on another USPAP-compliant appraisal to satisfy the reasonable diligence standard, the Agencies are revising the proposed list to clarify that a creditor would not be permitted to rely on an appraisal other than the one prepared for the creditor for the subject HPML. Specifically, the Agencies are revising Item 8, which, in the proposal read as follows: ''A written appraisal signed by an appraiser who certifies that the appraisal has been performed in conformity with USPAP that shows any prior transactions for the subject property.'' In the final rule, this comment has been revised to read as follows: ''A written appraisal performed in compliance with § 1026.35(c)(3)(i) for the same transaction that shows any prior transactions for the subject property.'' The Agencies are concerned that, as proposed, this item in the written source document list could lead creditors to believe that appraisals performed for the seller's acquisition or other appraisals that might otherwise be considered ''stale'' could be relied on. As revised, the list item allows reliance specifically on an appraisal performed in compliance with the HPML appraisal requirements for the same HPML transaction. That means that the appraisal would have to have been performed by a state-certified or -licensed appraiser in conformity with USPAP and FIRREA.

On a related issue, the Agencies emphasize that allowing the creditor to rely on the first appraisal for prior sales information does not require more of appraisers than does USPAP. Again, the first appraisal must be performed in compliance with USPAP and FIRREA. The Agencies understand that USPAP Standards Rule 1–5 requires appraisers to ''analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal'' if that information is available to the appraiser ''in the normal

[73] During informal outreach conducted by the Agencies for the proposal, representatives of large, small, and regional lenders expressed concern that in some cases, a creditor may be unable to determine the seller's date and price due to information gaps in the public record. The Agencies also understand that a creditor may not be able to determine prior transaction data because of delays in the recording of public records. The Agencies also understand that certain ''non-disclosure'' jurisdictions do not make the price at which a seller acquired a property available in the public records. These concerned were affirmed by public comments on the proposal.

course of business.'' [74] If the appraiser did not include that information because it was not available to the appraiser under the USPAP standard, the creditor must turn to another document under the reasonable diligence standard.

Overall, due to the many requirements to which the first appraisal is subject, including independence requirements under TILA (implemented by § 1026.42), and in the absence of public comments to the contrary, the Agencies expect that, in cases where the appraiser has provided a price, a creditor generally could rely on the first appraisal prepared for the HPML transaction to satisfy the reasonable diligence standard under § 1026.35(c)(4)(vi)(A). The exception would be circumstances under which other information obtained by the creditor makes reliance on the price unreasonable. *See also* section-by-section analysis of § 1026.35(c)(4)(ii), above.

Comment 35(c)(4)(vi)(A)–2 clarifies that reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under § 1026.35(c)(4)(vi)(A). This comment is adopted from the proposal without change.

Requirement for two appraisals when sale information is unavailable or conflicting. Under the proposal, a creditor that cannot determine the seller's acquisition date, or a creditor that can determine that the date is within 180 days but cannot determine the price, would have to obtain an additional appraisal before originating a ''higher-risk mortgage loan'' (now HPML). The proposal included a comment with two examples of how this rule would apply: one in which a creditor is unable to obtain information on the seller's acquisition price or date and the other in which a creditor obtains conflicting information about the seller's acquisition price or date.

Comment 35(c)(4)(vi)(A)–3, discussed further below, gives two examples of how the rule applies. This comment was moved from its placement in the proposal with no substantive change to the requirements of the reasonable diligence standard intended.

Public Comments on the Proposal

The Agencies requested comment on whether the enhanced protections for consumers afforded by requiring an additional appraisal whenever the seller's acquisition date or price cannot be determined merit the potential restraint on the availability of higher-risk mortgage loans. The Agencies also requested comment on whether concerns about these potential restraints on credit availability make it particularly important to include the first four source documents listed in the proposed commentary, even though they would be seller-provided, and whether these concerns warrant further expanding the sources of information creditors may rely on to satisfy the reasonable diligence standard under the proposed rule.

The Agencies did not receive comments directly responsive to these questions.

Discussion

In general, the Agencies believe that, based on recent data provided by FHFA discussed in the proposal, most property resales would not trigger the proposal's conditions requiring an additional appraisal.[75] However, the Agencies understand that, in some cases, a creditor performing typical underwriting and documentation procedures may be unable to ascertain through information derived from public records whether the conditions in the additional appraisal requirement have been triggered. For example, a creditor may be unable to determine information about the seller's acquisition because of lag times in recording public records. The Agencies also understand that some source documents often report only estimated amounts of consideration when describing the consideration paid by the current titleholder for the property. Moreover, as noted, several ''non-disclosure'' jurisdictions do not make the price at which a seller acquired a property publicly available. In addition, the creditor may obtain conflicting information from written source documents. In these cases, a creditor may be unable to determine, based on its reasonable diligence, whether the criteria in § 1026.35(c)(4)(i)(A) and (c)(4)(i)(B) have been met.

Comment 35(c)(4)(vi)(A)–3 provides two examples of how the rule would apply: one in which a creditor is unable to obtain information on the seller's acquisition price or date and the other in which a creditor obtains conflicting information about the seller's acquisition price or date. In the first example, comment 35(c)(4)(vi)(A)–3.i assumes that a creditor orders and reviews the results of a title search showing the seller's acquisition date occurred between 91 and 180 days ago, but the seller's acquisition price was not included. In this case, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement exceeded the seller's acquisition price by more than 20 percent. Before extending an HPML subject to the appraisal requirements of § 1026.35(c), the creditor must either: (1) Perform additional diligence to obtain information showing the seller's acquisition price and determine whether two written appraisals in compliance with § 1026.35(c)(4) would be required based on that information; or (2) obtain two written appraisals in compliance with § 1026.35(c)(4). This comment also contains a cross-reference to comment 35(c)(4)(vi)(B)–1, which explains the modified requirements for the analysis that must be included in the additional appraisal. *See* § 1026.35(c)(4)(iv); *see also* section-by-section analysis of § 1026.35(c)(4)(vi)(B).

In the second example, comment 35(c)(4)(vi)(A)–3.ii assumes that a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. This comment also assumes that the creditor subsequently receives a written appraisal indicating that the seller acquired the property fewer than 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to § 1026.35(c)(4)(i)(A). Before extending an HPML subject to the appraisal requirements of § 1026.35(c), the creditor must either: (1) Perform additional diligence to obtain information confirming the seller's acquisition date (and price, if within 180 days) and determine whether two written appraisals in compliance with § 1026.35(c)(4) would be required based on that information; or (2) obtain two written appraisals in compliance with § 1026.35(c)(4). This comment also contains a cross-reference to comment 35(c)(4)(vi)(B)–1, which explains the modified requirements for the analysis that must be included in the additional appraisal. *See* § 1026.35(c)(4)(iv); *see also* section-by-section analysis of § 1026.35(c)(4)(vi)(B).

As under the proposal, in the final rule, when information about a property is not available from written source

[74] Appraisal Standards Bd., Appraisal Fdn., Standards Rule 1–5, USPAP (2012–2013 ed.).

[75] Based on county recorder information from select counties licensed to FHFA by DataQuick Information Systems.

documents, creditors extending HPMLs will routinely incur increased costs associated with obtaining the additional appraisal. One risk of this rule is that, because TILA section 129H(b)(2)(B) prohibits creditors from charging their customers for the additional appraisal, creditors will simply refrain from engaging in any HPML where sales history data cannot be obtained. 15 U.S.C. 1639h(b)(2)(B). *See also* § 1026.35(c)(4)(v) (requiring that the creditor cannot charge the consumer for the additional appraisal).

As expressed in the proposal, however, the Agencies believe that requiring an additional appraisal where creditors are unable to obtain the seller's acquisition price and date is necessary to prevent circumvention of the statute. In particular, the Agencies are concerned that not requiring an additional appraisal in cases of limited information may inadequately address the problem of fraudulent property flipping to borrowers of HPMLs in ''non-disclosure'' jurisdictions, where prior sales data is routinely unavailable through public sources. Similarly, the Agencies are concerned that sellers that acquire and sell properties within a short timeframe could take advantage of delays in the public recording of property sales to engage in fraudulent flipping transactions. The Agencies believe that, where the seller's acquisition date in particular is not in the public record due to recording delays, it is more reasonable to assume that the seller's transaction was sufficiently recent to be covered by the rule than not.

35(c)(4)(vi)(B) Inability To Determine Prior Sale Date or Price—Modified Requirements for Additional Appraisal

Section 35(c)(4)(vi)(B) provides that if, after exercising reasonable diligence, a creditor cannot determine whether the conditions in § 1026.35(c)(4)(i)(A) and (B) are present and therefore must obtain two written appraisals under § 1026.35(c)(4), the additional appraisal must include an analysis of the factors in § 1026.35(c)(4)(iv) (difference in sales price, changes in market conditions, and property improvements) only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

For the reasons discussed above, the Agencies believe that an HPML creditor should be required to obtain an additional appraisal if the creditor cannot determine the seller's acquisition date, or if it can determine the date is within 180 days but cannot determine the price, based on written source documents. However, in keeping with the proposal, § 1026.35(c)(4)(vi)(B) also provides that the additional appraisal in this situation would not have to contain the full analysis required for additional appraisals of flipping transactions under TILA section 129H(b)(2)(A), implemented in the final rule as § 1026.35(c)(4)(iv)(A)–(C). 15 U.S.C. 1639h(b)(2)(A).

Public Comments on the Proposal

The Agencies requested comment on whether an appraiser would be unable to analyze the difference in the price the consumer is obligated to pay to acquire the property and the price at which the seller acquired the property without knowing when the seller acquired the property. If such an analysis is not possible without information about when the seller acquired the property, the Agencies requested comment on whether the rule should assume the seller acquired the property 180 days prior to the date of the consumer's agreement to acquire the property. The Agencies also requested comment generally on the proposed approach to situations in which the creditor cannot obtain the necessary information and whether the rule should address information gaps about the flipping transaction in other ways.

The Agencies did not receive comments directly responsive to these questions.

Discussion

Under the proposal, now adopted in § 1026.35(c)(4)(vi)(B), the additional appraisal must include an analysis of the elements that would be required in proposed § 1026.35(c)(4)(iv)(A)–(C) only to the extent that the creditor knows the seller's purchase price and acquisition date. As discussed in the section-by-section analysis of § 1026.35(c)(4)(iv), TILA section 129H(b)(2)(A) requires that the additional appraisal analyze the difference in sales prices, changes in market conditions, and improvements to the property between the date of the previous sale and the current sale. 15 U.S.C. 1639h(b)(2)(A). An appraiser could not perform this analysis if efforts to obtain the seller's acquisition date and price were not successful.

Consistent with the proposal, comment 35(c)(4)(vi)(B)–1 confirms that, in general, the additional appraisal required under § 1026.35(c)(4)(i) should include an analysis of the factors listed in § 1026.35(c)(4)(iv)(A)–(C). However, the comment also confirms that if, following reasonable diligence, a creditor cannot determine whether the conditions in § 1026.35(c)(4)(i) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under § 1026.35(c)(4)(iv)(A)–(C) only to the extent that the information necessary to perform the analysis is known. As an example, comment 35(c)(4)(vi)(B)–1 assumes that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property, but cannot determine the sale price. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under § 1026.35(c)(4)(iv)(B) and (c)(4)(iv)(C) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under § 1026.35(c)(4)(iv)(A) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

The Agencies note that the proposed rule does not provide commentary with guidance on the modified requirements for the additional analysis in a situation in which the creditor is unable to determine the date the seller acquired the property but is able to determine the price at which the seller acquired the property. As noted, the Agencies requested but did not receive public comments on this aspect of the proposal. The Agencies are unaware of situations in which the seller's acquisition price, but not the acquisition date, would be known. In the absence of public comment on the issue, the Agencies are not adopting additional guidance on this theoretical situation.

The Agencies believe that allowing creditors to comply with a modified form of the full analysis where a creditor cannot determine information about a property based on its reasonable diligence is a reasonable interpretation of the statute. If a creditor could not determine when or for how much the prior sale occurred, it would be impossible for a creditor to obtain an appraisal that complies with the full analysis requirement of TILA section 129H(b)(2)(A) concerning the change in price, market conditions, and improvements to the property. 15 U.S.C. 1639h(b)(2)(A).

The Agencies' approach to situations in which the creditor cannot obtain the necessary information, either due to a lack of information or conflicting

information, can be summed up as follows:

- An additional appraisal is required.
- However, to account for missing or conflicting information, only a modified version of the full additional analysis required under TILA section 129H(b)(2)(A), as implemented by § 1026.35(c)(4)(iv) is required. 15 U.S.C. 1639h(b)(2)(A).

Alternative approaches not chosen by the Agencies include prohibiting creditors from extending the HPML altogether under these circumstances. As stated in the proposal, however, the Agencies believe that a flat prohibition would unduly limit the availability of higher-risk mortgage loans to consumers.

35(c)(4)(vii) Exemptions From the Additional Appraisal Requirement

TILA section 129H(b)(4)(B) permits the Agencies to exempt jointly a class of loans from the additional appraisal requirement if the Agencies determine the exemption ''is in the public interest and promotes the safety and soundness of creditors.'' 15 U.S.C. 1639h(b)(4)(B). The Agencies did not expressly propose any exemptions from the additional appraisal requirement, but invited comment on whether exempting any classes of higher-risk mortgage loans from the additional appraisal requirement (beyond the exemptions in § 1026.35(c)(2)) would be in the public interest and promote the safety and soundness of creditors. The Agencies offered a number of examples of potential exemptions, such as loans made in rural areas, and transactions that are currently exempt from the restrictions on FHA insurance applicable to property resales in the FHA Anti-Flipping Rule, including, among others, sales by government agencies of certain properties, sales of properties acquired by inheritance, and sales by State- and federally-chartered financial institutions.[76] *See, e.g.,* 24 CFR 203.37a(c). Regarding a possible exemption for higher-risk mortgage loans (now HPMLs) made in ''rural'' areas from the additional appraisal requirement, the Agencies requested comment on whether the rule should use the same definition of ''rural'' that was provided in the 2011 ATR Proposal.[77] This same definition of ''rural'' was also proposed by the Board regarding Dodd-Frank Act escrow requirements (2011 Escrows Proposal).[78] This definition is reviewed in more detail in the section-by-section analysis of § 1026.35(c)(4)(vii)(H), below.

In the final rule, the Agencies are adopting exemptions from the additional appraisal requirement under § 1026.35(c)(4)(i) for extensions of credit that finance the consumer's acquisition of a property:

(1) From a local, State or Federal government agency (§ 1026.35(c)(4)(vii)(A));

(2) From a person that acquired the property through foreclosure, deed-in-lieu of foreclosure or other similar judicial or non-judicial procedures as a result of exercising the person's rights as a holder of a defaulted mortgage loan (§ 1026.35(c)(4)(vii)(B));

(3) From a non-profit entity as part of a local, State or Federal government program under which the non-profit entity is permitted to acquire single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure (§ 1026.35(c)(4)(vii)(C));

(4) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party (§ 1026.35(c)(4)(vii)(D));

(5) From an employer or relocation agency in connection with the relocation of an employee (§ 1026.35(c)(4)(vii)(E));

(6) From a servicemember, as defined in 50 U.S.C. Appx. 511(1), who received deployment or permanent change of station orders after the servicemember acquired the property (§ 1026.35(c)(4)(vii)(G));

(7) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area (§ 1026.35(c)(4)(vii)(F)); and

(8) Located in a ''rural'' county, as defined in the Bureau's 2013 Escrows Final Rule, § 1026.35(b)(2)(iv)(A) (which is the same definition used in the 2013 ATR Final Rule, § 1026.43(f)(2)(vi) and comment 43(f)(2)(vi–1) (§ 1026.35(c)(4)(vii)(H)).

Public Comments on the Proposal

The Agencies received over fifty comments concerning the questions asked by the Agencies about appropriate exemptions from the additional appraisal requirement. Several commenters opposed requiring two appraisals under any circumstances. However, the Agencies note that the additional appraisal requirement is mandated by statute. TILA section 129H(b)(2), 15 U.S.C. 1639h(b)(2). Commenters in general strongly supported an exemption for loans made in rural areas. The commenters stated that there are limited numbers of licensed and certified appraisers in rural areas, which would make the additional appraisal requirement (requiring appraisals by two independent appraisers) particularly burdensome in these areas. In addition, commenters argued that lenders in rural areas may be forced to hire appraisers from far outside the geographic area, which would increase the time and cost associated with the transaction. Several commenters also stated that rural areas have not historically been sources of fraudulent real estate flipping activity. A number of commenters noted that property prices in rural areas tend to be lower, so the cost of the second appraisal is higher as a percentage of the overall transaction. Two commenters, national trade associations for appraisers, opposed the exemption for rural loans, suggesting that it is not difficult to find two appraisers to value rural properties.

As for how to define ''rural,'' one commenter, a national trade association for community banks, suggested that the agencies use a definition of ''rural'' that is consistent with the definition used in rules addressing the use of escrow accounts. *See* 2011 Escrows Proposal, discussed below, revised and adopted in

[76] The FHA exceptions to the restrictions on FHA insurance are as follows:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

24 CFR 203.37a(c).

[77] 76 FR 27390, 28471 (May 11, 2011) (2011 ATR Proposal).

[78] 76 FR 11598, 11612 (March 2, 2011) (2011 Escrows Proposal).

the 2013 Escrows Final Rule.[79] Another commenter, a financial holding company, suggested that the final rule exempt lenders located in areas where the State appraiser licensing or certification roster shows five or fewer unaffiliated appraisers within a reasonable distance, such as 50 miles or less. A large bank further recommended that the final rule exempt loans secured by properties in low-density appraiser markets, such as states with fewer than 500 appraisers or counties with fewer than five appraisers.

A large number of commenters also supported an exemption for transactions that are currently exempted from the restrictions on FHA insurance applicable to property resales in the FHA Anti-Flipping Rule. The commenters argued that these categories of transactions do not present the same risk to consumers and therefore do not require the additional anti-flipping consumer protections.

Two commenters, national trade associations for appraisers, objected to adding any exemptions to the additional appraisal requirement, and suggested that there should be a strong presumption that an additional appraisal is necessary to protect consumers and to promote the safety and soundness of financial institutions.

A number of commenters suggested other exemptions or endorsed exemptions from the entire rule already in the proposal. These are as follows.

- Three commenters (a national trade association for the banking industry, a State trade association for the banking industry, and a bank holding company) suggested an exemption from the second appraisal requirement in cases when the initial appraisal is performed by an appraiser who was selected from the creditor's list of qualified appraisers. The commenters stated that eliminating the seller's ability to influence the selection of the appraiser in this fashion would be sufficient to protect the borrower from the risk of an artificially-inflated appraisal, thereby addressing the fraudulent ''flipping'' concern the statute seeks to address.
- Two commenters (a nonprofit organization and State credit union association) suggested an exemption for active duty military personnel who receive permanent change of duty station orders.
- A number of commenters (including national trade associations for the mortgage finance and retail banking industry) suggested exemptions for certain non-purchase transactions, such as gifts, transfers in connection with trusts, transfers that do not generate capital gains, and intra-family transfers for estate planning purposes, on grounds that these transactions are not ''profit seeking.'' Several commenters suggested that transfers in connection with a divorce decree be included in this category as an exemption.
- Many commenters (including two national trade associations for the mortgage finance and retail banking industry, a national trade association for the banking industry, a national trade association for community banks, a national trade association for credit unions, four regional associations for credit unions, a large national bank, a financial holding company, and a community bank) endorsed exemptions for construction and bridge loans, on grounds that these are temporary loans and that consumers are not exposed to risk at the level comparable to other residential loans that Congress targeted in the statute. These commenters also argued that the additional appraisal requirement would be impractical for construction loans, given the inability to conduct interior inspections.
- Two commenters (a community bank and a credit union) suggested an exemption for non-purchase acquisitions and transfers where the consumer previously held a partial interest in the property and cited to Regulation Z (commentary on the definition of residential mortgage transaction) as support.

Discussion

In response to widespread support for adopting exemptions consistent with exemptions from the restrictions on FHA financing in the FHA Anti-Flipping Rule, the Agencies are adopting several exemptions from the additional appraisal requirement generally consistent with exemptions in the FHA Anti-Flipping Rule under 24 CFR 203.37a(c). These are extensions of credit that finance the consumer's acquisition of a property:

- From a local, State or Federal government agency (§ 1026.35(c)(4)(vii)(A); *see also* 24 CFR 203.37a(c)(1), (2) and (7)).
- From an entity that acquired the property through foreclosure, deed-in-lieu of foreclosure or other similar judicial or non-judicial procedures as a result of exercising the person's rights as a holder of a defaulted mortgage loan (§ 1026.35(c)(4)(vii)(B); *see also* 24 CFR 203.37a(c)(6)).
- From a non-profit entity as part of a local, State or Federal government program under which the non-profit entity is permitted to acquire single-family properties for resale from a seller who acquired the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure (§ 1026.35(c)(4)(vii)(C); *see also* 24 CFR 203.37a(c)(3)).
- From a seller who acquired the property pursuant to a court order of dissolution of marriage, civil union or domestic partnership, or of partition of joint or marital assets to which the seller was a party (§ 1026.35(c)(4)(vii)(D); *see also* 24 CFR 203.37a(c)(4)).
- From an employer or relocation agency in connection with the relocation of an employee (§ 1026.35(c)(4)(vii)(E); *see also* 24 CFR 203.37a(c)(4)).
- Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area (§ 1026.35(c)(4)(vii)(F); *see also* 12 CFR 203.37a(c)(4)).

In addition, the Agencies are adopting an exemption for extensions of credit to finance the consumer's purchase of property being sold by a servicemember, as defined in 50 U.S.C. Appx. 511(1), if the servicemember receives deployment or permanent change of station orders after the servicemember purchased the property (§ 1026.35(c)(4)(vii)(G)).

Finally, the Agencies are adopting an exemption for HPMLs in rural areas (§ 1026.35(c)(4)(vii)(H)). The exemption would apply to HPMLs secured by properties in counties considered ''rural'' under definitions promulgated by the Bureau in the 2013 ATR Final Rule and 2013 Escrows Final Rule—specifically, properties located within the following Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Services (USDA–ERS): 4, 6, 7, 8, 9, 10, 11, or 12. These UICs generally correspond with areas outside of metropolitan statistical areas (MSAs) and Micropolitan Statistical Areas, defined by the Office of Management and Budget (OMB). For reasons discussed in more detail in the section-by-section analysis of § 1026.35(c)(4)(vii)(H) and the Dodd-Frank Act Section 1022(b)(2) analysis in the **SUPPLEMENTARY INFORMATION** below, rural properties located in micropolitan statistical areas that are not adjacent to an MSA (UIC 8) are also included in the exemption.

[79] *See also* 2011 ATR Proposal at 28471, revised and adopted in the 2013 ATR Final Rule, § 1026.43(f)(2)(vi) and comment 43(f)(2)(vi–1).

Each of these exemptions is discussed in turn below.

35(c)(4)(vii)(A)

Acquisitions of Property From Local, State or Federal Government Agencies

In § 1026.35(c)(4)(vii)(A), the Agencies are adopting an exemption for HPMLs financing consumer acquisitions of property being sold by a local, State or Federal government agency. This exemption generally corresponds with exemptions in the FHA Anti-Flipping Rule for loans financing the purchase of an ''REO'' (real estate owned) property being sold by HUD or another U.S. government agency (*see* 12 CFR 203.37a(c)(1) and (2)) and a broad exemption for sales of properties by local and State government agencies (*see* 12 CFR 203.37a(c)(7)). The Agencies do not believe that purchases of properties being sold by local, State or Federal government agencies present the fraudulent flipping risks that the special ''higher-risk mortgage'' appraisal rules in TILA section 129H were intended to address. 15 U.S.C. 1639h.

Typically, these types of sales are in connection with government programs involving the sale of property obtained through foreclosure or by deed-in-lieu of foreclosure, which can promote affordable housing and neighborhood revitalization. Government agency sales may also be related to foreclosures due to tax liability or related reasons. Without an exemption, most consumer acquisitions involving these types of sales would be subject to the additional appraisal requirement because the government agency typically would have ''acquired'' the property (for example, in a foreclosure or by deed-in-lieu of foreclosure) for the outstanding balance of the government's lien (plus costs), which is generally less than the value of the property; thus, the price paid to the government agency by the consumer would typically be substantially higher than the government agency's acquisition ''price.'' In addition, these sales might occur relatively soon after the government agency acquired the property, particularly if the acquisition resulted from a foreclosure or tax sale.

The Agencies believe that requiring an HPML creditor to obtain two appraisals to finance transactions involving the purchase of property from government agencies could interfere with beneficial government programs. The Agencies further do not believe that this interference is warranted for these transactions, which do not involve a profit-motivated seller and thus do not present the kinds of flipping concerns that the statute is intended to address. The Agencies believe that an exemption for HPMLs financing the sale of property by a local, State, or Federal government agency is in the public interest because it allows beneficial government programs to go forward as intended. By reducing costs for creditors that might offer HPMLs to finance these transactions, the exemption helps creditors to strengthen and diversify their lending portfolios, thereby promoting the safety and soundness of creditors as well.

35(c)(4)(vii)(B)

Acquisitions of Property Obtained Through Foreclosure and Related Means

In § 1026.35(c)(4)(vii)(B), the Agencies are adopting an exemption for HPMLs financing the purchase of a property from a person that had acquired the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures as a result of exercising the person's rights as a holder of a defaulted mortgage loan. This exemption generally corresponds with an exemption from the FHA Anti-Flipping Rule for loans financing the purchase of properties sold by State- and Federally-chartered financial institutions and GSEs (*see* 12 CFR 203.37a(c)(6)). The Agencies recognize that this exemption might overlap with the exemption in § 1026.35(c)(4)(vii)(A) for sales by government agencies, which might sell properties that the agencies acquire in connection with liquidating a mortgage. However, the Agencies believe that a separate exemption for sales by government agencies is advisable because government agencies might have other reasons for acquiring a property that they then determined was advisable to sell, such as property acquired through exercise of the government's eminent domain powers.

The exemption covers HPMLs that finance the acquisition of a home from a ''person'' who has acquired title of the property through foreclosure and related means. ''Person'' is defined in Regulation Z to mean ''a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.'' § 1026.2(a)(22). Thus, consistent with the FHA Anti-Flipping Rule exemptions, the exemption in § 1026.35(c)(4)(vii)(B) covers purchases of properties being sold by State- and Federally-chartered financial institutions, as well as by GSEs such as Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. In addition, the exemption covers HPML loans financing property acquisitions from non-bank mortgage companies, servicers that administer loans held in the portfolios of financial institutions or in pools of mortgages that underlie private and government or GSE asset-backed securitizations, and, less commonly, private individuals. The Agencies believe that a more inclusive exemption for foreclosures better reflects the way that mortgage loans are held and serviced in today's market.

Several commenters pointed out that the sale of REO properties to consumers and potential investors contributes significantly to revitalizing neighborhoods and stabilizing communities. They expressed concerns that the additional appraisal requirement might unduly interfere with these sales, which could have a number of negative effects. First, holders of the mortgages might be forced to hold properties after foreclosure longer than is financially optimal, increasing losses; some public commenters indicated that waiting six months so that the additional appraisal requirement would not apply would be far too long. Second, holders who want or need to clear these properties off of their books might be forced to accept lower prices offered by investors, which would also increase losses. When the holder in this situation is a creditor such as a bank or other financial institution, increased losses can have a negative effect on its safety and soundness. Third, incentives for investors to buy and rehabilitate properties could be reduced, which could be counterproductive to community development and the revitalization of the housing market. Finally, more consumers might have to forego opportunities for homeownership.

For all of these reasons, the Agencies believe that the exemption in § 1026.35(c)(4)(vii)(B) is in the public interest and promotes the safety and soundness of creditors.

35(c)(4)(vii)(C)

Acquisitions of Property From Certain Non-Profit Entities

In § 1026.35(c)(4)(vii)(C), the Agencies are adopting an exemption for HPMLs financing the purchase of a property from a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire single-family properties for resale from a seller who acquired the property through foreclosure or similar means. Comment 35(c)(4)(vii)(C)–1 clarifies that, for purposes of 1026.35(c)(4)(vii)(C), a

''non-profit entity'' refers to a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (12 U.S.C. 501(c)(3)).[80] This exemption generally builds on an exemption from the FHA Anti-Flipping Rule for loans financing the purchase of properties from nonprofit organizations approved to purchase HUD REO single-family properties at a discount with resale restrictions (*see* 12 CFR 203.37a(c)(3)).

Consistent with the FHA Anti-Flipping Rule exemptions, the exemption in § 1026.35(c)(4)(vii)(C) would cover nonprofit organizations approved to purchase HUD REO single-family properties. In addition, the exemption would cover purchases of these types of properties from nonprofit organizations as part of other local, State or Federal government programs under which the non-profit entity is permitted to acquire title to REO single family properties for resale.

For reasons similar to those discussed under the exemption for loan holders selling a property acquired through liquidating a mortgage (§ 1026.35(c)(4)(vii)(B)), the Agencies believe that the exemption for HPMLs financing the acquisitions described in § 1026.35(c)(4)(vii)(C) is in the public interest and promotes the safety and soundness of creditors. The exemption is intended in part to help holders such as banks and other financial institutions sell properties held as a result of foreclosure or deed-in-lieu of foreclosure, thereby removing them from their books. This can minimize losses, which improves institutions' safety and soundness. The exemption is also intended to facilitate neighborhood revitalization for the benefit of communities and individual consumers. Government programs involving purchases and sales of REO property by non-profits can foster positive community investment and help investors dispense with loss-generating properties efficiently and in a manner that maximizes public benefit. The Agencies do not believe that these types of sales to consumers by non-profits involve serious risks of fraudulent flipping, and thus do not believe that TILA's additional appraisal requirement was intended to apply to these transactions. For these reasons, the Agencies believe that the exemption in § 1026.35(c)(4)(vii)(C) is in the public interest and promotes the safety and soundness of creditors.

35(c)(4)(vii)(D)

Acquisitions From Persons Acquiring the Property Through Inheritance or Dissolution of Marriage, Civil Union, or Domestic Partnership

In § 1026.35(c)(4)(vii)(D), the Agencies are adopting an exemption for HPMLs financing the purchase of a property that was acquired by the seller by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party. The exemption would include HPMLs financing the acquisition by a joint owner of the property of a residual interest in that property, if the joint owner acquired that interest by inheritance or dissolution of a marriage, civil union, or domestic partnership. This exemption generally corresponds with an exemption from the FHA Anti-Flipping Rule for purchases of properties that had been acquired by the seller by inheritance (*see* 12 CFR 203.37a(c)(4)). As discussed in the section-by-section analysis of § 1026.35(c)(4)(i), above, an exemption for HPMLs that finance the purchase of a property acquired by the seller through a non-purchase transaction was widely supported by commenters.

In response to comments, the Agencies have decided to expand the FHA Anti-Flipping Rule exemption for loans financing the purchase of a property from a seller who had acquired it by inheritance, to include properties acquired as the result of a dissolution of a marriage, civil union, or domestic partnership. The Agencies are not aware that sales of properties so acquired have been the source of fraudulent flipping activity and note that no commenters suggested that this type of flipping occurs. In addition, the Agencies do not believe that Congress intended to cover purchases of property acquired by sellers in this manner with the ''higher-risk mortgage'' additional appraisal requirement. The Agencies believe that consumer protection from fraudulent flipping is aided by the requirement that the acquisition of property through dissolution of a marriage or civil union must be part of a court order, which can be easily confirmed and helps ensure that the original transfer was for legitimate purposes and not merely to defraud a subsequent purchaser.

As for the exemption for HPMLs financing the purchase of a property acquired by the seller as an inheritance, the Agencies similarly do not see the risk of fraudulent flipping that Congress intended to address occurring in these transactions. Finally, in both the case of inheritance and that of divorce or dissolution, the seller has acquired the property (or full ownership of the property) under adverse circumstances; the Agencies see no reason as a public policy matter to impose further burden on the seller attempting to sell property obtained in this manner. With respect to promoting the safety and soundness of creditors, the Agencies note that a seller attempting to sell property obtained via inheritance or dissolution of marriage may not be in a position to satisfy the mortgage obligation associated with the property. As a result, creditors could be subject to losses, which can negatively affect the safety and soundness of the creditors.

For these reasons, the Agencies believe that the exemptions in § 1026.35(c)(4)(vii)(D) are in the public interest and promote the safety and soundness of creditors.

35(c)(4)(vii)(E)

Acquisitions of Property From Employers or Relocation Agencies

In § 1026.35(c)(4)(vii)(E), the Agencies are adopting an exemption for HPMLs financing the purchase of a property from an employer or relocation agency that had acquired the property in connection with the relocation of an employee. This exemption mirrors an identical exemption from the FHA Anti-Flipping Rule. *See* 12 CFR 203.37a(c)(5)). As with other exemptions adopted in the final rule that correspond with similar FHA Anti-Flipping Rule exemptions, the Agencies concur with FHA's longstanding conclusion that these types of transactions do not present significant fraudulent flipping risks. Rather, the circumstances of the transaction provide evidence that the impetus for the resales stems from bona fide reasons other than the seller's efforts to profit from a flip.

The Agencies believe that these transactions benefit both employees and employers by helping to ensure that employees can relocate as needed for business reasons in an efficient manner. The Agencies also believe that the exemption can benefit HPML consumers and creditors by reducing costs otherwise associated with purchasing and extending credit to finance the purchase of these properties. In addition, due to reduced burden involved with the sale of the home, the Agencies believe the exemption will promote the purchase of homes by employers. This, in turn, promotes the safety and soundness of the employees'

[80] ''Person'' is defined in Regulation Z as ''a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.'' § 1026.2(a)(22).

creditors by ensuring that the employees' mortgage obligations will be met.

For these reasons, the Agencies believe that the exemption in § 1026.35(c)(4)(vii)(E) is in the public interest and promotes the safety and soundness of creditors.

35(c)(4)(vii)(F)

Acquisitions of Property From Servicemembers With Deployment or Permanent Change of Station Orders

In § 1026.35(c)(4)(vii)(F), the Agencies are adopting an exemption from the additional appraisal requirement for HPMLs financing the purchase of a property being sold by a servicemember, as defined in 50 U.S.C. Appx. 511(1), who received a deployment or permanent change of station order after acquiring the property. This exemption is not in the FHA Anti-Flipping Rule. The exemption was suggested by some commenters in response to a request for recommendations for other appropriate exemptions, however. The Agencies believe that many of the reasons for the exemptions in the final rule based on the FHA Anti-Flipping Rule support a servicemember exemption as well. For example, as with the exemption for HPMLs financing the sale of a property by an employer or relocation agency in connection with the relocation of an employee, the exemption for HPMLs financing the sale of a property by a servicemember with permanent relocation orders facilitates the efficient transfer of servicemembers.

Without this exemption, servicemembers might have more limited options for eligible buyers. For reasons discussed earlier, some creditors might be reticent about lending to an HPML consumer in a transaction that would trigger the additional appraisal requirement. This could result in servicemembers being forced to retain mortgages that are difficult for them to afford when they must also support themselves and their families in a new living arrangement elsewhere. In turn, the positions of creditors and investors on those existing mortgages could be compromised by servicemembers not being able to meet their mortgage obligations.

The Agencies do not believe that this exemption would be used frequently. Regardless, the Agencies believe that an exemption for HPMLs financing the purchase of the property in that instance is in the public interest and promotes the safety and soundness of creditors.

35(c)(4)(vii)(G)

Acquisitions of a Property in a Federal Disaster Area

In § 1026.35(c)(4)(vii)(G), the Agencies are adopting an exemption for HPMLs financing the purchase of a property located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area. This exemption generally corresponds to an exemption in the FHA Anti-Flipping Rule for loans financing the purchase of properties located in areas designated by the President as federal disaster areas, if HUD has announced that these transactions will not be subject to the restrictions. *See* 12 CFR 203.37a(c)(8).

The Agencies believe that this exemption appropriately facilitates the repair and restoration of disaster areas to the benefit of individual consumers, communities, and credit markets. The Agencies also recognize that disasters might result in some consumers being unable to meet their mortgage obligations. As a result, creditors could be subject to losses, which could negatively affect the safety and soundness of the creditors. The Agencies believe that this exemption would help creditors extend HPMLs that finance the purchase of properties in disaster areas without undue burden, thus enabling the creditors to improve their lending positions more effectively.

As noted, the Agencies specified that the exemption would take effect only if and for as long as the Federal financial institutions regulatory agencies also waive application of the FIRREA title XI appraisal rules for properties in the disaster area. The Agencies believe that this provision helps protect consumers from fraudulent flipping by giving the Federal financial institutions regulatory agencies, all of which are parties to this final rule, authority to monitor the area and determine when appraisal requirements should be reinstated.

For these reasons, the Agencies have concluded that the exemption in § 1026.35(c)(4)(vii)(G) for the purchase of properties in disaster areas is in the public interest and promotes the safety and soundness of creditors.

35(c)(4)(vii)(H)

Acquisitions of Properties in Rural Counties

In § 1026.35(c)(4)(vii)(H), the Agencies are adopting an exemption from the additional appraisal requirement for HPMLs that finance the purchase of a property in a ''rural'' county, as defined in § 1026.35(b)(iv)(A), which is a county assigned one of the following Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Services (USDA–ERS): 4, 6, 7, 8, 9, 10, 11, or 12. These UICs correspond to areas outside of MSAs as well as most micropolitan statistical areas; the definition would also include properties located in micropolitan statistical areas that are not adjacent to an MSA. This rural county exemption is not an exemption in the FHA Anti-Flipping Rule. However, the Agencies received requests to consider an exemption for loans in rural areas during informal outreach for the proposal, as well as from public commenters.

In the proposal, the Agencies did not propose an exemption for loans secured by properties in ''rural'' areas from all of the Dodd-Frank Act ''higher-risk mortgage'' appraisal rules, but requested comment on an exemption for these loans from the additional appraisal requirement. As discussed earlier, commenters widely supported an exemption for loans secured by properties in rural areas, citing several reasons: a lack of appraisers; the disproportionate cost of an extra appraisal, based on commenters' view that property values tend to be lower in rural areas than in non-rural areas; the assertion that many lenders in rural areas hold the loans in portfolio and therefore are more mindful of ensuring that properties securing their loans are valued properly; the assertion that lenders in rural areas tend to need to price loans higher for legitimate reasons, so a disproportionate amount of their loans (compared to those of larger lenders) will be subject to the appraisal rules and thus these lenders will bear an unfair burden that they are less equipped than larger lenders to bear; and the assertion that property flipping is rare in rural areas.

The analysis in the proposal of the impact of the proposed rule in rural areas corroborated commenters' concern that a larger share of loans in rural areas tend to be HPMLs than in non-rural areas.[81] Although many small and rural

[81] In the proposal, ''rural'' was defined as a loan made outside of a micropolitan or metropolitan

lenders are excluded from HMDA reporting, tabulations of rural loans by HMDA reporters may be informative about patterns of rural HPML usage. As conveyed in the proposal, 10 percent of rural first-lien purchase-money loans were HPMLs in 2010 compared to 3 percent of non-rural first-lien purchase loans.[82] Based on this information, the Bureau concluded that rural borrowers may be more likely to incur the cost of an additional appraisal requirement than non-rural consumers.

Regarding appraiser availability, analysis conducted for the proposal indicated that more than two appraisers are located in all but 22 counties nationwide (13 of which are in Alaska).[83] An appraiser was considered ''located'' in a county if the appraiser's home or business address listed on the Appraisal Subcommittee's National Appraiser Registry was in that county. Public commenters pointed out, however, that while many rural areas might have more than two appraisers, these few appraisers are often busy and not readily available. One reason may be that many rural counties cover large areas, perhaps making it more difficult to arrange timely appraisals in such areas. As noted, a financial holding company suggested that the final rule exempt lenders located in areas where the State appraiser licensing or certification roster shows five or fewer unaffiliated appraisers within a reasonable distance, such as 50 miles or less. A large bank further recommended that the final rule exempt loans secured by properties in low-density appraiser markets, such as states with fewer than 500 appraisers or counties with fewer than five appraisers. The final rule does not adopt an exemption based on the number of appraisers within a particular geographic area or radius of the property securing the HPML. The Agencies believe that a simpler approach is consistent with the objectives of the statute, facilitates compliance, and reduces burden on creditors.

Other than the commenters who suggested a ''radius'' or low-density approach for the rural exemption, only one other commenter offered suggestions on how to define rural. This commenter recommended that the Agencies adopt a definition of ''rural'' that is consistent with the definition used in rules addressing the use of escrow accounts. *See* 2013 Escrows Final Rule, § 1026.35(b)(2)(iv); *see also* 2013 ATR Final Rule, § 1026.43(f)(2)(vi) and comment 43(f)(2)(vi–1). The Agencies specifically requested comment on whether the definition of ''rural'' used in any exemption adopted should be the same as the definition in the 2011 ATR Proposal and 2011 Escrows Proposal. These exemptions are described below.

2011 Escrows Proposal. Since 2010, Regulation Z, implementing TILA, has required creditors to establish escrow accounts for taxes and insurance on HPMLs. *See* 12 CFR 1026.35(b)(3). The Dodd-Frank Act subsequently amended TILA to codify and augment the escrow requirements in Regulation Z. *See* Dodd-Frank Act §§ 1461 and 1462, adding 15 U.S.C. 1639d. The Board issued the 2011 Escrows Proposal to implement a number of these provisions.

Among other amendments, one new section of TILA authorizes the Board (now, the Bureau) to create an exemption from the requirement to establish escrow accounts for transactions originated by creditors meeting certain criteria, including that the creditor ''operates predominantly in rural or underserved areas.'' 15 U.S.C. 1639d(c).

Accordingly, the 2011 Escrows Proposal proposed to create an exemption for any loan extended by a creditor that makes most of its first-lien HPMLs in counties designated by the Board as ''rural or underserved,'' has annual originations of 100 or fewer first-lien mortgage loans, and does not escrow for any mortgage transaction it services.

Definition of ''Rural''

In the 2011 Escrows Proposal, the Board proposed to define ''area'' as ''county'' and to provide that a county would be designated as ''rural'' during a calendar year if:

> * * * it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and either (1) it is not adjacent to any metropolitan or micropolitan area; or (2) it is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2,500 or more residents.

See 76 FR 11598, 11610–13 (March 2, 2011); proposed 12 CFR 1026.45(b)(2)(iv)(A).

Further, the Board proposed to clarify in Official Staff Commentary to this provision that, on an annual basis, the Board would ''determine[] whether each county is 'rural' by reference to the currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). Specifically the Board classifies a county as ''rural'' if the USDA–ERS categorizes the county under UIC 7, 10, 11, or 12.'' *See* proposed comment 45(b)(2)(iv)–1.

The Board explained its proposed definition of ''rural'' in the **SUPPLEMENTARY INFORMATION** to the proposal as follows:

> The Board is proposing to limit the definition of ''rural'' areas to those areas most likely to have only limited sources of mortgage credit. The test for ''rural'' in proposed § 226.45(b)(2)(iv)(A), described above, is based on the ''urban influence codes'' numbered 7, 10, 11, and 12, maintained by the Economic Research Service (ERS) of the United States Department of Agriculture. The ERS devised the urban influence codes to reflect such factors as counties' relative population sizes, degrees of ''urbanization,'' access to larger communities, and commuting patterns. The four codes captured in the proposed ''rural'' definition represent the most remote rural areas, where ready access to the resources of larger, more urban communities and mobility are most limited. Proposed comment 45(b)(2)(iv)–1 would state that the Board classifies a county as ''rural'' if it is categorized under ERS urban influence code 7, 10, 11, or 12.

Id. at 11612.

2011 ATR Proposal. The Dodd-Frank Act also amended TILA to impose new requirements that creditors consider a consumer's ability to repay a mortgage loan secured by the consumer's principal dwelling. *See* Dodd-Frank Act section 1411, adding 15 U.S.C. 1639c. As part of these amendments, the Dodd-Frank Act created a new class of loans called ''qualified mortgages'' and provided that creditors making qualified mortgages would be presumed to have met the new ability to repay requirements. *See id.* section 1412. Under the Act, balloon mortgages can be considered qualified mortgages if they meet certain criteria, including that the creditor ''operates predominantly in rural or underserved areas.'' *Id.*

In May 2011, the Board issued the 2011 ATR Proposal to implement these provisions.

In the ATR Proposal, the Board's proposed definition of ''rural'' and accompanying explanation in the Official Staff Commentary and **SUPPLEMENTARY INFORMATION** are identical to the definition and

statistical area. *See* 77 FR 54722, 54752 n. 108 (Sept. 5, 2012).

[82] 77 FR 54722, 54752 (Sept. 5, 2012). Similar percentages for rural and non-rural first-lien purchase HPML lending are reflected in 2011 HMDA data. *See* Robert B. Avery, Neil Bhutta, Kenneth B. Brevoort, and Glenn Canner, ''The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' FR Bulletin, Vol. 98, no. 6 (Dec. 2012) *http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf.*

[83] *See* 77 FR 54722, 54752–54753 (Sept. 5, 2012).

explanation quoted above in the 2011 Escrows Proposal. *See* 76 FR 27390, 27469–72 (May 11, 2011); proposed § 1026.43(f)(2)(i) and comment 43(f)(2)–1.

As discussed in more detail in the 2013 ATR Final Rule and 2013 Escrows Final Rule, most commenters on the proposals for those rulemakings objected to this definition of ''rural'' as too narrow (it covers approximately 2 percent of the U.S. population). The narrow scope of the definition of ''rural'' was viewed as especially onerous because the scope was narrowed even further by a number of additional conditions on the exemption imposed by the statute.[84] As explained more fully in the 2013 ATR Final Rule and 2013 Escrows Final Rule, the Bureau is finalizing a more broad definition of ''rural,'' acknowledging that the exemption will nonetheless be narrowed by the additional conditions.

The Bureau is defining ''rural'' as UICs 4, 6, 7, 8, 9, 10, 11, or 12. These codes comprise all areas outside of MSAs and outside of all micropolitan statistical areas except micropolitan statistical areas that are not adjacent to MSAs. According to current U.S. Census data, approximately 10 percent of the U.S. population lives in these areas.

Exemption for HPMLs secured by properties in rural counties from the additional appraisal requirement. The Agencies believe that the definition of ''rural'' county used by the Bureau is appropriate for the exemption from the requirement to obtain an additional appraisal under § 1026.35(c)(4)(i) for loans in rural areas. In addition, the Agencies view consistency across mortgage rules in defining rural county as desirable for compliance and enforcement. Thus, the exemption in § 1026.35(c)(4)(vii)(H) cross-references the definition of rural county in the HPML escrow provisions of revised § 1026.35(b) (*see* 2013 Escrows Final Rule, § 1026.35(b)(2)(iv)). (The same definition of rural county is adopted by the Bureau in the 2013 ATR Final rule, § 1026.43(f)(2)(vi) and comment 43(f)(2)(vi–1).) The Agencies have considered several factors in determining how to define the scope of the exemption.

First, the Agencies believe that creditors must be readily able to determine whether a particular transaction qualifies for the exemption. This will be possible because the Bureau will annually publish on its Web site a table of the counties in which properties would qualify for this exemption. Comment 35(c)(4)(vii)(H)–1 cross-references comment 35(b)(2)(iv)–1, which clarifies that the Bureau will publish on its Web site the applicable table of counties for each calendar year by the end of that calendar year. The comment further clarifies that a property securing an HPML subject to § 1026.35(c) is in a rural county under § 1026(c)(4)(vii)(H) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. The comment provides the following example: for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of § 1026(c)(4)(vii)(H) if the county is on the table of rural counties published by the Bureau at the end of 2014. The Agencies anticipate that loan officers and others will be able to look on the Bureau Web site to identify whether the county in which the subject property is located is on the list.

Second, the Agencies endeavored to create an exemption tailored to address key concerns raised by commenters requesting a rural exemption, based on data findings by the Agencies. The principal concerns that the Agencies identified among commenters were that: first, adequate numbers of appraisers might not be available in rural areas for creditors to comply with the additional appraisal requirement and; second, the cost of obtaining the additional appraisal might deter some creditors from making HPMLs in these areas, many of which might already be underserved, reducing credit access for rural consumers. As noted in the proposed rule and discussed below, the potential reduction in credit access might be disproportionally greater in rural areas than in non-rural areas because the proportion of HPMLs is higher in rural as opposed to non-rural areas.

For the reasons explained below, the Agencies believe that the exemption for loans in rural areas as defined in the final rule is appropriately tailored to address these and related concerns. By better ensuring credit access and lowering costs among creditors extending HPMLs in rural areas, including small community banks, the exemption is expected to benefit the public and promote the safety and soundness of creditors. *See* TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

Appraiser availability. As noted, commenters indicated that in some rural areas it can be difficult to find appraisers who are both competent to appraise a particular rural property and also readily available. The cost-benefit analysis conducted by the Bureau for the proposal focused in part on estimating appraiser availability in particular areas and identified counties in which fewer than two appraisers with requisite credentials indicated having a business or home address.[85] However, commenters noted and the Agencies confirmed based on additional outreach for this final rule that not all appraisers whose home or business address is in a particular geographic area are competent to appraise properties in that area. Thus, to inform the final rule, the Bureau expanded its research from that conducted for the proposal.

For the final rule, the Bureau computed how many appraisers showed that they had a home or business address within a 50-mile radius of the center of each census tract in which an HPML loan was reported in the 2011 HMDA data.[86] The 50-mile radius test was intended to be a proxy for the potential service area for an appraiser in a more rural area and would cover properties located in roughly an hour's drive of an appraiser's home or office location.

On this basis, the Bureau found that, of 262,989 HMDA-reported HPMLs in 2011, 603 had fewer than five appraisers within a 50-mile radius of the center of the tract in which the securing property was located; 484 of these loans were in areas covered by the final rule's rural exclusion. Based on FHFA data, the Bureau estimates that 5 percent of these HPMLs were potentially covered by the statute's additional appraisal

[84] For the exemption from the escrow requirement, the statute states that the Board (now, the Bureau) may exempt a creditor that: ''(1) Operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the [Bureau]; (3) retains its mortgage loan originations in portfolio; and (4) meets any asset size threshold and any other criteria the [Bureau] may establish . * * *'' TILA section 129D(c), 15 U.S.C. 1639d(c); *see also* TILA section 129C(b)(2)(E), 15 U.S.C. 1639c(b)(2)(E) (granting the Bureau authority to deem balloon loans ''qualified mortgages'' under certain circumstances, including that the loan is extended by a creditor described meeting the same conditions set forth for the exemption from the escrow requirement).

[85] *See* 77 FR 54722, 54752–54753 (Sept. 5, 2012).

[86] The appraisers accounted for in the Bureau's analysis of the National Appraiser Registry were listed on the Registry as ''active,'' ''AQB Compliant'' and either licensed or certified. The Registry is available at *https://www.asc.gov/National-Registry/NationalRegistry.aspx.* ''AQB Compliant'' means that the appraiser met the Real Property Appraisal Qualification Criteria as promulgated by the Appraisal Qualifications Board on education, experience, and examination. *See* Appraisal Subcommittee of the Federal Financial Institutions Examination Council, *https://www.asc.gov/Frequently-Asked-Questions/FrequentlyAskedQuestions.aspx#AQB%20Compliant%20meaning.*

requirement because they were purchase-money HPMLs secured by properties sold within a 180-day window.[87] A lower proportion would have been flips with a price increase. *See* TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). But taking solely the number of flips without regard to price increase or other exemptions (*see* § 1026.35(c)(2) and (c)(4)(vii)), an estimated 30 HPML transactions that were flips had fewer than five appraisers within a 50-mile radius of the center of the census tract in which they were located (5 percent of 603 HPMLs). Twenty-four of these would have been covered by the rural exemption as defined in the final rule (5 percent of 484 HPMLs).

On this basis, the Agencies have concluded that the exemption is reasonably tailored to exclude from coverage of the additional appraisal requirement the loans for which appraiser availability might be an issue.

Credit access. Commenters also raised concerns about credit access, emphasizing that a larger proportion of loans in rural areas are HPMLs than in non-rural areas. Commenters suggested that the additional appraisal requirement could deter some creditors from extending HPML credit. *See* § 1026.35(c)(4)(v) and corresponding section-by-section analysis.

The additional appraisal requirement entails several compliance steps. After identifying that a loan is an HPML under § 1026.35(a), a creditor will need to assess whether the HPML is exempt from the appraisal requirements entirely under § 1026.35(c)(2). If the loan is not exempt as a qualified mortgage or other type of transaction exempt under § 1026.35(c)(2), the creditor will need to determine whether the HPML is one of the transactions that is exempt from the additional appraisal requirement under § 1026.35(c)(4)(vii). If the HPML is not exempt from the additional appraisal requirement, the creditor will need to determine whether the requirement to obtain an additional appraisal is triggered based on the date and, if necessary, price of the seller's acquisition of the property securing the HPML. *See* § 1026.35(c)(4)(i)(A) and (B). (Alternatively, the creditor could assume that the requirement applies and order two appraisals without taking each of these steps.) If the requirement is triggered, the creditor must obtain an additional appraisal performed by a certified or licensed appraiser, the cost of which cannot be charged to the consumer. *See id.* and § 1026.35(c)(4)(v).

If these compliance obligations would deter some creditors from extending HPMLs, the impact on credit access might be greater in rural areas as defined in the final rule than in non-rural areas, because a significantly larger proportion of residential mortgage loans made in rural areas are HPMLs than in non-rural areas. Again, based on 2011 HMDA data, 12 percent of rural first-lien, purchase-money loans were HPMLs compared to four percent of non-rural first-lien, purchase-money loan.[88] That is, recent data indicates that HPMLs occur three times as often in the rural setting.

Thus, an important consideration for the Agencies in determining the scope of the exemption was the comparative number of creditors extending HPMLs in various geographic areas. To this end, the Agencies considered, based on HMDA data, the number of creditors reported to have extended HPML credit in the geographic units defined by the 12 UICs. (For more details, see the Section 1022(b)(2) cost-benefit analysis in the **SUPPLEMENTARY INFORMATION** below.) The Agencies believe that in the areas with a greater number of lenders reporting that they extended HPMLs, the additional appraisal requirement will have a lower impact on credit access.

HMDA data for 2011 show that a sharp drop-off in the number of creditors reporting to extend HPML credit occurs in micropolitan statistical areas not adjacent to MSAs (UIC 8), compared to MSAs and micropolitan statistical areas that are adjacent to MSAs.[89] Specifically, 10 creditors reported that they extended HPMLs in a median county classified as UIC 8 in 2011; by contrast, in the median counties of the UICs with the next highest populations (UICs 2, 3, 5), the number of creditors reporting that they extended HPMLs was 24, 18, and 16, respectively. The drop-off in numbers of HPML creditors continues for UICs representing non-MSAs and non-micropolitan statistical areas.[90]

The Agencies also looked at the estimated number of flips in areas encompassed by the rural exemption of the final rule to determine whether the consumer protections lost might outweigh the benefits of the exemption. As explained in greater detail in the Section 1022(b)(2) analysis, the Bureau estimates that, based on HMDA data, 122,806 purchase-money HPMLs were made in 2011; 21,370 of those were in the areas covered by the rural exclusion. As noted, the Bureau estimates that the proportion of purchase-money HPMLs involving properties sold within 180 days is 5 percent.[91] Thus, of HPMLs in rural counties as defined in the final rule, an estimated 5 percent would have been flips. This number does not account for any other exemptions from the HPML appraisal rules that might apply to these HPMLs under § 1026.35(c)(2) or (c)(4)(vii). It also does not account for the price increase thresholds defining a transaction covered under the additional appraisal requirement in this final rule. *See* § 1026.35(c)(4)(i)(A) and (B) and corresponding section-by-section analysis.

The Agencies believe that the exemption for HPMLs secured by rural properties appropriately balances credit access and consumer protection. As the data above suggests, the estimated number of HPML consumers that would not receive the protections of an additional appraisal due to this exemption is very small. Moreover, the Agencies note that affected HPML consumers would still receive the consumer protections afforded by the general requirement for an interior-inspection appraisal performed by a certified or licensed appraiser. *See* § 1026.35(c)(3)(i).

In sum, the Agencies believe that the exemption in § 1026.35(c)(4)(vii)(G) will help ensure that creditors in rural areas are able to extend HPML credit without undue burden, which will in turn mitigate any detrimental impacts on access to credit in rural areas that might result absent the exemption. The Agencies further believe that the exemption is appropriately tailored to ensure that needed consumer protections regarding appraisals are in place in areas where they are needed. For all of the reasons explained above, the Agencies have concluded that the exemption in § 1026.35(c)(4)(vii)(H) is in the public interest and promotes the safety and soundness of creditors.

[87] Based on county recorder information from select counties licensed to FHFA by DataQuick Information Systems.

[88] Robert B. Avery, Neil Bhutta, Kenneth B. Brevoort, and Glenn Canner, ''The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' FR Bulletin, Vol. 98, no. 6 (Dec. 2012) *http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf.*

[89] More detail about the population densities represented by the 12 UICs is provided in the Section 1022(b)(2) analysis in Part V of the **SUPPLEMENTARY INFORMATION**.

[90] Ten creditors reported extending HPML credit in 2011 in UICs 6 and 4; six in UIC 11; seven in UIC 9; six in UIC 7; four in UIC 10; and three in UIC 12.

[91] Based on county recorder information from select counties licensed to FHFA by DataQuick Information Systems.

35(c)(5) Required Disclosure

35(c)(5)(i) In General

Title XIV of the Dodd-Frank Act added two new appraisal-related notification requirements for consumers. First, TILA section 129H(d) states that, at the time of the initial mortgage application for a higher-risk mortgage loan, the applicant shall be ''provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.'' 15 U.S.C. 1639h(d). The Agencies interpret TILA section 129H(d) to provide the elements that a disclosure imposed by regulation should address. In addition, new section 701(e)(5) of the Equal Credit Opportunity Act (ECOA) similarly requires a creditor to notify an applicant in writing, at the time of application, of the ''right to receive a copy of each written appraisal and valuation'' subject to ECOA section 701(e). 15 U.S.C. 1691(e)(5); *see also* 77 FR 50390 (Aug. 21, 2012) (2012 ECOA Appraisals Proposal) and the Bureau's final ECOA appraisals rule (2013 ECOA Appraisals Final Rule).[92] Read together, the revisions to TILA and ECOA require creditors to provide two appraisal disclosures to consumers applying for a higher-risk mortgage loan secured by a first lien on a consumer's principal dwelling.

The Agencies proposed text for the notice required by TILA section 129H that was intended to incorporate the statutory elements, using language honed through consumer testing designed to minimize confusion both with respect to the language on its face, as well as when read in conjunction with appraisal notices required under the ECOA. Under the proposal, the TILA section 129H notice stated: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.''

As explained more fully below, in § 1026.35(c)(5), the Agencies are adopting the proposed disclosure provision with one change—in effect, including the word ''promptly'' in the disclosure is optional.

[92] The Bureau released the 2013 ECOA Appraisals Final Rule on January 18, 2013, under Docket No. CFPB–2012–0032, RIN 3170–AA26, at *http://consumerfinance.gov/Regulations.*

Public Comments on the Proposal

The Agencies received approximately 20 comments pertaining to the proposal on the text, timing, and form of the HRM appraisal notice. The comments came from banks and bank holding companies, credit unions, bank and credit union trade associations, an appraisal industry trade association, GSEs, consumer advocates, and an industry service provider. Regarding the text of the disclosure, the Agencies requested comment on the proposed language and whether additional changes should be made to the language to further enhance consumer comprehension.

Combining ECOA/TILA notices. A bank and service provider commented that the proposed text was clear and easy to understand. A major bank, a credit union trade association, and GSEs supported the proposal to streamline and integrate the ECOA appraisal notice and the TILA appraisal notice into a single notice. The credit union trade association noted this harmonization would increase the likelihood consumers would read and understand the notice. No commenters objected to the integration of the ECOA and TILA notices.

Use of ''promptly'' for the timing of disclosure of appraisals. Several commenters—a bank and two bank trade associations at the State level—expressed concern that the term ''promptly'' in the proposed notice was not defined, and that the failure to define the term could lead to consumer confusion as well as disputes. One commenter suggested that the term ''promptly'' be defined as within three days before closing, which the commenter indicated would be consistent with Regulation B.

Use of the term ''appraisal,'' without reference to ''valuations.'' A major bank suggested that the term ''valuations'' should be added to the text of the notice, because disclosure of valuations also is required by ECOA (and the 2012 ECOA Appraisals Proposal, finalized in the 2013 ECOA Appraisals Final Rule). Because consumers may be unfamiliar with the term ''valuation,'' the bank also suggested that the notice include a list of documents that constitute a ''valuation,'' and several other statements regarding how valuations may be conducted and used by the lender. A GSE also suggested that the term ''valuations'' appear in the notice, so that when copies of valuations are provided under ECOA consumers would not mistake them for appraisals.

Statement that the appraisal will be provided even if the loan does not close. A bank trade association at the State level commented on the part of the notice stating that the appraisal would be provided ''even if your loan does not close.'' The commenter suggested that consumers need to be informed that the creditor is not ''compelled to order an appraisal if it is determined that the loan will not be consummated prior to appraisal order process.'' This commenter suggested adding the qualifier, ''if an appraisal was obtained.''

Ability of creditor to levy certain charges. One bank commenter expressed concern that the proposed notice did not condition the right of the borrower to receive a copy of the appraisal upon the borrower's payment for the appraisal. A credit union trade association suggested that the notice clarify that the borrower may be charged for any ''additional copies'' of the appraisal that are requested by the borrower.

Potential for consumer expectations regarding creditor use of the applicant-ordered appraisal. Several commenters—national and State banking trade associations, a major credit union trade association, and an appraisal industry trade association—expressed concern over the text informing the applicant of the applicant's right to order his or her own appraisal for his or her own use. These commenters noted that the proposed notice did not clearly state what use, if any, a creditor could make of a borrower-ordered appraisal.

- Three commenters suggested that the notice clarify that the borrower-ordered appraisal would not be used by the creditor. One of these commenters stated that Federal guidelines prohibited use of the borrower-ordered appraisal as the appraisal for the transaction. The bank trade associations argued that the creditor is prohibited by law from ''considering'' the borrower-ordered appraisal (pointing, for example, to the Appraisal and Evaluation Interagency Guidelines [93]). Similarly, a national credit union trade association suggested that the notice clarify that a borrower-ordered appraisal ''will not be taken into consideration.''
- By contrast, another State bank trade association suggested a less categorical clarification, that the lender

[93] The Interagency Guidelines state: ''An institution's use of a borrower-ordered or borrower-provided appraisal violates the [FIRREA title XI] appraisal regulations. However, a borrower can inform an institution that a current appraisal exists, and the institution may request it directly from the other financial services institution.'' 75 FR 77450, 77458 (Dec. 10, 2010).

''has no obligation to use or review any borrower-ordered appraisal.''

Discussion

Section 1026.35(c)(5) of the final rule provides that, unless an exemption from the HPML appraisal rules applies under § 1026.35(c)(2) (discussed in the corresponding section-by-section analysis above), a creditor shall disclose the following statement, in writing, to a consumer who applies for an HPML: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.'' Section 1026.35(c)(5) further provides that compliance with the disclosure requirement in Regulation B, 12 CFR § 1002.14(a)(2) satisfies the requirements of this paragraph. Under § 1026.35(c)(5)(ii) in the final rule, this disclosure shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to § 1026.35(c). In the case of a loan that is not a higher-priced mortgage loan subject to § 1026.35(c) at the time of application, but becomes a higher-priced mortgage loan subject to § 1026.35(c) after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to § 1026.35(c).

Combining ECOA/TILA notices. As noted, there was strong industry support for harmonizing the ECOA/TILA notice language. Consumer testing also supported this harmonization, as discussed in the proposal. The Agencies therefore retain the proposed approach of harmonizing the TILA appraisal notice with language for the ECOA notice.

Use of ''promptly'' for the timing of disclosure of appraisals. The Agencies have decided to give creditors the option of providing the HPML appraisal disclosure with or without the word ''promptly.'' Specifically, the final rule clarifies that a creditor may comply with the HPML appraisal disclosure requirement—which does not incorporate ''promptly''—by providing the disclosure required under ECOA's Regulation B, which does. Indeed, this is the only difference between the two notices. The model language for the Bureau's final rule implementing ECOA's appraisal disclosure requirement in Regulation B incorporates ''promptly'' to conform to statutory language in ECOA. *See* ECOA section 701(e)(1), 15 U.S.C. 1691(e)(1); *see also* 2013 ECOA Appraisals Final Rule, 12 CFR part 1002, Appendix C (model form C–9). Specifically, ECOA requires that a creditor of a first-lien dwelling-secured mortgage provide the applicant with a copy of each written appraisal and other valuation ''promptly, and in no case later than three days prior to closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.'' ECOA section 701(e)(1), 15 U.S.C. 1691(e)(1). TILA's ''higher-risk mortgage'' appraisal requirements in section 129H(c) do not use the word ''promptly'' in describing the timing requirement for creditors to provide a copy of the appraisal. Instead, the timing requirement is defined only as ''at least 3 days prior to the transaction closing date.'' 15 U.S.C. 1639h(c).

In the final rule, the Agencies are not requiring HPML creditors to include ''promptly'' in the HPML appraisal notice under § 1026.35(c)(5)(i) because ''promptly'' is not the legal standard for providing a copy of the appraisal in TILA section 129H(c). 15 U.S.C. 1639h(c).

At the same time, the Agencies recognize that all first-lien dwelling-secured mortgages, including first-lien HPMLs, are subject to the ECOA disclosure and appraisal copy requirements. Therefore, under the final rule, first-lien HPML creditors who wish to provide a single notice to comply with both TILA and ECOA can do so by using the ECOA notice with the word ''promptly'' into the disclosure. Subordinate-lien HPMLs are subject only to TILA's rules on appraisal copies, not ECOA's, so the timing requirement of ''promptly'' does not apply to creditors of subordinate-lien HPMLs. Therefore, under the final rule, subordinate-lien HPML creditors have the option of providing a disclosure without the word ''promptly;'' however, the final rule also makes it clear that any creditor, whether of a first- or subordinate-lien HPML, complies with the HPML appraisal disclosure requirement by complying with the disclosure requirement under ECOA's Regulation B. As noted, the model language for the ECOA/Regulation B disclosure includes the word ''promptly.''

Use of term ''appraisal,'' without reference to ''valuations.'' For several reasons, the Agencies have decided to retain the term ''appraisal'' in the disclosure notice and not refer to ''valuations.'' First, the duty to disclose valuations in addition to appraisals arises under ECOA, not TILA. The Bureau sought comment on the issue in its proposed ECOA appraisal rule and is not requiring the use of the term ''valuation'' in its final version of that rule. *See* 77 FR 50390, 50396 (Aug. 21, 2012); 2013 ECOA Appraisals Final Rule § 1002.14(a)(1) and appendix C, Form C–9. The Agencies do not believe that the issue is appropriately addressed in a rule implementing the TILA requirement expressly relating only to ''appraisals.''

The Agencies also note that, as discussed more fully in the Bureau's 2013 ECOA Appraisals Final Rule, consumer comprehension would not necessarily be enhanced by use of the term ''valuation.'' In consumer testing by the Bureau, for example, a settlement statement whose ''appraisal'' section did not refer to valuations generally was viewed as less confusing than one that did refer to valuations. Including the term ''valuations'' in the HPML appraisal notice also might confuse subordinate-lien borrowers and creditors, because neither TILA nor ECOA requires disclosure of valuations for subordinate-lien loans.

Statement that the appraisal will be provided even if the loan does not close. The Agencies are retaining the proposed language that the consumer will receive a copy of the appraisal ''even if your loan does not close.'' This reflects the statutory requirement of providing a copy of each appraisal ''conducted,'' a requirement the Agencies interpret as applying whether or not the loan ultimately is consummated. TILA section 129H(c) and (d), 15 U.S.C. 1639h(c) and (d).

The Agencies decline to add a qualifier suggested in public comments explaining that the creditor might not order an appraisal if the creditor determines that the applicant will not qualify for a loan before the appraisal is ordered. The Agencies do not believe that this clarification, while true, is necessary for the disclosure. The proposed notice, now adopted, states that the creditor ''may'' order an appraisal. This language indicates that the creditor is not always required to order an appraisal. Further, the proposed text, now adopted, states that the creditor will provide a copy of ''any appraisal.'' This additional language also underscores the possibility that in some situations (such as if the loan will not close), an appraisal might not be ordered.

Ability of creditor to levy certain charges. The Agencies decline to add language to the disclosure indicating that the consumer's right to receive a

copy of the appraisal is conditioned on payment for the appraisal. TILA does not condition the consumer's right to receive a copy of each appraisal in an HPML transaction on payment for the appraisal. *See* TILA section 129H(c), 15 U.S.C. 1639h(c). Moreover, a statement to this effect would directly contradict the statutory prohibition against charging for any second appraisal required by the HPML appraisal rule. *See* TILA section 129H(b)(2)(B), 15 U.S.C. 1639h(b)(2)(B), implemented in § 1026.35(c)(4)(v), discussed above. Such a statement would also further complicate the disclosure, potentially increasing consumer confusion. Regarding whether a creditor may condition the consumer's right to receive a copy of an appraisal for a first-lien HPML transaction that is also subject to ECOA, the Agencies believe that the issue is more properly addressed in the 2013 ECOA Appraisals Final Rule.[94]

The Agencies also decline to revise the appraisal notice to state that the creditor may charge the consumer for additional copies. The proposed notice, as adopted, refers to the obligation to provide ''a copy,'' singular. Consumer testing did not suggest consumers were likely to believe that they had a right to multiple free copies, and it is unclear that borrowers frequently or even regularly request multiple copies of the appraisals. The Agencies believe that consumer understanding is best enhanced by keeping the disclosure as simple as possible, in part by excluding nonessential information.

Potential for consumer expectations regarding creditor use of a borrower-ordered appraisal. The proposed disclosure stated: ''You can pay for an additional appraisal for your own use at your own cost.'' As noted, several commenters expressed concerns that this statement might create misunderstandings about whether the creditor has an obligation to consider an appraisal ordered by a consumer. Some commenters suggested additional language to address the issue.

The Agencies are not adopting additional language for the disclosure on this issue. Consumer testing on iterations of the disclosure language did not indicate that the proposed notice would mislead borrowers into believing that creditors are required to consider borrower-ordered appraisals. The language concerning use of a borrower-ordered appraisal evolved during the consumer testing, to reduce confusion. One version of language the Bureau tested contained no suggestion as to the use of borrower-ordered appraisals: ''You can choose to pay for your own appraisal of the property.'' [95] Consumers participating in the testing had difficulty understanding the purpose of this language; moreover, industry testing participants noted a concern that consumers might take it to mean that the consumer could order the consumer's own appraisal to be used by the creditor in lieu of the creditor-ordered appraisal.[96] The Bureau subsequently modified the language to add the ''for your own use'' language,[97] and this is the language the Agencies proposed. The Agencies believe that the phrase, ''for your own use,'' is succinct and enhances consumer understanding that an appraisal ordered by the consumer is not a substitute for the appraisal ordered by the creditor.

In addition, the Agencies do not wish to include language in a disclosure that might inadvertently discourage consumers from questioning the appraisal report ordered by the creditor and providing the creditor with any supporting information that may be relevant to the question of the property's value.

The Agencies also recognize that creditors are subject to existing Federal regulatory and supervisory regulations and requirements that provide additional guidance to creditors about appropriate and inappropriate use of borrower-ordered appraisals. To affirm these existing requirements, the final rule states in comment 35(c)(5)(i)–2 that nothing in the text of the consumer notice required by § 1026.35(c)(5) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or the prohibitions against use of borrower-ordered appraisals by creditors.

Finally, comment 35(c)(5)(i)–1 reflects without change a proposed comment clarifying that when two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers. This interpretation is consistent with the statutory language requiring the creditor to provide a disclosure to ''the applicant.'' This interpretation is also consistent with comment 14(a)(2)(i)–1 in Regulation B, which interprets the requirement in § 1002.14(a)(2)(i) that creditors notify applicants of the right to receive copies of appraisals. 12 CFR 1002.14(a)(2) and comment 14(a)(2)(i)–1. This aspect of existing Regulation B is retained in the Bureau's 2013 ECOA Appraisals Final Rule, in § 1002.14(a)(1) and comment 14(a)–1.

35(c)(5)(ii) Timing of Disclosure

TILA section 129H(d) requires that the appraisal notice be provided at the time of the application. 15 U.S.C. 1639h(d). Consistent with this requirement, and recognizing that the ''higher-risk'' status of the proposed loan would not necessarily be determined at the precise moment of the application, the Agencies proposed to require that the TILA section 129H notice ''be mailed or delivered not later than the third business day after the creditor receives the consumer's application.'' The proposed requirement also stated that, if the notice is not provided to the consumer in person, the consumer is presumed to have received the notice three days after its mailing or delivery.

The final rule adopts this provision with two changes. First, the final rule omits the proposed language providing that ''[i]f the disclosure is not provided to the consumer in person, the consumer is presumed to have received the disclosure three business days after they are mailed or delivered.'' While commenters did not address the issue, the Agencies have concluded that the date of consumer receipt in this context is not relevant. By contrast, as discussed in the section-by-section analysis for § 1026.35(c)(6), below, the Agencies emphasize in the final rule the relevance of the date that a consumer receives the copy of the appraisal. Second, the final rule provides that, in the case of an application for a loan that is not an HPML at the time of application, but whose rate is set at an HPML level after application, the disclosure must be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is an HPML.

Public Comments on the Proposal

In the proposal, the Agencies asked for comment on whether providing the notification at some other time would be more beneficial to consumers, and how the notification should be provided when an application is submitted by telephone, facsimile, or electronically.

[94] Regulation B currently does not require a creditor to provide an appraisal before the borrower pays for it. 12 CFR 1002.14(a)(2)(ii). The Bureau's 2012 ECOA Appraisals Proposal would have eliminated this aspect of Regulation B, however. *See* 77 FR 50390, 50403 (Aug. 21, 2012). The Bureau adopted this change in the 2013 ECOA Appraisals Final Rule. *See* new § 1002.14(a)(1).

[95] Kleimann Communication Group, Inc., Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures (July 9, 2012), at 254–56 (Round 9, Version 1).

[96] *Id.*

[97] This language was included in the disclosure testing in Round 10.

The Agencies further asked whether, in cases such as in-person or telephone applications, the notice should be provided at the time the application is received, or as part of the application. The Agencies also requested comment on whether a creditor who has a reasonable belief that the transaction will not be a ''higher-risk mortgage loan'' (now, HPML) at the time of application, but later determines that the applicant only qualifies for an HPML, should be allowed an opportunity to give the notice at some later time in the application process.

Timing issues for the HPML appraisal notice. The majority of commenters—banks, major industry trade associations, and a software and document service provider—supported a timing requirement that would allow them to integrate the HPML appraisal notice into the TILA-RESPA Loan Estimate (as proposed in the 2012 TILA-RESPA Proposal [98]), using the same disclosure timing requirement as proposed for that disclosure—within three business days after the application. This timing requirement is consistent with the Agencies' proposal for the HPML disclosure. These commenters offered three reasons why an earlier deadline would be inappropriate:

- The trade associations and the service provider noted that the lender cannot charge an appraisal fee before the TILA Good Faith Estimate (GFE) is disclosed and the consumer elects to proceed. *See* § 1026.19(a)(1)(ii) As a result, there is no value to an appraisal notice that precedes the TILA GFE.
- One of the banks asserted that it would be difficult for a creditor to comply with a deadline for the notice that is any earlier than the TILA GFE disclosure deadline, because the rate and therefore ''higher-risk mortgage'' status of a loan is not typically known earlier. Similarly, the service provider also added that it would be unrealistic to expect the creditor to determine the status while the applicant is submitting the application.
- The service provider also noted that consumers prefer integrated disclosures.

Two community banks and a State bank trade association submitted substantially identical comments opposing the three-business-day deadline, however. These commenters argued that complying with the notice requirement in the first few days after the application will slow the loan approval process and increase loan costs. These commenters called instead for a 10 business day deadline.

[98] 77 FR 51116 (Aug. 23, 2012).

No commenters responded to the question in the proposed rule of whether the notice should be provided at the time the application is received, or as part of the application.

Potential need for a mechanism to provide the notice later. Two banks, a credit union trade association at the State level, and a service provider supported including a method in the rule for a creditor to comply with the disclosure requirement if the loan is determined to be an HPML after the time of application. For example, if the rate were not locked, HPML status could arise later in the application process when the rate is set. One large bank noted, however, that if the language in the notice under this rule is the same as in the ECOA notice, then there would be no need to allow this type of cure right for loans that are subject to ECOA (*i.e.,* first-lien dwelling-secured HPMLs).

Discussion

Again, under § 1026.35(c)(5)(ii) of the final rule, the disclosure required under § 1026.35(c)(5)(i) shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to § 1026.35(c). In the case of a loan that is not a higher-priced mortgage loan subject to § 1026.35(c) at the time of application, but becomes a higher-priced mortgage loan subject to § 1026.35(c) after application, the disclosure must be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to § 1026.35(c).

Timing issues for the HPML appraisal notice. In § 1026.35(c)(5)(ii), the final rule adopts the proposed timing requirement of three business days after application. Congress did not define the statutory phrase ''at the time of the application'' when describing when the HRM appraisal notice must be provided. The Agencies believe that the three-business-day timeframe in the proposed rule is a reasonable and appropriate interpretation of the statute. As noted, commenters generally supported a timeframe that would allow for including the notice in the proposed combined TILA-RESPA Loan Estimate, which would be provided within three business days after the application. No commenter suggested that the Agencies should mandate either an earlier or separate notice. Industry commenters correctly pointed out that the appraisal charge cannot be levied prior to the TILA GFE (and, as proposed, the TILA-RESPA Loan Estimate) being provided in any event. As a result, it appears unlikely that creditors would order appraisals before this time, so consumers would not appear to have a significant need to receive the appraisal notice either earlier or separately from the GFE or Loan Estimate. Adding new separate notices could increase the volume of information consumers receive, and potentially decrease consumer understanding.

The Agencies decline to adopt a timing requirement of more than three business days after application, as some commenters suggested. The statute requires that the disclosure be provided ''at application,'' and a three-business-day timing requirement implementing this would be consistent with the application-related disclosure requirements of other residential mortgage rules, most notably the current GFE and proposed TILA-RESPA Loan Estimate discussed above. *See, e.g.,* § 1026.19(a)(1)(i); 77 FR 51116 (Aug. 23, 2012).

Potential need for a mechanism to provide the notice later. As one commenter noted, clarification may be needed on how a creditor could comply with the notice requirement when the loan becomes an HPML more than three days after application due to the higher-priced rate being set at a later date. As one commenter noted, this clarification would not be necessary for first-lien loans. ECOA, as implemented in Regulation B of the Bureau's 2013 ECOA Appraisals Final Rule, requires notice within three business days after application for all first-lien dwelling-secured loans, regardless of whether they are HPMLs. ECOA section 701(e)(5), 15 U.S.C. 1691(e)(5); 2013 ECOA Appraisals Final Rule § 1002.14(a)(1). Further, the HPML appraisal notice is integrated with the ECOA appraisal notice. *See* 2013 ECOA Appraisals Final Rule, § 1002.14(b) and appendix C, Form C–9. As the final rule makes clear, by complying with the ECOA notice requirement, the creditor would automatically comply with the HPML appraisal notice requirement, even if the creditor had not yet determined that the loan would be an HPML. Again, § 1026.35(c)(5)(i) provides that ''[c]ompliance with the disclosure requirement in Regulation B § 1002.14(a)(2) satisfies the requirements of [the HPML appraisal disclosure requirement of § 1026.35(c)(5)(i)].''

By contrast, the ECOA appraisal notice requirement does not apply to subordinate-lien loans. Thus, for subordinate-lien mortgage creditors, a rate increase that occurs more than three business days after application (*i.e.,*

after the required HPML appraisal rule disclosure should have been given) could trigger the HPML notice requirement. Accordingly, the Agencies are adopting additional regulation text providing that a creditor may issue the HPML appraisal notice within three business days of determining the rate.

35(c)(6) Copy of Appraisals

35(c)(6)(i) In General

Consistent with TILA section 129H(c), the proposal required that a creditor must provide a copy of any written appraisal performed in connection with a higher-risk mortgage loan (now HPML) to the applicant. 15 U.S.C. 1639h(c). A proposed comment clarified that when two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of required appraisals to only one of the consumers.

The Agencies received no comments on these aspects of the proposal and, in § 1026.35(c)(6)(i) and comment 35(c)(6)(i)–1, adopt them without change.

35(c)(6)(ii) Timing

TILA section 129H(c) requires that the appraisal copy must be provided to the consumer at least three days prior to the transaction closing date. 15 U.S.C. 1639h(c). The proposal required creditors to provide copies of written appraisals no later than ''three business days'' prior to consummation of the higher-risk mortgage loan (now HPML). The Agencies did not receive public comment on this aspect of the proposal, but are making certain changes to the proposal, explained below. Specifically, the Agencies have revised the proposed timing requirement to include a timing rule for loans that are not consummated. Thus, under new § 1026.35(c)(6)(ii), creditors must provide a copy of an appraisal required under § 1026.35(c)(6)(i):

- No later than three business days prior to consummation of the higher-priced mortgage loan; or
- In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

For consistency with the other provisions of Regulation Z, the proposal also used the term ''consummation'' instead of the statutory term ''closing'' that is used in TILA section 129H(c). 15 U.S.C. 1639h(c). The term ''consummation'' is defined in § 1026.2(a)(13) as the time that a consumer becomes contractually obligated on a credit transaction. The Agencies have interpreted the two terms as having the same meaning for the purpose of implementing TILA section 129H. 15 U.S.C. 1639h. The Agencies did not receive comment on this aspect of the proposal, and adopt the proposed term ''consummation'' in § 1026.35(c)(6)(ii).

As noted, TILA's requirement for when a creditor must give a copy of the appraisal to the consumer is ''at least 3 days prior to the transaction closing date.'' TILA section 129H(c), 15 U.S.C. 1639h(c). Thus, the timing requirement is clear for consummated loans.

The Agencies interpret the statute, however, to require that a copy of the appraisal also be given to HPML applicants when their loans do not close because they are denied or withdrawn, or for any other reason. In reaching this interpretation, the Agencies note that TILA section 129H specifies that the appraisal copy shall be provided ''to the applicant,'' without suggesting that only applicants whose loans are closed are entitled to a copy. In addition, the requirement refers to appraisals that are ''conducted,'' a term whose meaning is independent of whether the loan closes. In the case of applicants' loans that do not close, the Agencies are adopting a requirement that the appraisal be provided ''no later than 30 days after the creditor determines that the loan will not be consummated.'' § 1026.35(c)(6)(ii)(A). The Agencies believe that this timing requirement is a reasonable interpretation of the statute, which is silent on the matter. The timing requirement is clear, which the Agencies believe will reduce compliance burden and risks for creditors, and generally consistent with longstanding timing requirements for providing copies of appraisals under existing Regulation B, 12 CFR 1002.14(a)(2)(ii). The approach is also reflected in the Bureau's 2013 ECOA Appraisals Final Rule in § 1002.14(a)(1).

In addition, as stated in the proposal, the Agencies believe that requiring that the appraisal be provided three ''business'' days in advance of consummation is a reasonable interpretation of the statute and is consistent with the Agencies' interpretation of the statutory term ''days'' used in the Bureau's 2013 ECOA Appraisals Final Rule, which implements the appraisal requirements of new ECOA section 701(e)(1). *See* 15 U.S.C. 1691(e)(1). The Agencies did not receive comment on this aspect of the proposal, and adopt the proposed language ''no later than three business days prior to consummation'' in § 1026.35(c)(6)(ii).

To ensure that the consumer actually receives the appraisal in advance of consummation so that the consumer can use it to inform the consumer's credit decision, comment 35(c)(6)(ii)–1 explains that, for purposes of the requirement to provide a copy of the appraisal three days before consummation, ''provide'' means ''deliver.'' This comment further explains that delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt must be based upon consent that complies with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*)), whichever is earlier. Comment 35(c)(6)(ii)–2 clarifies that, for appraisals prepared by the creditor's internal appraisal staff, the date of ''receipt'' is the date on which the appraisal is completed.

Finally, comment 35(c)(6)(ii)–3 clarifies that the ECOA provision allowing a consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 1026.35(c). ECOA section 701(e)(2), 15 U.S.C. 1691(e)(2), implemented in the 2013 ECOA Appraisals Final Rule, Regulation B § 1002.14(a)(1). The comment further clarifies that a consumer of a higher-priced mortgage loan subject to § 1026.35(c) may not waive the timing requirement to receive a copy of the appraisal under § 1026.35(c)(6)(i).

35(c)(6)(iii) Form of Copy

Section 1026.31(b) currently provides that the disclosures required under subpart E of Regulation Z may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. In the proposal, the Agencies stated their belief that it is also appropriate to allow creditors to provide applicants with copies of written appraisals in electronic form if the applicant consents to receiving the copies in this form. Accordingly, the proposal provided that any copy of a written appraisal may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Public Comments on the Proposal

Two commenters—a bank holding company and a credit union—requested that the final rule not impose the E-Sign Act requirement of consumer consent to receiving HPML appraisals electronically. The first commenter

indicated that challenges with the E-Sign Act compliance may result in issuing a duplicate copy in paper form. The second commenter indicated that these challenges may lead institutions to refuse to provide appraisal copies electronically (to the detriment of those consumers who prefer to receive them this way). A third commenter—a credit union trade association—supported the option of electronic delivery, but did not challenge the proposed E-Sign consent requirement.

Discussion

The E-Sign Act generally requires that, before written consumer disclosures are made electronically, the consumer receive certain prescribed notices and consent to the electronic disclosures in a manner that reasonably demonstrates the ability to access the information that will be disclosed electronically. The E-Sign Act generally applies to statutes that require consumer disclosures ''in writing.'' 15 U.S.C. 7001(c)(1). It is unclear from the comments whether this E-Sign consent requirement would place a significant burden on creditors. The Agencies continue to believe that the proposed clarification that the E-Sign Act applies to providing copies of the appraisal is appropriate and notes that it is consistent with the Bureau's approach in the 2013 ECOA Appraisals Final Rule. Thus, in § 1026.35(c)(6)(iii), this clarification is adopted as proposed.

35(c)(6)(iv) No Charge for Copy of Appraisal

TILA section 129H(c) provides that a creditor shall provide one copy of each appraisal conducted in accordance with this section in connection with a higher-risk mortgage to the applicant without charge. 15 U.S.C. 1639h(c). In the proposal, the Agencies interpreted this provision to prohibit creditors from charging consumers for providing a copy of written appraisals required for higher-risk mortgage loans. Accordingly, the proposal provided that a creditor must not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to new § 1026.35(c)(6)(i).

A proposed comment clarified that the creditor is prohibited from charging the consumer for any copy of a required appraisal, including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-risk mortgage loan.

The Agencies received no comments on this aspect of the proposal and adopt the proposed regulation text and comment without change in § 1026.35(c)(6)(iv) and comment 35(c)(6)(iv)–1.

35(c)(7) Relation to Other Rules

Section 1026.35(c)(7) clarifies that the final rule was adopted jointly by the Agencies. This provision states that the Board is codifying the HPML appraisal rules at 12 CFR 226.43 *et seq.;* the Bureau is codifying the HPML appraisal rules at 12 CFR 1026.35(a) and (c); and the OCC is codifying the HPML appraisal rules at 12 CFR Part 34 and 12 CFR Part 164. Section 1026.35(c)(7) further clarifies that there is no substantive difference among the three sets of rules.

The NCUA and FHFA are adopting the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), by cross-referencing these rules in 12 CFR 722.3 and 12 CFR Part 1222, respectively. The FDIC is adopting the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c) without a cross-reference.

As noted above at the beginning of the section-by-section analysis, § 1026.35(a) is re-published in the final rule for ease of reference, and the joint rulemaking authority extends to § 1026.35(c).

V. Bureau's Section 1022(b)(2) Analysis of the Dodd-Frank Act

Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts to consumers and covered persons.[99] The Bureau is issuing this final rule jointly with the Federal financial institutions regulatory agencies and FHFA, and has consulted with these agencies, HUD, and the FTC, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. The Bureau also has considered the comments filed by industry, consumer groups, and others as described in the section-by-section analysis. Data received from commenters relating to potential benefits and costs, such as the cost of an appraisal, is discussed below.

As discussed above, the final rule implements section 1471 of the Dodd-Frank Act, which establishes appraisal requirements for certain HPMLs. Consistent with the statute, the final rule allows a creditor to originate a covered HPML transaction only if the following conditions are met:

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser; and
- The appraiser conducts a physical property visit of the interior of the property.

In addition, as required by the Act, the final rule requires a creditor in a covered HPML transaction to obtain an additional written appraisal, at no cost to the borrower, if the transaction has each of the following characteristics (subject to certain exemptions, as discussed below):

- The HPML will finance the acquisition of the consumer's principal dwelling;
- The seller acquired the property within 180 days prior to the consumer's purchase agreement (measured from the date of the consumer's purchase agreement); and
- The consumer is acquiring the home for a price that exceeds the price at which the seller acquired the home by more than 10 percent (if the seller acquisition was within 90 days of the consumer's purchase agreement) or by more than 20 percent (if the seller acquisition was within the past 91 to 180 days of the consumer's purchase agreement).

The additional written appraisal, from a different licensed or certified appraiser, generally must include the following information: an analysis of the difference in sale prices (*i.e.,* the price at which the seller acquired the property and the price at which the consumer would acquire the property as set forth in the consumer's purchase agreement), changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

The final rule also requires that within three days of the application, the creditor provide the applicant with a brief disclosure statement that the creditor may charge the applicant for an appraisal, that the creditor will provide the applicant a copy of any appraisal, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant. Finally, the final rule requires that the creditor provide the consumer with a free copy of any written appraisals obtained for the transaction at least three (3) business days before consummation, or within 30 days of determining the transaction will not be consummated.

In many respects, the final rule codifies mortgage lenders' current practices. In outreach calls to industry,

[99] Specifically, Section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

all respondents reported requiring the use of full-interior appraisals in 95 percent or more of first-lien transactions [100] and providing copies of appraisals to borrowers as a matter of course if such a loan is originated.[101] The convention of using full-interior appraisals on first liens has been developing to improve underwriting quality, and the implementation of this rule would assure that the practice would continue even under different market conditions.

The Bureau notes that many of the provisions in the final rule implement self-effectuating amendments to TILA. The costs and benefits of these provisions arise largely or in some cases entirely from the statute and not from the rule that implements them. This rule provides benefits compared to allowing these TILA amendments to take effect without implementing regulations, however, by clarifying parts of the statute that are ambiguous. Greater clarity on these issues covered by the rule should reduce the compliance burdens on covered persons by reducing costs for attorneys and compliance officers as well as potential costs of over-compliance and unnecessary litigation.[102]

Section 1022 permits the Bureau to consider the benefits, costs, and impacts of the final rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. To provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to consider the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline (*i.e.,* the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act and the regulation combined).[103]

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs, and impacts of the final rule.[104] However, in some instances, the requisite data are not available or are quite limited. Data with which to quantify the benefits of the rule are particularly limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the rule.

The primary source of data used in this analysis is data collected under the Home Mortgage Disclosure Act (HMDA).[105] Because the latest wave of complete data available is for loans made in calendar year 2011, the empirical analysis generally uses the 2011 market as the baseline. Data from the 4th quarter 2011 bank and thrift Call Reports,[106] the 4th quarter 2011 credit union call reports from the NCUA, and de-identified data from the National Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR) [107] for the 4th quarter of 2011 also were used to identify financial institutions and their characteristics. Most of the analysis relies on a dataset that merges this depository institution financial data from Call Reports with the data from HMDA including HPML counts that are created from the loan-level HMDA dataset. The unit of observation in this analysis is the entity: if there are multiple subsidiaries of a parent company, then their originations are summed and revenues are total revenues for all subsidiaries.

Other portions of the analysis rely on property-level data regarding parcels and their related financing from DataQuick [108] and on data on the location of certified appraisers from the Appraisal Subcommittee Registry.[109]

[100] Respondents include a large bank, a trade group of smaller depository institutions, a credit union, and an independent mortgage bank.

[101] Respondents include a large bank, a trade group of smaller depository institutions, and an independent mortgage bank.

[102] While it is possible that some clarifications would put greater burdens on creditors as compared to what the statute would ultimately be found to mandate, the Bureau believes that the rule's clarifying provisions generally mitigate burden.

[103] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[104] The estimates in this analysis are based upon data and statistical analyses performed by the Bureau. To estimate counts and properties of mortgages for entities that do not report under the Home Mortgage Disclosure Act (HMDA), the Bureau has matched HMDA data to Call Report data and National Mortgage Licensing System (NMLS) and has statistically projected estimated loan counts for those depository institutions that do not report these data either under HMDA or on the NCUA call report. The Bureau has projected originations of higher-priced mortgage loans for depositories that do not report HMDA in a similar fashion. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings, and geographic presence. Neither HMDA nor the Call Report data have loan level estimates of debt-to-income (DTI) ratios that, in some cases, determine whether a loan is a qualified mortgage. To estimate these figures, the Bureau has matched the HMDA data to data on the historic-loan-performance (HLP) dataset provided by the FHFA. This allows estimation of coefficients in a probit model to predict DTI using loan amount, income, and other variables. This model is then used to estimate DTI for loans in HMDA.

[105] HMDA, enacted by Congress in 1975, as implemented by the Bureau's Regulation C requires lending institutions annually to report public loan-level data regarding mortgage originations. For more information, see *http://www.ffiec.gov/hmda*. It should be noted that not all mortgage lenders report HMDA data. The HMDA data capture roughly 90–95 percent of lending by the FHA and 75–85 percent of other first-lien home loans, in both cases including first liens on manufactured homes (which in some cases are subject to the final rule). HUD, Office of Policy Development and Research (2011), ''A Look at the FHA's Evolving Market Shares by Race and Ethnicity,'' *U.S. Housing Market Conditions* (May), pp. 6–12. Depository institutions (including credit unions) with assets less than $40 million (in 2011), for example, and those with branches exclusively in non-metropolitan areas and those that make no home purchase loan or loan refinancing a home purchase loan secured by a first lien on a dwelling, are not required to report under HMDA. Reporting requirements for non-depository institutions depend on several factors, including whether the company made fewer than 100 home purchase loans or refinancings of home purchase loans, the dollar volume of mortgage lending as share of total lending, and whether the institution had at least five applications, originations, or purchased loans from metropolitan areas. Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort & Glenn B. Canner, *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,* 98 Fed. Res. Bull., December 2012, n.6. In addition, HMDA data used in this analysis does not include transactions secured by properties located in U.S. territories, or refinance transactions where the existing loan is already a refinance or a subordinate lien. Although the TILA HRM rule would apply to otherwise covered HPMLs in these categories, the Bureau does not believe there are a high number of transactions in these categories. To the extent this gap understates costs, that effect will be at least partially offset by the overstatement resulting from including other data on transactions that are not subject to the rule.

[106] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see *http://www2.fdic.gov/call_tfr_rpts/*.

[107] The NMLS is a national registry of non-depository financial institutions including mortgage loan originators. Portions of the registration information are public. The Mortgage Call Report data are reported at the institution level and include information on the number and dollar amount of loans originated, and the number and dollar amount of loans brokered. The Bureau noted in its Summer 2012 mortgage proposals that it sought to obtain additional data to supplement its consideration of the rulemakings, including additional data from the NMLS and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. Each of these data sources was not necessarily relevant to each of the rulemakings. The Bureau used the additional data from NMLS and NMLS Mortgage Call Report data to better corroborate its estimate the contours of the non-depository segment of the mortgage market. The Bureau has received loan file extracts from three lenders, but at this point, the data from one lender is not usable and the data from the other two is not sufficiently standardized nor representative to inform consideration of the final rule. Additionally, the Bureau has thus far not yet received data from the National Mortgage Database pilot phases. The Bureau also requested that commenters submit relevant data. All probative data submitted by commenters are discussed in this final rule.

[108] DataQuick is a database of property characteristics on more than 120 million properties and 250 million property transactions.

[109] The National Registry is a database containing selected information about State certified and licensed real estate appraisers and is publicly

Tabulations of the DataQuick data are used for estimation of the frequency of properties being sold within 180 days of a previous sale. The Appraisal Subcommittee's Registry is used to describe the availability of appraisers.

Potential Benefits of the Rule for Covered Persons and Consumers

In a mortgage transaction, the appraisal helps the creditor avoid lending based on an inflated valuation of the property, and similarly helps consumers avoid borrowing based upon an inflated valuation. Assuming that full-interior appraisals conducted by a certified or licensed appraiser are more accurate than other valuation methods, the rule would improve the quality of home valuations for those transactions where such an appraisal would not be performed currently. While the appraisal is used by the creditor, the improved valuation also can prevent inflated valuations that would lead consumers to borrowing that would not be supported by their true home value, as well as deflated valuations (such as those that do not value an interior which is of different than average quality) that can lead consumers to be eligible for a narrower class of loan products that are priced less advantageously. The requirement that a second appraisal be conducted in certain circumstances would further reduce the likelihood of an inflated sales price for those transactions.

Benefits to covered persons. Transactions where the collateral is overvalued expose the creditor to higher default risk. By tightening valuation standards for a class of transactions that are already priced as higher-risk transactions, the rule may reduce both the risk of default for creditors, as well as more accurately value the collateral available to the creditor in the event of default. Furthermore, by requiring the use of full interior appraisals in transactions involving covered HPMLs, the statute prevents creditors from attempting to compete on price by using less costly and possibly less accurate valuation methods in underwriting. Eliminating the ability to use lower-cost valuation methods, and thereby eliminating price competition on this component of the transaction, may benefit firms that prefer to employ more thorough valuation methods.

Benefits to consumers. The final rule ensures that covered HPML transactions will have a written interior appraisal, and in some cases a second written interior appraisal, and that consumers will receive an appraisal notice and a copy of these appraisals. These requirements will mostly benefit consumers whose transactions would not already have written interior appraisals a copy of which they receive. The benefits enjoyed by these consumers are described below.

Individual consumers engage in real estate transactions infrequently, so developing the expertise to value real estate is costly and consumers often rely on experts, such as real estate agents, as well as on list prices, to make price determinations. These methods may not lead a consumer to an accurate valuation of a property they intend to purchase. For example, there is evidence that real estate agents sell their own homes for significantly more than other similar homes, which suggests that consumers may not be able to accurately price the homes that they are selling.[110] Other research, this time in a laboratory setting, provides evidence that individuals are sensitive to anchor values when estimating home prices.[111] In such cases, an independent signal of the value of the home should benefit the consumer. Having a professional valuation as a point of reference may help consumers who are applying for a HPML to gain a more accurate understanding of the home's value and improve overall market efficiency, relative to the case where the knowledge of true valuations is more limited.[112]

While the consumer can order an appraisal voluntarily at any time, an especially valuable time for the consumer to receive a copy of an appraisal is before closing an HPML—whether it is for a home purchase, a refinance, or a home improvement. Undoubtedly, some consumers are aware of the benefits of an appraisal, and could have decided for themselves whether they want to pay for it if one was not required or otherwise prepared and provided under standard industry practice. However, other consumers may be unaware of the benefits of an appraisal in terms of improving accuracy of a home valuation, and to these consumers the rule is especially valuable in an HPML transaction that would not otherwise include an appraisal. Moreover, even the consumers who are aware of the benefits would not be able to use the self-ordered appraisal for any transactions with creditors, since those require creditor-ordered valuations.

The Bureau believes that ensuring HPML borrowers receive appraisals ensures that they will have more accurate information about the value of their dwelling, and therefore about their net worth and whether they have any equity in their dwelling. For transactions that would already include the appraisal, the rule ensures that in similar transactions consumers will continue to have an appraisal; for other transactions, the rule will result in the appraisal. In either case, more accurate information leads to better decisions and can lead to more investment in the property in some cases by removing the uncertainty over the value of the dwelling. The appraisal may also help to inform the consumer of whether they may be overpaying for the property with a new home purchase, about to invest more into a property that might be valued at less than they think with a home improvement loan, or about to pay the refinance cost on a property that they should sell instead. The latter two points are especially valuable for consumers who are in negative equity, or ''underwater'' situations (where the loan amount exceeds the value of the dwelling). A consumer who finds out that she is not underwater, when she thought that she might have been, has an incentive to continue investing in the property and make sure that she does not lose it in foreclosure or otherwise default. Conversely, a consumer who finds out that he is underwater, when he thought that he might not have been, might have second thoughts about any investments, and will potentially want to pursue loss mitigation options or, if they do not succeed and the consumer is facing financial difficulties or default, agree on a short-sale or on a deed-in-lieu of foreclosure with the creditor.

Aside from the aforementioned decisions, depending on the alternative valuation, an appraisal can help the consumer to lower their property tax, to forgo private mortgage insurance (PMI), and to choose the correct property value for insurance purposes. A lower loan-to-value (LTV) ratio might also result in a lower interest rate on the loan, all else equal, as discussed further below. Again, the final rule ensures these benefits are available to consumers in

available at *https://www.asc.gov/National-Registry/NationalRegistry.aspx.*

[110] Levitt, Steven and Chad Syverson. ''Market Distortions When Agents are Better Informed: The Value of Information In Real Estate Transactions.'' The Review of Economics and Statistics 90 no. 4 (2008): 599–611.

[111] Scott, Peter and Colin Lizieri. ''Consumer House Price Judgments: New Evidence of Anchoring and Arbitrary Coherence.'' Journal of Property Research 29 no. 1 (2012): 49–68.

[112] For example, in Quan and Quigley's theoretical model where buyers and sellers have incomplete information, trades are decentralized, and prices are the result of pairwise bargaining, ''[t]he role of the appraiser is to provide information so that the variance of the price distribution is reduced.'' Quan, Daniel and John Quigley. ''Price Formation and the Appraisal Function in Real Estate Markets.'' Journal of Real Estate Finance and Economics 4 (1991): 127–146.

transactions that do not currently have appraisals or provide copies to applicants.

If a borrower is prepared to pay an inflated price for a property, then an appraisal that reflects its value more accurately may prevent the transaction from being completed at the inflated price and consequently, at a higher loan amount, which would be more costly to the consumer who, in the case of an HPML borrower, also may have fewer resources to repay the loan. This is particularly true when considering that transactions subject to the rule will be those HPMLs that are not qualified mortgages, and which therefore may involve higher points, greater fees, or a higher debt-to-income ratio, among other differences. In addition to the direct costs of paying more than the true value for a property, buying an overvalued property is associated with higher risk of default. If a property that is sold shortly after its previous sale is more likely to have an inflated price, since it may have been purchased the first time with the intention to improve the property quickly and resell it for a profit, the additional appraisal requirement also would help ensure an accurate estimate of the value of the property. This would be particularly true in transactions involving fraudulent flipping using an inadequate or improperly performed first appraisal.[113] Ensuring a more accurate valuation of a flipped property might be especially valuable to a consumer when borrowing an HPML (due to its higher price). In the case of subordinate-lien transactions, the full-interior appraisal requirement may prevent borrowers on HPMLs from extracting too much equity if their property is overvalued by other valuation methods. Accordingly, the appraisals required by the final rule could reduce the chance consumers would be in a negative equity or near negative equity situation, which can limit refinancing and selling opportunities.

At the same time, if a borrower is prepared to take out an HPML based upon the creditor's use of a valuation other than an interior appraisal, that valuation may be less likely to take into account unique characteristics of the subject property, such as its setting in the immediate neighborhood, its views, the quality of the exterior or the residential structure, or its interior condition. For borrowers where direct assessments of those characteristics would have improved the valuation, the price of the loan may be based upon an LTV ratio that is overstated, and the loan may be overpriced to the extent that higher LTVs correlate with higher-priced loans.

The final rule also may support greater consumer choice in HPML transactions, to the extent new creditors treat the appraisals required as portable. For example, the FHA has taken steps to ensure appraisal portability in the situation of an ''applicant who has gotten to the appraisal stage of the home loan process, but'' the applicant decides he or she is ''dissatisfied with [the] lender and decide[s] to find a new one.'' [114] The final rule ensures that if consumers would not otherwise have an appraisal in HPML transactions for which they have applied, then they will have an appraisal that may be able to be used in alternative transactions that the consumer may pursue.

Codifying HPML valuation standards across the industry likely would simplify the shopping process for consumers who receive HPML offers. First, for consumers in HPML transactions that would not have otherwise included an appraisal, the appraisals required by the rule may help to improve consumers' understanding of the determinants of the value of the property that they intend to purchase. In cases where a loan is denied due to an appraiser valuing the property at less than the contract price, the appraisal will include support for its findings of the lower value, which may help the consumer in future negotiations or property searches. Second, codifying appraisal standards across the industry would simplify the shopping process for consumers by making the process of applying for HPMLs more consistent between lenders. Full-interior appraisals typically cost more than other valuation methods, and appraisal costs are often passed on to consumers. Consumers may not understand the differences between different valuation methods or know that different creditors will use different methods, and therefore may benefit from the standardization the rule can be expected to promote.

The final rule also will ensure that borrowers in covered HPML transactions involving subordinate liens receive a notice informing them about the appraisal process, of their ability to order their own appraisal, and that they will receive copies of any appraisals at least three business days prior to the consummation. Under ECOA section 701(e) and its implementing rules, applicants in transactions secured by a first lien on a dwelling will receive this notice and a copy of an appraisal; under this provision in the statute and the Bureau's 2013 ECOA Appraisals Final Rule, which takes effect on January 18, 2014, these requirements do not apply to subordinate lien transactions, however. The final rule fills this gap for borrowers on covered HPMLs, ensuring they are better informed prior to entering into subordinate lien loans, such as for home improvement purposes and other common purposes.

Potential Costs of the Rule for Covered Persons

The costs of the rule, which are predominantly related to compliance, are more readily quantifiable than the benefits and can be calculated based on the mix of loans originated by an entity and the number of employees at that entity. These compliance costs may be considered as the discrete tasks that would be required by the rule. These can be separated into costs that are associated with the origination of a single HPML and the costs of reviewing and implementing the regulation.

Costs per HPML. The costs of the rule for covered persons that derive from requirements to obtain appraisals depend on the number of appraisals that would be conducted, above and beyond current practice, and the degree to which those costs are passed to consumers. For HMDA reporters, counts of HPMLs that are purchase-money loans, first-lien refinance loans, or closed-end subordinate lien loans are computed from the loan-level HMDA data. Accepted statistical methods are used to project loan counts for non-HMDA reporting depository institutions.[115] Estimates of the number of loan officers are calculated from similar projections of applications per institution.

The calculation of costs for IMBs uses a slightly different approach.[116] Consistent with the results from HMDA-reporting IMBs, the Bureau estimates the costs to IMBs by multiplying a cost per loan by the total number of loans originated by IMBs. To obtain a count of full-time equivalent employees, this number is imputed for HMDA-reporting IMBs based on the number of

[113] Congress has noted a concern, for example, that parties to a flipping transaction ''can often find an appraiser to inflate the home's value.'' H.Rep. 111–94 (May 4, 2009) at 59.

[114] *See* FHA FAQ ''Are FHA Home Loan Appraisals Portable?'' available at *http://www.fha.com/fha_article.cfm?id=350*, citing FHA Mortgagee Letter 09–29 (Sept. 18, 2009) (stating that FHA programs allow for appraisal portability).

[115] Poisson regressions are run, projecting loan volumes in these categories on the natural log of characteristics available in the Call Reports (total 1–4 family residential loan volume outstanding, full-time equivalent employees, and assets), separately for each category of depository institutions.

[116] ''Independent Mortgage Bank'' refers to non-depository mortgage lenders.

applications (assuming 1.38 days per loan application).[117]

Based on these data sources, the Bureau estimates that there were approximately 292,000 HPMLs in 2011. Of these, the Bureau estimates that 146,000 were purchase-money mortgages, 116,000 were first-lien refinancings, and 30,000 were closed-end subordinate lien mortgages that were not part of a purchase transaction.[118] Due to the exemptions from the rule, only a subset of HPMLs will be covered by the rule. Qualified mortgages, for example, are exempt from the final rule, as are reverse mortgages, loans for initial construction, temporary bridge loans, and new manufactured housing sales.[119] Conservatively, the Bureau is preparing this estimate based upon a loan count without subtracting construction loans, temporary bridge loans, loans for new manufactured housing, or reverse mortgages. While these loans are exempt from the final rule, the data sources do not separately break them out and nationally-representative data on the number of loans that fall into these specific categories and also meet the HPML definition is not available.[120] Subtracting only those HPMLs that would be qualified mortgages under Regulation Z, § 1026.43(e)[121] results in a loan count of approximately 26,000 HPMLs that are not qualified mortgages, 12,000 of which were purchase-money mortgages, 12,000 of which were first-lien refinancings, and 2,000 of which were closed-end subordinate lien mortgages that were not part of a purchase transaction. These are the number of loans originated annually that the Bureau conservatively estimates currently would be subject to the final rule.

The Bureau estimates that the probability that full-interior appraisals are conducted as part of current practice is 95 percent for purchase-money transactions, 90 percent for refinance transactions, and 5 percent for subordinate lien mortgage transactions.[122] The Bureau therefore estimates that the proposal would lead to full-interior appraisals for approximately 3,800 HPML originations annually that would not otherwise have a full-interior appraisal.[123] A portion of these HPMLs also would be subject to the requirement that lenders obtain a second full-interior appraisal in situations where the home that would secure the higher-risk mortgage is being resold at or within 180 days at a higher price that exceeds the seller's acquisition price by 10 percent (if the seller acquired the property within 90 days) or 20 percent (if the seller acquired the property within 91 to 180 days). Based on FHFA estimates from DataQuick noted in the proposal, the Bureau estimates that the proportion of sales that are resales within 180 days is 5 percent. A significant number of HPMLs financing resales would not be subject to the second appraisal requirement, however, due to the price increase thresholds discussed above and to various exemptions from the second appraisal requirement. For purposes of estimating the number of HPMLs that are subject to the second appraisal requirement, however, the Bureau conservatively only excludes the estimated number of loans subject to the exemption for rural loans.[124] The rural exemption excludes 20.6 percent of the relevant market by transaction volume, according to the 2011 HMDA data. The Bureau therefore estimates that this provision of the rule would apply to approximately 500 HPMLs annually.[125] Accordingly, the Bureau estimates that the number of HPMLs subject to only one new interior appraisal under the rule would be 3,800, and the number of HPMLs subject to a second interior appraisal under the rule would be 500, resulting in a combined addition of 4,300 interior appraisals to HPML transactions each year. This combined addition is the estimated total effect of the rule on the number of appraisals each year.[126]

The following discussion considers estimated compliance costs in the order in which they arise in the mortgage origination process. First, the rule requires that the creditor furnish the applicant with the disclosure required by § 1026.35(c)(5)(i).[127] The cost of this disclosure—at most, delivery of a single piece of paper with a standardized disclosure that could be delivered with

[117] Sumit Agarwal and Faye Wang, *Perverse Incentives at the Banks? Evidence from Loan Officers* (Federal Reserve Bank of Chicago Working Paper 2009–08).

[118] Purchase-money mortgages include subordinate-lien HPMLs that were part of a purchase transaction. The Bureau assumes that these loans were part of a transaction where the first-lien mortgage was not a HPML; to the extent that any of these subordinate-lien purchase-money HPMLs were part of a transaction where the first lien mortgage was a HPML the costs imposed by the rule would be double-counted. First-lien refinancings include loans classified as first-lien ''home improvement'' loans in HMDA.

[119] Very conservatively, the PRA burden estimates for Agencies other than the Bureau do not estimate and exclude the number of HPMLs that are qualified mortgages. By contrast, based upon data available to it, the Bureau does so in this section 1022 analysis and its Regulatory Flexibility Act certification.

[120] Similarly, no subtractions are made for boats, trailers, or mobile homes, which also are exempt from the final rule. The Bureau also notes that HMDA data includes same-creditor refinances with lower rates and new payment schedules, within the meaning of 12 CFR 1026.20(a)(2). For purposes of this analysis, the Bureau assumes the final rule applies to those transactions, which the HMDA data also does not segregate. This assumption also accounts for the fact that these transactions would not be qualified mortgages, under Regulation Z comment 43(a)–1 adopted in the 2013 ATR Final Rule.

[121] The final rule exempts all loans that would meet one or more of the definitions of qualified mortgage in § 1026.43(e). *See also* 2013 ATR Final Rule, available at *http://consumerfinance.gov*. These loans are therefore excluded from the HPML count.

[122] As other Agencies noted in the proposed rule, federal regulations do not require interior appraisals in some cases, such as for transactions below $250,000. To the extent creditors in those transactions elect not to order interior appraisals, those transactions would fall within the 5 percent of purchase-money transactions, 10 percent of refinance transactions, and 95 percent of subordinate lien transactions in which the Bureau assumes no interior appraisal is currently performed.

[123] (5%*12,249) + (10%*11,950) + (95%*2,091) = 3,794.

[124] The Bureau has not been able to locate nationally-representative data on the number of HPMLs that are flips that fall within other categories of transactions that are exempt from the second appraisal requirement.

[125] (12,249*5%*(100% − 20.6%)) = 486.

[126] The Bureau believes that under the 2013 ATR Final Rule creditors generally will be able to determine at the outset of the application process whether the loan will be a qualified mortgage. Some creditors may, for their own risk management and at their option, over-comply during the application process to mitigate any risk that due to an error the loan as closed or handled post-closing ultimately would not be a qualified mortgage. For example, under the temporary qualified mortgage provision related to GSEs, a creditor may determine early in the application process that a proposed HPML would be a qualified mortgage because it meets the criteria for purchase or guarantee by a GSE consistent with comment 43(e)(4)(iii)-4 in the Bureau's 2013 ATR Final Rule, but later find that the loan is rejected by the GSE as ineligible for reasons unrelated to the HPML rule. For the loan to be a qualified mortgage, it is not necessary that the loan ultimately be purchased or guaranteed by the GSE. But if the original eligibility determination were invalid, then this could create a risk that the loan would not meet the definition of a qualified mortgage. Such a loan potentially still could meet the definition of qualified mortgage on other bases than being eligible for purchase or guarantee by a GSE. But if not, then under this final rule, origination of such a loan would have been a violation if the creditor did not comply with the requirements for HPML appraisals and no other exemption applied. While these situations may be infrequent, some creditors may seek to over-comply in order to mitigate the risk they may pose. The Bureau does not believe over-compliance, to control for the risk of an erroneous determination by the creditor that the loan was a qualified mortgage, would lead to creditors ordering a significant number of new appraisals above those estimated here.

[127] Creditors must disclose the following statement, in writing, to a consumer who applies for a higher-risk mortgage loan: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can also pay for an additional appraisal for your own use at your own cost.''

other documents or disclosures—would be very low.[128]

Second, the rule requires the creditor to verify whether a loan is a HPML. However, the Bureau believes this activity does not to introduce any significant costs beyond the regular cost of business because creditors already must compare APRs to APOR for a variety of compliance purposes under existing Regulation Z [129] or to determine if a loan is subject to the protections of the Home Ownership and Equity Protection Act of 1994 (HOEPA).[130]

The third step is an optional one. If a creditor decides to seek to be eligible for the safe harbor provided for in § 1026.35(c)(3)(ii), the creditor likely would take certain steps in the process of ordering and reviewing a full-interior appraisal as prescribed by the rule. The review process is described in the Appendix N of the rule, and the Bureau assumes it will be performed by a loan officer and to take 15 minutes on average (including the very brief time needed to send a copy to the applicant, as discussed below).[131] Assuming an average total hourly labor cost of loan officers of $48.29, the cost of review per additional appraisal is $12.07.[132] With an estimated total number of annual additional appraisals—pursuant to both the first and second appraisal requirements—of 4,300, the total cost of reviewing those appraisals is $58,000 (rounded to the nearest thousand).[133]

In purchase transactions financed by a covered HPML, creditors also will need to determine whether a second appraisal would be required based upon prior sales or acquisitions involving the property that would secure the loan. This would require labor costs to determine, through reasonable diligence, whether the seller acquired the property in the past 180 days, and if so, at a price that is sufficiently lower than the contract sale price for the current transaction to trigger the second appraisal requirement. The rule provides that reasonable diligence can be performed through reliance on written source documents, which may include, among others, the 10 types of documents listed in new Appendix O to Part 1026. The Bureau believes creditors typically already obtain many of the common source documents for other purposes during the application process for a purchase-money HPML. The Bureau estimates that reasonable diligence would take, on average, 15 minutes of staff time. Because an estimated 95 percent of covered HPML transactions are not flips at all, in many cases this may be determined from the available documentation more quickly than 15 minutes, simply by determining that the seller's acquisition occurred more than 180 days before the borrower's purchase agreement. Of the 5 percent that are flips, creditors may take more time to analyze price differences versus the thresholds in the rule. Thus the 15 minute estimation is an average. The dollar cost per covered HPML loan is therefore $12.07.[134] With total annual non-QM HPMLs that are purchase transactions of 12,000, the total cost per year is estimated to be $148,000 (rounded to the nearest thousand).[135]

The Bureau believes based on outreach that the direct costs of conducting appraisals would be passed through to consumers, except in the case of an additional appraisal that would be required by § 1026.35(c)(4)(i) (requiring an additional appraisal for properties that are the subject of certain 180-day resales).[136] Based on a nationally-representative dataset of the cost of appraisals, which as a standard matter include interior inspections per the URAR form discussed in the section-by-section analysis in this final rule, the Bureau believes that the average cost of each full-interior appraisal is $350.[137] As noted above, the Bureau estimates that 486 second full-interior appraisals would be required each year under the rule, for a total cost to creditors of $170,000 (rounded to the nearest thousand).[138]

Finally, the rule also requires that free copies of appraisals be provided to borrowers at least three business days before the loan is consummated (or within 30 days of determining the loan will not be consummated). In outreach prior to the proposal stage, market participants, including a large bank, representatives from a national community banking trade association, and a large independent mortgage bank [139] told the Bureau that, in cases where loans are consummated, copies of appraisals that are ordered are provided to consumers 100 percent of the time. Indeed, GSEs also generally require that, as a condition of eligibility for their purchase of a loan, copies of appraisals be provided to consumers promptly upon completion but no later than three days before consummation.[140] The Bureau therefore believes that for covered HPML first lien transactions, the requirement to provide copies in the rule imposes no additional costs; any cost due to providing copies for the small proportion of first lien transactions that do not currently obtain and provide copies of appraisals is estimated not to be significant. The only other costs of providing copies of the appraisals would be for the 2,000 new appraisals in subordinate lien transactions that the Bureau estimates would be caused by the rule on an

[128] The Bureau notes that creditors in first lien transactions making a disclosure required by Bureau rules implementing ECOA section 701(e) also would automatically satisfy the disclosure requirement under this rule; the final rule. In addition, the disclosure is included in the proposed Loan Estimate as part of the 2012 TILA–RESPA Proposal (*see* 2012 TILA–RESPA Proposal, (published July 9, 2012), *available at http://files.consumerfinance.gov/f/201207_cfpb_proposed-rule_integrated-mortgage-disclosures.pdf.*); if that proposal were adopted, the cost of providing the disclosure would be part of the overall costs of implementing that disclosure.

[129] 12 CFR 1026.35.

[130] 15 U.S.C. 1639.

[131] One community bank commenter stated that this estimate was too low, but did not explain the amount of time it believed would be required to review the appraisal under the rule. In any event, the 15 minute assumption is on average. Some appraisals would be assumed to take more time, and others less. To the extent an appraisal is deficient, and is sent for revision and then further review by the creditor upon revision, this is not assumed to be a cost imposed by the rule and rather is part of a standard underwriting process.

[132] (.25* $48.29) = $12.07. The hourly wage rate is based on the higher of the loan officer wages at depository institutions of $31.69 and at non-depository institution of $32.16. Wages comprised 66.6 percent of compensation for employees in credit intermediation and related fields in Q4 2011, according to the Bureau of Labor Statistics Series ID CMU2025220000000D,CMU2025220000000P, available at *http://www.bls.gov/ncs/ect/#tables.* All the hourly wage rates below are computed similarly from the same source.

[133] ($12.07*4,280) = $58,000 (rounded to the nearest thousand).

[134] (.25*$45.80) = $11.45.

[135] ($12.07*12,249) = $148,000 (rounded to the nearest thousand).

[136] The final rule, in § 1026.35(c)(4)(v), prohibits the creditor from charging the consumer for the cost of the additional appraisal. For purposes of estimating the cost the rule imposes on creditors, the Bureau assumes that the creditors will not pass through any of the cost of the second appraisal to the consumers.

[137] Based upon the industry dataset used in the proposal, the Bureau calculates the median for the United States overall is $350, the average is $351, and standard deviation is $92. The $350 estimated cost also falls within the range of $225 to $750 cited by industry comments, most of which referred to costs between $300 and $600. While the proposal had assumed a $600 cost, that cost was at the highest state median (Alaska) in the industry dataset. Upon further review, the Bureau believes that $350 is a more accurate estimate of the average cost and that using a $600 cost would, while being conservative, also overestimate the cost. In any event, the estimated costs do not change significantly using a $600 estimate, as noted in the Bureau's Regulatory Flexibility Analysis below.

[138] (350*486) = $170,000 (rounded to the nearest thousand).

[139] Interviews conducted on May 15, 2012 and May 24, 2012.

[140] Fannie Mae Selling Guide, ''Appraiser Independence Requirements'' (Oct. 15, 2010) (Part III), available at *https://www.fanniemae.com/content/fact_sheet/air.pdf;* Freddie Mac, Single Family Seller/Servicer Guide, Vol. 1, Exhibit 35, Appraiser Independence Requirements (October 15, 2010) (same).

annual basis. As noted in the PRA section of the final rule, the time to send the copy can be assumed to be part of the 15 minutes of time needed on average to review the appraisal. Given the number of extra copies that would need to be provided, and the provision in the final rule that allows these copies to be provided electronically based upon consent under the E-Sign Act, the Bureau believes that this cost is not significant.

As noted above, the Bureau assumes that costs of many of the new first appraisals would be borne directly by the consumers. This increase in costs charged to HPML borrowers could deter some consumers from agreeing to HPMLs. In these cases, however, creditors could agree to fold the appraisal cost into the cost of the loan. To the extent consumers would still be deterred from borrowing, creditors also could waive the cost of the appraisal and absorb it, or otherwise reduce origination fees.

Costs per institution or loan officer. Aside from the per-loan costs just described, the Bureau has estimated that each institution would incur the one-time cost of reviewing the regulation, and one-time training costs for loan officers to become familiar with the provisions of the rule.[141]

Potential Costs of the Rule to Consumers

The direct pecuniary costs to consumers that would be imposed by the rule can be calculated as the incremental cost of having a full interior appraisal instead of using another valuation method for the relatively small subset of covered HPML transactions (a few thousand annually as discussed above) where an appraisal is not currently performed. As described above, the Bureau believes that consumers would pay directly for all new first appraisals—but not the new second appraisals that would be required because of a recent resale of the property—for a total of 3,794 new first appraisals per year. Assuming the consumer pays $350 for an appraisal that would not otherwise have been conducted, versus $5 for an alternative valuation, gives a total direct costs to consumers of 3,794 * ($350-$5) = $1,308,930 (rounded to the nearest thousand).

Potential Reduction in Access by Consumers to Consumer Financial Products or Services

Incremental costs in covered HPML transactions that would not otherwise have a full-interior appraisal could reduce consumers' access to non-QM HPMLs. However, the impact on access to credit is probably negligible. Any costs that derive from the additional underwriting requirements incurred under the rule are likely to be very small. What matters, for both first and subordinate lien loans, are the incremental costs from the difference between the full-interior appraisal and alternative valuation method costs. These only arise in the fraction of HPMLs where use of the interior appraisal is not already accepted practice. For first liens, full interior inspection appraisals are common industry practice: passing the cost of appraisals on to consumers is current industry practice, and consumers appear to accept the appraisal fee. The interior appraisal requirement therefore is unlikely to cause a significant adverse effect on consumers' access to this kind of credit. Furthermore, these costs may also be rolled into the loan, up to LTV ratio limits, so buyers are unlikely to face short-term liquidity constraints that prevent purchasing the home. The impact of the rule on the volume of non-QM HPMLs originated may be relatively greater for subordinate liens because in these transactions the rule would impose an interior appraisal practice that is not as widespread currently, and also because the cost of a full interior appraisal is a larger proportion of the loan amount (because subordinate lien loans are typically lower in amount than first lien loans). However, the number of subordinate lien HPMLs that will be covered by the rule will be small to begin with, excluding qualified mortgages; any changes in non-QM HPML subordinate lien transaction volume may be mitigated by consumers rolling the appraisal costs into the loan or the consumer and the creditor splitting the incremental cost of the full-interior appraisal if it is profitable for the creditor to do so.

Significant Alternatives Considered

In determining what level of review by creditors should be required for full interior appraisals related to HPMLs, two alternatives were considered in developing the proposed rule. One alternative considered was to require a full technical review of the appraisal that would comply with USPAP Standard 3 (USPAP3). Such a requirement, however, would add substantially to the cost of each appraisal, as a USPAP3-compliant review can cost nearly as much as a full interior appraisal. Another alternative was to require creditors to have USPAP3-compliant reviews conducted on a sample of the appraisals carried out on properties related to an HPML. Reviewing a sample of appraisals, however, would be most useful for creditors making a large number of HPMLs and employing the same appraisers for a large number of those loans. Given the small number of HPMLs made each year, the value of sampling appraisals for full USPAP3 review is likely to be small.

In addition to the exemptions that were adopted in the final rule, based upon its review of comments discussed in the section-by-section analysis above, the Agencies also considered possible exemptions from the final rule for ''streamlined'' refinance programs (such as programs designed by certain government agencies and government-sponsored enterprises that do not require appraisals), and loans of lower dollar amounts, and clarification on application of the rule to loans secured by certain property types. As discussed in the section-by-section analysis, however, the Agencies did not adopt these exemptions or clarifications in the final rule and instead intend to publish a supplemental proposal to request additional comment on these issues.

[141] As stated in the proposal, the Bureau estimates that on average one lawyer and a variable number of compliance officers at each institution will review the regulation for 1.5 hours each person. Compliance officer review is assumed to vary by size and type of the institution, and it is assumed that in some cases there is no compliance officer review: one compliance officer at each independent mortgage bank; two compliance officers at each depository institution larger than $10 billion in assets; and half a compliance officer (on average) at each depository institution smaller than $10 billion in assets. Total hourly labor costs are estimated to be: $116.08 for attorneys and $52.04 for compliance officers. Actual review time will vary by institution. At some institutions that do not originate non-QM HPMLs, review time may be lower as lawyers and compliance officers may review secondary trade press or other free sources of information. By contrast, for those institutions that originate non-QM HPMLs, the review time may be greater as it may include activities to prepare for implementation, such as training. As also stated in the proposal, the Bureau estimates that on average an additional 0.5 hours of training time will be added to regular training programs for each loan officer. Here again, training time will vary depending on whether the officer is involved in origination of non-QM HPMLs. One community bank commenter stated that the estimate in the proposal of 30 minutes for training time was too low, but did not explain the amount of time it believed would be required for training. Training time per officer may be lower than average for many loan officers to the extent they do not or are not likely to originate non-QM HPMLs, and closer to or potentially more than average in some cases for those who do or may originate such loans (because those officers would need to be trained on how to comply with the rule, rather than simply alerted to its existence). Finally, the Bureau also believes that as part of routine software updates, creditors may make adjustments to software systems to ensure compliance with this rule; the Bureau does not believe these adjustments would impose significant additional costs beyond the existing routine upgrade processes.

Finally, the Agencies considered alternatives to the scope of the second appraisal requirement for HPMLs on properties being resold within 180 days. With respect to what price increase would trigger this requirement, in addition to the approach adopted in the final rule, the Agencies also considered whether the trigger should be any amount greater than zero, an increase of 10 percent regardless of the number of days between 0 and 180 days since the acquisition, or an increase of 20 percent regardless of the number of days between 0 and 180 days since the acquisition. For the reasons outlined in the section-by-section analysis above, the Agencies determined that setting staggered price increase thresholds—more than 10 percent for properties acquired within 90 days and more than 20 percent for properties acquired within 91 and 180 days—was more appropriate. In addition, the Agencies considered providing no exemption from the second appraisal requirement for loans on properties located in rural areas (as proposed), or providing an exemption for loans on properties in rural areas defined using combinations of urban influence codes (UICs). For the reasons outlined in the section-by-section analysis above, the Agencies determined that an exemption was appropriate for HPMLs secured by properties located in certain UICs, as discussed in the section-by-section analysis of § 1026.35(c)(4)(vii)(H) above.

Impact of the Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026 [142]

Depository institutions and credit unions with $10 billion or less in assets would experience the same types of impacts as those described above. The impact on individual institutions would depend on the mix of mortgages that these institutions originate, the number of loan officers that would need to be trained, and the cost of reviewing the regulation. The Bureau estimates that these institutions originated 151,000 HPML loans in 2011. Assuming the mix of purchase money, refinancings, and subordinate lien mortgages, and the proportion of loans exempt as qualified mortgages, was the same at these institutions as for the industry as a whole, the Bureau estimates that the rule will require these institutions to have 1,966 full interior appraisals conducted for transactions that would otherwise not have a full-interior appraisal, and 252 new second full-interior appraisal (as is be required by § 1026.35(c)(4)), for a total of 2,218 appraisals. As noted above, these estimates are derived without subtracting some of the loans that are exempt from the overall rule. These estimates therefore are conservative, given that these exemptions collectively apply to a significant number of loans. The Bureau believes that the impact on each creditor under $10 billion is substantially the same as for the broader group of creditors described above. In particular, based upon analysis of the same data sources described above, the Bureau has determined the under $10 billion creditors have the same cost per loan and similar one-time and ongoing burdens, with the specific differences described above.

Impact of the Final Rule on Consumers in Rural Areas

The Bureau does not anticipate that the final rule will have a unique impact on consumers in rural areas. The Bureau does not believe that requiring one interior USPAP-compliant appraisal for a covered HPML on a rural property will have a significantly greater impact than the same requirement for a covered HPML on a non-rural property.[143] Further, the final rule exempts these rural transactions from the requirement to obtain a second appraisal on the property. Therefore, the cost of creditor compliance with the second appraisal requirement (including due diligence) will not be present for these transactions. For these reasons, explained in more detail below, the Bureau does not anticipate the final rule will have a unique or disproportionate impact on consumers in rural areas.

As in the section 1022 analysis in the proposal, the Bureau continues to conclude that there would be no unique impact on rural consumers of the requirement to obtain the first appraisal. For first lien transactions, conditional on taking out a mortgage, rural consumers may take out first lien HPMLs at a higher rate than non-rural consumers. Such a difference between rural and non-rural rates of first lien HPMLs does not have a unique impact on rural consumers, however, because the rule does not alter existing industry practice with respect to appraisals for most first lien transactions. For subordinate lien transactions, conditional on taking out a mortgage, in 2010 the proportion of subordinate liens that were HPMLs were roughly the same for consumers in rural areas as in non-rural areas, as illustrated in Table 2 of the proposal. In addition, HMDA data for 2011 indicates the proportion of subordinate liens in rural areas that were HPMLs (6.77 percent) was lower than the proportion for non-rural areas (8.53 percent). Thus, even though the rule may have a greater impact on subordinate lien HPML transactions because appraisals are less common currently for these transactions, rural consumers' subordinate liens appear no more likely to be HPMLs than non-rural consumers, based upon the recent HMDA data. As a result, there is no unique or disproportionate impact on rural consumers in subordinate lien transactions either.

With respect to the second appraisal requirement for certain transactions involving flips, the Bureau believes that flips occur at the same rate in rural areas as in non-rural areas. The second appraisal requirement will not have any impact on consumers engaging in transactions on properties in rural areas, however, because they are exempt from the second appraisal requirement.[144] As discussed in the preamble to the final rule, based upon comments received and further analysis, the Agencies have determined that there is a sufficient basis for concern over availability of appraisers in rural areas to conduct a second appraisal on rural HPML transactions, and consequently some concern over credit availability if the second appraisal requirement were applied to these transactions. The Agencies therefore have exempted these transactions from the second appraisal requirement. This determination in the final rule is based upon a broader consideration of appraiser availability, as well as other factors discussed in the section-by-section analysis above, than the Bureau considered in its section 1022 analysis in the proposal stage. In its section 1022 analysis in the proposal, the Bureau concluded that sufficient appraisers likely would be available for a property if there were two active certified and licensed appraisers on the National Appraiser Registry in the same or adjacent county. After reviewing a number of industry comments

[142] Approximately 50 banks with under $10 billion in assets are affiliates of large banks with over $10 billion in assets and subject to Bureau supervisory authority under Section 1025. However, these banks are included in this discussion for convenience.

[143] Despite receiving some comments requesting an exemption from the entire rule for rural HPMLs, the Agencies have not received nationally-representative data indicating that the cost of first appraisals for HPMLs would be disproportionately difficult to incur in rural transactions.

[144] If rural consumers had been subject to the additional appraisal requirement for transactions in rural areas, then this requirement may also have had a disproportionate impact on consumers in rural areas because significantly more rural first lien mortgage transactions were HPMLs according to 2010 HMDA data described in Table 2 of the proposal.

summarized in the section-by-section analysis above, however, the Agencies concluded that this approach was too narrow. The existence of an appraiser on the registry did not necessarily guarantee that the appraiser was available, or if they were, that they would be competent or charging a reasonable fee for the transaction. As discussed in more detail in the section-by-section analysis above, when the Agencies considered more broadly whether five appraisers were available within 50 miles, the potential for appraiser availability issues grew more apparent. This broader approach was viewed as necessary, to account for the fact that one or more of the active appraisers in the registry results for a given property may not be available or appropriate for the transaction.

VI. Regulatory Flexibility Act

Board

The Board prepared an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) (RFA) in connection with the proposed rule. The regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604, 605(b). The final rule covers certain banks, other depository institutions, and non-bank entities that extend higher-risk mortgage loans to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[145] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of nonbank entities that are likely to be subject to the final rule. Based on its analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.[146]

A. Reasons for the Final Rule

Section 1471 of the Dodd-Frank Act establishes a new TILA section 129H, which sets forth appraisal requirements applicable to ''higher-risk mortgages.'' The Act generally defines ''higher-risk mortgage'' as a closed-end consumer loan secured by a principal dwelling with an APR that exceeds the APOR by 1.5 percent for first-lien loans, 2.5 percent for first-lien jumbo loans, or 3.5 percent for subordinate-liens. The definition of higher-risk mortgage in new TILA section 129H expressly excludes qualified mortgages, as defined in TILA section 129C, as well as reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

Specifically, new TILA section 129H does not permit a creditor to extend credit in the form of a ''higher-risk mortgage'' to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the property.
- Obtaining an additional appraisal from a different certified or licensed appraiser if the purpose of the higher-risk mortgage loan is to finance the purchase or acquisition of a mortgaged property from a seller within 180 days of the purchase or acquisition of the property by that seller at a price that was lower than the current sale price of the property. The additional appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.
- Providing the applicant, at the time of the initial mortgage application, with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Providing the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three (3) days prior to the transaction closing date.

Section 1400 of the Dodd-Frank Act requires that final regulations to implement these provisions be issued no later than January 21, 2013. The Agencies are issuing the final rule to fulfill their statutory duty to implement the appraisal provisions added in new TILA section 129H.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. As discussed above, the legal basis for the final rule is new TILA section 129H(b)(4). 15 U.S.C. 1639h(b)(4). New TILA section 129H was established by section 1471 of the Dodd-Frank Act.

C. Summary of Issues Raised by Commenters

In the proposed rule to implement the appraisal provisions in new TILA section 129H, the Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the rule to small institutions. The Board received comments from various industry representatives, including banks, credit unions, and the trade associations that represent them. As discussed in the **SUPPLEMENTARY INFORMATION** above, the commenters asserted that compliance with the proposed rule would have a disproportionate impact on small entities and cited concerns about the utility and expense of requiring these entities to comply with all or some of the rule's requirements. These comments, however, did not contain specific information about costs that will be incurred or changes in operating procedures that will be required for compliance.

In general, the commenters discussed the impact of statutory requirements rather than any impact that the proposed rules themselves would generate. Moreover, the Agencies have reduced the compliance burden in the final rule by adding exemptions from both the written appraisal and the additional written appraisal requirements. Thus, the Board continues to believe that the final rule will not have a significant impact on a substantial number of small entities.

D. Description of Small Entities to Which the Rules Apply

The final rule applies to creditors that make HPMLs subject to 12 CFR 1026.35(c).[147] To estimate the number of small entities that will be subject to the requirements of the rule, the Board is relying primarily on data provided by the Bureau.[148] According to the data

[145] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[146] The Board notes that for purposes of its analysis, the Board considered all creditors to which the final rule applies. The Board's Regulation Z at 12 CFR 226.43 applies to a subset of these creditors. *See* § 226.43(g).

[147] As discussed in the **SUPPLEMENTARY INFORMATION** above, the Agencies in the final rule are referring to ''higher-risk mortgages'' as HPMLs subject to 12 CFR 1026.35(c) in order to use terminology consistent with that already used in Regulation Z.

[148] *See* the Bureau's Regulatory Flexibility Analysis.

provided by the Bureau, approximately 3,466 commercial banks, 373 savings institutions, 3,240 credit unions, and 2,294 non-depository institutions are considered small entities and extend mortgages, and therefore are potentially subject to the final rule.

Data currently available to the Board are not sufficient to estimate how many small entities that extend mortgages will be subject to 12 CFR 1026.35(c), given the range of exemptions from the rules, including the exemption for qualified mortgages. Further, the number of these small entities that will make HPMLs subject to 12 CFR 1026.35(c) in the future is unknown.

E. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final rule are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The final rule generally applies to creditors that make HPMLs subject to 12 CFR 1026.35(c), which are generally mortgages with an APR that exceeds the APOR by a specified percentage, subject to certain exceptions. The final rule generally requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used.

A creditor is required to determine whether it extends HPMLs subject to 12 CFR 1026.35(c); if so, the creditor must analyze the regulations. The creditor must establish procedures for identifying mortgages subject to the new appraisal requirements. A creditor making a HPML subject to 12 CFR 1026.35(c) must obtain a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the property. Creditors seeking a safe harbor for compliance with this requirement must:

- Order that the appraiser perform the written appraisal in conformity with the USPAP and title XI of the FIRREA, and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification;
- Verify through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;
- Confirm that the elements set forth in appendix N to this part are addressed in the written appraisal; and
- Have no actual knowledge to the contrary of facts or certifications contained in the written appraisal.

A creditor must also determine whether it is financing the purchase or acquisition of a mortgaged property by a consumer from a seller (1) within 90 days of the seller's acquisition of the property for a resale price that exceeds the seller's acquisition price by more than 10 percent; or (2) 91 to 180 days of the seller's acquisition of the property for a resale price that exceeds the seller's acquisition price by more than 20 percent. If so, the creditor must obtain an additional appraisal of the property and confirm that the additional appraisal meets the requirements of the first appraisal. The creditor also must ensure that the additional appraisal includes an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

Creditors extending HPMLs subject to 12 CFR 1026.35(c) also must design, generate, and provide a new notice to applicants. Specifically, within three business days of application, a creditor must provide a disclosure that informs consumers of the purpose of the appraisal, that the creditor will provide the consumer with a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer. In addition, creditors making HPMLs subject to 12 CFR 1026.35(c) must provide the consumer with a copy of each appraisal conducted at least three business days prior to closing and develop systems for that purpose.

The Board believes that certain factors will mitigate the economic impact of the final rule. First, the Board believes that only a small number of loans will be affected by the final rule. For example, according to HMDA data, less than four percent of first-lien home purchase mortgage loans in 2010 or 2011 would potentially be subject to the appraisal requirements of 12 CFR 1026.35(c).[149] Moreover, most home purchase loans do not involve properties that were previously purchased within 180 days and therefore would not require an additional written appraisal. In addition, based on outreach, the Board believes that many creditors are already obtaining written appraisals performed by certified or licensed appraisers who conduct a physical property visit of the interior of the property. Creditors may be obtaining such appraisals pursuant to other requirements, such as of FIRREA title XI or the FHA Anti-Flipping Rule, or they may be obtaining the appraisals voluntarily.

Because of the small number of transactions affected, the Board believes that the final rule is unlikely to have a significant economic impact on a substantial number of small entities.

F. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the final rule. The final rule will work in conjunction with the existing requirements of FIRREA title XI and its implementing regulations.

G. Discussion of Significant Alternatives

As described in the **SUPPLEMENTARY INFORMATION**, above, the Board has sought to minimize the economic impact on small entities in several ways. First, the final rule provides exemptions from both the written appraisal and the additional written appraisal requirements, and provides creditors with a safe harbor for determining that an appraiser has met certain specified requirements. The final rule also replaces the term ''higher-risk mortgage loan'' with ''higher-priced mortgage loan'' in order to use terminology consistent with that already used in Regulation Z. Moreover, the final rule seeks to reduce burden by providing that the disclosure required at application may be fulfilled by compliance with the disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2). Lastly, the final rule seeks to reduce burden by allowing a creditor subject to the additional appraisal requirement under TILA section 129H(b)(2) to obtain an appraisal that contains the analysis required in TILA section 129H(b)(2)(A) only to the extent that needed information is known. 15 U.S.C. 1639h(b)(2).

Bureau

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[150] The Bureau

[149] This estimate does not account for exemptions provided in the final rule.

[150] For purposes of assessing the impacts of the final rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference

also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[151] A FRFA is not required because this rule will not have a significant economic impact on a substantial number of small entities.

A. Summary of Final Rule

The empirical approach to calculating the impact that the regulation has on small entities subject to the final rule follows the methodology, and uses the same data, as the above analysis conducted under Section 1022 of the Dodd-Frank Act. The impact analysis focuses on the economic impact of the final rule, relative to a pre-statute baseline, for small depository institutions (DIs) and non-depository independent mortgage banks (IMBs), also described in this impact analysis as non-DIs. The Small Business Administration classifies DIs (commercial banks, savings institutions, credit unions, and other depository institutions) as small if they have no more than $175 million in assets, and classifies other real estate credit firms (including non-DIs) as small if they have no more than $7 million in annual revenues.[152]

The final rule implements section 1471 of the Dodd-Frank Act, which establishes appraisal requirements for HPMLs that are not otherwise exempt under the final rule. Under the exemptions in the final rule, the final rule does not apply qualified mortgages as defined in the Bureau's 2013 ATR Final Rule, transactions secured by a new manufactured home, transactions secured by a mobile home, boat, or trailer, transactions to finance the initial construction of a dwelling, temporary bridge loans with a term of 12 months or less, or reverse mortgages.

Consistent with the statute, the final rule allows a creditor to make a covered HPML only if the following conditions are met:

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser; and
- The appraiser conducts a physical property visit of the interior of the property.

In addition, as required by the Act, the final rule requires a creditor originating a covered HPML to obtain an additional written appraisal, at no cost to the borrower, if certain conditions are met, unless a transaction falls into one of the exemptions from this requirement in the rule (exemptions are described in § 1026.35(c)(4)(vii). The following conditions trigger this requirement:

- The HPML will finance the acquisition of the consumer's principal dwelling;
- The seller selling what will become the consumer's principal dwelling acquired the home within 180 days prior to the consumer's purchase agreement (measured from the date of the consumer's purchase agreement); and
- The consumer is acquiring the home for a price that is more than 10 percent higher than the price at which the seller acquired the property (if the seller acquired the property within 90 days of the consumer's purchase agreement) or more than 20 percent higher than the price at which the seller acquired the property (if the seller acquired the property within 91 to 180 days of the consumer's purchase agreements).

The additional written appraisal, from a different licensed or certified appraiser, generally must include the following information: an analysis of the difference in sale prices (*i.e.,* the price at which the seller previously acquired the property, and the price at which the consumer agreed to acquire the property as set forth in the consumer's purchase agreement), changes in market conditions, and any improvements made to the property between the date of the seller's previous acquisition and the consumer's agreement to acquire the property.

Finally, the rule requires creditors in covered HPML transactions to provide a standardized notice to consumers regarding the appraisal process within three days of the application, as well as a free copy of any written appraisal obtained for the transaction no later than three business days prior to consummation of the transaction (or within 30 days of determining the transaction will not be consummated).

B. Number and Classes of Affected Entities

Of the roughly 17,462 depository institutions (including credit unions) and IMBs, 12,568 are below the relevant small entity thresholds. Of the small institutions, 9,094 are estimated to have originated mortgaged loans in 2011. While loan counts exist for credit unions and HMDA-reporting DIs and IMBs, they must be projected for non-HMDA reporters. For IMBs, an accepted statistical method (''nearest neighbor matching'') is used to estimate the number of these institutions that have no more than $7 million in revenues from the MCR.

TABLE 1—COUNTS OF CREDITORS BY TYPE

Category	NAICS code	Total entities	Small entities	Entities that originate any mortgage loans [b]	Small entities that originate any mortgage loans
Commercial Banking	522110	6,505	3,601	[a] 6,307	[a] 3,466
Savings Institutions	522120	930	377	[a] 922	[a] 373
Credit Unions [c]	522130	7,240	6,296	[a] 4,178	[a] 3,240
Real Estate Credit [d e]	522292	2,787	2,294	2,787	[a] 2,294
Total		17,462	12,568	14,194	9,373

Source: 2011 HMDA, Dec 31, 2011 Bank and Thrift Call Reports, Dec 31, 2011 NCUA Call Reports, Dec 31, 2011 NMLSR Mortgage Call Reports.

[a] For HMDA reporters, loan counts from HMDA 2011. For institutions that are not HMDA reporters, loan counts projected based on Call Report data fields and counts for HMDA reporters.

[b] Entities are characterized as originating loans if they make one or more loans.

to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[151] 5 U.S.C. 609.

[152] 13 CFR Ch. 1.

[c] Does not include cooperatives operating in Puerto Rico. The Bureau has limited data about these institutions, which are subject to Regulation Z, or their mortgage activity.

[d] NMLSR Mortgage Call Report ("MCR") for 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For institutions with missing revenue values, the probability that institution was a small entity is estimated based on the count and amount of originations and the count and amount of brokered loans.

[e] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit presumptively includes nonprofit organizations.

C. Analysis

Although most DIs and non-DIs are affected by the final rule, the final rule does not have a significant impact on a substantial number of small entities, as is demonstrated by the burden estimates for small institutions calculated below. For each institution the cost of compliance is calculated and then divided by a measure of revenue. For DIs, revenue is obtained from the appropriate call report. For non-DIs, the frequency of HPMLs is not available in the MCR. However, data available in HMDA shows that the proportion of HPMLs in a non-DI's originations does not vary by origination volume. As such, HMDA data is used in lieu of the MCR data to calculate costs of compliance with the final rule.

The creditors will incur one-time costs of review, as described in the analysis under section 1022 above, and ongoing costs, proportional to the volume of HPMLs originated, and also as described in the section 1022 analysis above.

The Bureau estimates that 85 percent of the creditors affected are going to have one-time costs of less than $300.[153] Using an alternative metric, 85 percent of the creditors have a ratio of one-time costs to their revenue of less than 0.1 percent.[154]

For small DIs, Table 2 reports various statistics for the estimated annual cost of compliance with the final rule as a percentage of revenues using conservative assumptions. The assumptions underlying the Bureau's estimates are explained in the table and are generally discussed in more detail in the Section 1022(b)(2) analysis. The table shows that 85 percent of the small DIs and credit unions that originate any HPMLs have costs of significantly less than one percent of the revenue. This stays the same when the creditors are separated into types.[155]

TABLE 2—RECURRING COSTS OF RULE AS A SHARE OF REVENUE BY TYPE OF CREDITOR (85TH PERCENTILE).

	Small HPML originators	85th Percentile
All Institutions	4461	<0.01%
Banks	3006	<0.01%
Thrifts	310	<0.01%
Credit Unions	1145	<0.01%

Assumptions: Costs per-transaction and per-loan officer are as described in the section 1022(b)(2) analysis. These include but are not limited to the following: Full-interior appraisals—whether first or second—cost $350, alternative valuations cost $5. In the absence of the rule, the probability of a full-interior appraisal for a transaction is 95 percent for purchase-money transactions, 90 percent for refinance transactions, and 5 percent for subordinate-lien mortgages. The proportion of resales within 180 days is 5 percent, without regard to difference in price. Costs of the first full interior appraisal are passed on completely to consumers. The review of the appraisal upon receipt takes 15 minutes of loan officer time. The Bureau also includes 15 minutes of loan officer time per loan to estimate whether the transaction is a flip.

The Bureau also has analyzed the data for IMBs separately. Most IMBs are small, and the Bureau does not possess the data on the revenues of approximately 700 of those. As with the DIs and credit unions, the effects of the rule are insignificant. Out of the 1,325 small IMBs that originate any HPMLs, and for whom the Bureau possesses revenue information, 85 percent of the IMBs have costs below 0.30 percent of the revenue, using the same cost assumptions as for the depository institutions and credit unions.[156] The exemptions from the rule and from its second appraisal requirement significantly reduce the number of HPMLs subject to these requirements, almost tenfold. For the remaining HPMLs that are covered by the rule, such as non-QM HPMLs, because many of the costs imposed by the final rule are likely to be passed on to consumers, this may result in a decrease in demand for those loans (such as non-QM HPMLs). However, any possible decrease in non-QM HPML volume is likely to be negligible. For both first-lien and subordinate-lien HPMLs, the principal increase in cost to consumers is the difference in costs between the full-interior appraisal and any alternative valuation method costs; some other costs imposed by the rule, such as creditor labor costs discussed in the section 1022(b)(2) analysis above, and the cost of providing required disclosures, also may be reflected in increases in the fees or rates charged in a class of loans. These charges are unlikely to exceed $600. For first lien transactions, full interior inspections are common industry practice so for the typical first lien transaction this increase in cost to consumers would be small. Furthermore, these costs may also be rolled into the loan, up to loan-to-value ratio limits, so short-term liquidity constraints for buyers are unlikely to bind. Passing the cost of appraisals on to consumers is current industry practice, and consumers appear to accept the appraisal fee, so

[153] Banks, saving institutions, and credit unions all have comparatively lower numbers. For the small IMBs, 85 percent are going to have one-time setup costs of less than $445.

[154] Even for the small IMBs this ratio is less than 1 percent for 85 percent of the IMBs. The numbers are much lower for the other types of creditors.

[155] The final rule would not have a significant impact on a substantial number of small DIs, even if the cost of appraisals were assumed to be significantly higher than the average cost—such as at $600, as conservatively assumed in the proposal based upon the state with the highest median—and even if the analysis did not assume any HPMLs would meet the criteria for exemptions in the final rule. The switches from $350 to $600 for appraisal cost and from non-QM to all HPMLs would increase the percentages in the table approximately by a factor of 20. However, even then the impact remains well within 3 percent for 85 percent of the institutions.

[156] The final rule would not have a significant impact on a substantial number of small IMBs, even if the cost of appraisals were assumed to be significantly higher than the average cost—at $600, as conservatively assumed in the proposal—and even if the analysis did not assume any HPMLs would meet the criteria for exemptions in the final rule. The switches from $350 to $600 for appraisal cost and from non-QM to all HPMLs would increase the percentages in the table approximately by a factor of 20. However, even then the impact remains well within 3 percent for 85 percent of the institutions.

there is unlikely to be an adverse effect on demand.

A more likely impact—albeit significantly reduced by the scope of exemptions adopted in the final rule—would be on the volume of non-QM HPMLs secured by subordinate liens because, in practice, these are the transactions on which final rule imposes a change from the status quo, and also because the cost of a full interior appraisal is a larger proportion of the loan amount to the extent subordinate lien loan amounts generally are lower than first lien loan amounts. However, changes in the volume of subordinate lien non-QM HPMLs may be mitigated by consumers rolling the appraisal costs into the loan or the consumer and the creditor splitting the incremental cost of the full-interior appraisal if it is profitable for the creditor to do so. In addition, many creditors originating subordinate lien non-QM HPMLs can offer alternative products that are not subject to the rule, such as qualified mortgages or home equity lines of credit (HELOCs). Similarly, the costs imposed on creditors are sufficiently small that they are unlikely to result in a decrease in the supply of credit.

D. Certification

Accordingly, the Director of the Consumer Financial Protection Bureau certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FDIC

The RFA generally requires that, in connection with a final rulemaking, an agency prepare a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[157] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $175 million) and publishes its certification along with a statement providing the factual basis for such certification in the **Federal Register** together with the rule.

As of March 31, 2012, there were approximately 2,571 small FDIC-supervised banks, which include 2,410 state nonmember banks and 161 state-chartered savings banks. The FDIC analyzed the 2010 Home Mortgage Disclosure Act[158] (HMDA) dataset to determine how many loans by FDIC-supervised banks might qualify as HPMLs under section 129H of TILA, as added by section 1471 of the Dodd-Frank Act.[159] This analysis reflected that only 70 FDIC-supervised banks originated at least 100 HPMLs, with only four banks originating more than 500 HPMLs. Further, the FDIC-supervised banks that met the definition of a small entity originated on average less than eight HPML loans each in 2010.

The three requirements[160] in the final rule that could impact small FDIC-supervised institutions most significantly are:

1. Requiring an appraisal in connection with real estate financial transactions that previously did not require an appraisal,
2. mandating that the appraiser conduct a physical visit to the interior of the property, and
3. requiring a second appraisal at the lender's expense in certain situations.

As for the first potential impact, the FDIC notes that Part 323 of the FDIC Rules and Regulations[161] (Part 323) requires financial institutions to obtain an appraisal for federally related transactions unless an exemption applies. Part 323 grants an exemption to the appraisal requirement for real estate-related financial transactions of $250,000 or less. However, Part 323 requires financial institutions to obtain an appropriate evaluation that is consistent with safe and sound banking practices for such transactions. The final rule will supersede this exemption, resulting in creditors having to obtain an appraisal for an HPML transaction regardless of the transaction amount. The requirement to obtain an appraisal rather than an evaluation does not add much, if any, new burden on FDIC-supervised institutions, as they are required by Part 323 to obtain some type of valuation of the mortgaged property. The final rule merely limits the type of permissible valuation to an appraisal for HPMLs.

As for the second potential impact, the final rule's requirement affects a lender only to the extent that a lender must instruct the appraiser to conduct a physical visit of the interior of the mortgaged property. USPAP and title XI of FIRREA, and the regulations prescribed thereunder, do not require appraisers to perform on-site visits. Instead, USPAP requires appraisers to include a certification which clearly states whether the appraiser has or has not personally inspected the subject property. During informal outreach conducted by the Agencies, outreach participants indicated that many creditors require appraisers to perform a physical inspection of the mortgaged property. This requirement is documented in the *Uniform Residential Appraisal Report* form used as a matter of practice in the industry, which includes a certification that the appraiser performed a complete visual inspection of the interior and exterior areas of the subject property. Outreach participants indicated that requiring a physical visit of the interior of the mortgaged property added, on average, an additional cost of about $50 to the appraisal fee, which is paid by the applicant. Thus, the physical visit requirement creates a potential burden for the appraiser, not the lender, and the cost is born by the applicant.

As for the third potential impact, the final rule's requirement to conduct a second appraisal for certain transactions should not affect many FDIC-supervised banks. As previously indicated, FDIC-supervised banks that meet the definition of a small entity originated an average of less than eight HPMLs each in 2010. According to estimates provided by FHFA, about 5 percent of single-family property sales in 2010 reflected situations in which the same property had been sold within a 180-day period. This information shows that most small FDIC-supervised banks will have to obtain a second appraisal for a nominal number of transactions at the bank's expense. The estimated cost of a second appraisal is between $350 to $600.

In sum, the FDIC believes that the final rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the fact that: (1) Part 323 already requires FDIC-supervised depository institutions to obtain some type of valuation for real estate-related financial transactions; (2) the

[157] *See* 5 U.S.C. 601 *et seq.*

[158] The FDIC based its analysis on the HMDA data, as it provided a proxy for the characteristics of HPMLs. While the FDIC recognizes that fewer higher-priced loans were generated in 2010, a more historical review is not possible because the average offer price (a key data element for this review) was not added until the fourth quarter of 2009. The FDIC also recognizes that the HMDA data provides information relative to mortgage lending in metropolitan statistical areas, but not in rural areas.

[159] The FDIC notes that the exact number of small entities likely to be affected by the final rule is unknown because the FDIC lacks reliable sources for certain information.

[160] The requirements to provide consumers with a statement disclosing the purpose of the appraisal and to furnish consumers a copy of the appraisal without charge at least three days prior to closing should not create a significant new burden, as most FDIC-supervised institutions routinely provide required disclosures and copies of the appraisal to consumers in a timely manner.

[161] 12 CFR Part 323.

requirement of conducting a physical visit of the interior of the mortgaged property creates a potential burden for an appraiser, rather than the lender, with the cost being born by the applicant; and (3) the second appraisal requirement should affect a nominal number of transactions. Accordingly, pursuant to section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

FHFA

The final rule applies only to institutions in the primary mortgage market that originate mortgage loans. FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—operate in the secondary mortgage markets. In addition, these entities do not come within the meaning of small entities as defined in the Regulatory Flexibility Act. *See* 5 U.S.C. 601(6)).

NCUA

The RFA generally requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[162] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. NCUA defines small entities as small credit unions having less than ten million dollars in assets [163] in contrast to the definition of small entities in the rules issued by the Small Business Administration (SBA), which include banking organizations with total assets of less than or equal to $175 million.

NCUA staff analyzed the 2010 Home Mortgage Disclosure Act (HMDA) dataset to determine how many loans by federally insured credit unions (FICUs) might qualify as HPMLs under section 129H of TILA.[164] As of March 31, 2012, there were 2,475 FICUs that met NCUA's small entity definition but none of these institutions reported data to HMDA in 2010. For purposes of this rulemaking and for consistency with the Agencies, NCUA reviewed the dataset for FICUs that met the small entity standard for banking organizations under the SBA's regulations. As of March 31, 2012, there were approximately 6,060 FICUs with total assets of $175 million or less. Of the FICUs which reported 2010 HMDA data, 452 reported at least one HPML. The data reflects that only three FICUs originated at least 100 HPMLs, with no FICUs originating more than 500 HPMLs, and 88 percent of reporting FICUs originating ten HPMLs or less. Further, FICUs that met the SBA's definition of a small entity originated an average four HPML loans each in 2010.[165]

As previously discussed, section 1471 of the Dodd-Frank Act [166] generally prohibits a creditor from extending credit in the form of a HPML to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the property.
- Obtaining an additional appraisal from a different certified or licensed appraiser if the HPML finances the purchase or acquisition of a property from a seller at a higher price than the seller paid, within 180 days of the seller's purchase or acquisition. The additional appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.
- Providing the applicant, at the time of the initial mortgage application, with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Providing the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three (3) days prior to the transaction closing date.

The final rule implements the appraisal requirements of section 1471 of the Dodd-Frank Act. Part 722 of NCUA's regulations [167] requires FICUs to obtain an appraisal for federally related transactions unless an exemption applies. Part 722 grants an exemption to the appraisal requirement for real estate-related financial transactions of $250,000 or less. However, part 722 requires FICUs to obtain an appropriate evaluation that is consistent with safe and sound practices for such transactions.

The final rule will supersede this exemption, resulting in FICUs having to obtain an appraisal for a HPML transaction regardless of the transaction amount. The requirement to obtain an appraisal rather than an evaluation does not pose a new burden to financial institutions, as they are required by part 722 to obtain some type of valuation of the mortgaged property. The final rule merely limits the type of permissible valuations to an appraisal for HPMLs.

The final rule's requirement to conduct a physical visit of the interior of the mortgaged property potentially adds an additional burden to the appraiser. The USPAP and title XI of FIRREA and the regulations prescribed thereunder do not require appraisers to perform on-site visits. Instead, USPAP requires appraisers to include a certification which clearly states whether the appraiser has or has not personally inspected the subject property. During informal outreach conducted by the Agencies, outreach participants indicated that many creditors require appraisers to perform a physical inspection of the mortgaged property. This requirement is documented in the *Uniform Residential Appraisal Report* form used as a matter of practice in the industry, which includes a certification that the appraiser performed a complete visual inspection of the interior and exterior areas of the subject property. Outreach participants indicated that requiring a physical visit of the interior of the mortgaged property added on average an additional cost of about $50 to the appraisal fee, which is paid by the applicant.

In light of the fact that few loans made by FICUs would qualify as HPMLs, the fact that many creditors already require that an appraiser conduct an interior inspection of mortgage collateral property in connection with an appraisal; the fact that requiring an interior inspection would add a relatively small amount to the cost of an appraisal; and the various exemptions and exclusions from the requirements provided in the rule, NCUA believes the final rule will not have a significant economic impact on small FICUs.

For the reasons provided above, NCUA certifies that the final rule will

[162] *See* 5 U.S.C. 601 *et seq.*

[163] 68 FR 31949 (May 29, 2003).

[164] NCUA based its analysis on the HMDA data, as it provided a proxy for the characteristics of HPMLs. The analysis is restricted to 2010 HMDA data because the average offer price (a key data element for this review) was not added in the HMDA data until the fourth quarter of 2009.

[165] With only a fraction of small FICUs reporting data to HMDA, NCUA also analyzed FICUs not observed in the HMDA data. Using the total number of real estate loans originated by FICUs with less than $175M in total assets, NCUA estimated the average number of HPMLs per real estate loan originated. Using this ratio to interpolate the likely number of HPML originations, the analysis suggests that small FICUs originate on average less than two HPML loans each year.

[166] Codified at section 129H of the Truth-in-Lending Act, 15 U.S.C. 1631 *et seq.*

[167] 12 CFR part 722.

not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule applies to Federally insured credit unions and will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 [168] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[169] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget (OMB) for its determination.

OCC

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks, savings institutions and other depository credit intermediaries with assets less than or equal to $175 million [170] and trust companies with total assets of $7 million or less) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its final rule.

Section 1471 of the Dodd-Frank Act establishes a new TILA section 129H, which sets forth appraisal requirements applicable to higher-priced mortgage loans. A ''higher-priced mortgage'' generally is a closed-end consumer loan secured by a principal dwelling with an APR that exceeds the APOR by 1.5 percent for first-lien loans with a principal amount below the conforming loan limit, 2.5 percent for first-lien jumbo loans, or 3.5 percent for subordinate-liens. The definition of higher-priced mortgage loan expressly excludes qualified mortgages, as defined in TILA section 129C, as well as reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

Specifically, section 129H does not permit a creditor to extend credit in the form of a higher-priced mortgage loan to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the property.
- Obtaining an additional written appraisal from a different certified or licensed appraiser if the purpose of the higher-risk mortgage loan is to finance the purchase or acquisition of a mortgaged property from a seller within 180 days of the purchase or acquisition of the property by that seller at a price that was lower than the current sale price of the property. The additional written appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.
- Providing the applicant, at the time of the initial mortgage application, with a statement that any written appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Providing the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three (3) days prior to the transaction closing date.

The OCC currently supervises 1,926 banks (1,262 commercial banks, 65 trust companies, 552 federal savings associations, and 47 branches or agencies of foreign banks). We estimate that less than 1,400 of the banks supervised by the OCC are currently originating one- to four-family residential mortgage loans. Approximately 772 OCC supervised banks are small entities based on the SBA's definition of small entities for RFA purposes. Of these, the OCC estimates that 465 banks originate mortgages and therefore may be impacted by the final rule.

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank will range from a lower bound of approximately $10,000 to an upper bound of approximately $18,000. Using the upper bound cost estimate, we believe the final rule will have a significant economic impact on three small banks, which is not a substantial number.

Therefore, we believe the final rule will not have a significant economic impact on a substantial number of small entities. The OCC certifies that the Final Rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement.

VII. Paperwork Reduction Act

Certain provisions of this final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Under the PRA, the Agencies may not conduct or sponsor, and a person is not required to

[168] Public Law 104–121, 110 Stat. 857 (1996).

[169] 5 U.S.C. 551.

[170] ''A financial institution's asset are determined by averaging assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's Table of Size Standards.

respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this joint notice of final rulemaking have been submitted to OMB for review and approval by the Bureau, FDIC, NCUA, and OCC under section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB.

Title of Information Collection: HPML Appraisals.

Frequency of Response: Event generated.

Affected Public: Businesses or other for-profit and not-for-profit organizations.[171]

Bureau: Insured depository institutions with more than $10 billion in assets, their depository institution affiliates, and certain non-depository mortgage institutions.[172]

FDIC: Insured state non-member banks, insured state branches of foreign banks, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, Federal branches or agencies of foreign banks, or any operating subsidiary thereof.

Board: State member banks, uninsured state branches and agencies of foreign banks.

NCUA: Federally-insured credit unions.

Abstract:

The collection of information requirements in this final rule are found in paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (c)(6) of 12 CFR 1026.35. This information is required to protect consumers and promote the safety and soundness of creditors making HPMLs subject to 12 CFR 1026.35(c). This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR 1026.35(c). The final rule requires that, within three business days of application, a creditor provide a disclosure that informs consumers of the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure). *See* 12 CFR 1026.35(c)(5). If a loan is a HPML subject to 12 CFR 1026.35(c), then the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal), and provide a copy of the Written Appraisal to the consumer. *See* 12 CFR 1026.35(c)(3)(i) and (c)(6). To qualify for the safe harbor provided under the final rule, a creditor is required to review the Written Appraisal as specified in the text of the rule and Appendix N. *See* 12 CFR 1026.35(c)(3)(ii).

A creditor is required to obtain an additional appraisal (Additional Written Appraisal) for a HPML that is subject to 12 CFR 1026.35(c) if (1) the seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 20 percent. *See* 12 CFR 1026.35(c)(4). The Additional Written Appraisal must meet the requirements described above and also analyze: (1) The difference between the price at which the seller acquired the property and the price the consumer agreed to pay, (2) changes in market conditions between the date the seller acquired the property and the date the consumer agreed to acquire the property, and (3) any improvements made to the property between the date the seller acquired the property and the date on which the consumer agreed to acquire the property. *See* 12 CFR 1026.35(c)(4)(iv). A creditor is also required to provide a copy of the Additional Written Appraisal to the consumer. 12 CFR 1026.35(c)(6).

Comments on Proposed PRA Estimate

In the proposal, the Agencies proposed a Calculation of Estimated Burden based on the proposed requirements. The Agencies received one comment from a bank in response to the PRA estimate in the proposed rule. The commenter asserted that the Agencies' proposed PRA estimates to comply with the new requirements were understated, but the commenter did not provide alternative estimates. The Agencies recognize that the amount of time required of institutions to comply with the requirements may vary; however, the Agencies continue to believe that estimates provided are reasonable averages.

The requirements provided in the final rule are substantially similar to those provided in the proposed rule. Based upon data available to the Bureau as described in its section 1022 analysis above and in the table below, the estimated burdens allocated to the Bureau are revised from the proposal to reflect an institution count based upon updated data and reduced to reflect those exemptions in the final rule for which the Bureau has identified data. Because these data were unavailable to the other Agencies before finalizing this PRA section, the other Agencies did not adjust the calculations to account for the exempted transactions provided in the final rule. Accordingly, the estimated burden calculations in the table below are overstated.

Calculation of Estimated Burden

For the Initial Appraisal Disclosure, the creditor is required to provide a short, written disclosure within three days of application. Because the disclosure is classified as a warning label supplied by the Federal government, the Agencies are assigning it no burden for purposes of this PRA analysis.[173]

The estimated burden for the Written Appraisal requirements includes the creditor's burden of reviewing the Written Appraisal in order to satisfy the safe harbor criteria set forth in the rule and providing a copy of the Written Appraisal to the consumer. Additionally, as discussed above, an Additional Written Appraisal containing additional analyses is required in certain circumstances. The Additional Written Appraisal must meet the standards of the Written Appraisal. The Additional Written Appraisal is also required to be prepared by a certified or licensed appraiser different from the appraiser performing the Written Appraisal, and a copy of the Additional Written Appraisal must be provided to the consumer. The creditor must separately review the Additional Written Appraisal in order to qualify for

[171] The burdens on the affected public generally are divided in accordance with the Agencies' respective administrative enforcement authority under TILA section 108, 15 U.S.C. 1607.

[172] The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, for purposes of this PRA analysis, the Bureau has allocated to itself half of the Bureau's estimated burden for non-depository mortgage institutions. The FTC is responsible for estimating and reporting to OMB its share of burden under this proposal.

[173] The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of ''collection of information.'' 5 CFR 1320.3(c)(2).

the safe harbor provided in the final rule.

The Agencies estimate that respondents will take, on average, 15 minutes for each HPML that is subject to 12 CFR 1026.35(c) to review the Written Appraisal and to provide a copy of the Written Appraisal. The Agencies estimate further that respondents will take, on average, 15 minutes for each HPML that is subject to 12 CFR 1026.35(c) to investigate and verify the need for an Additional Written Appraisal and, where necessary, an additional 15 minutes to review the Additional Written Appraisal and to provide a copy of the Additional Written Appraisal. For the small fraction of loans requiring an Additional Written Appraisal, the burden is similar to that of the Written Appraisal. The following table summarizes these burden estimates.

Estimated PRA Burden

TABLE 3—SUMMARY OF PRA BURDEN HOURS FOR INFORMATION COLLECTIONS IN FINAL RULE

	Estimated number of respondents [a]	Estimated number of appraisals per respondent [174] [b]	Estimated burden hours per appraisal [c]	Estimated total annual burden hours [d] = (a*b*c)
Review and Provide a Copy of Written Appraisal				
Bureau [175] [176] [177].				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	6.21	0.25	205
Non-Depository Inst. and Credit Unions	2,853	0.38	0.25	[178]136
FDIC	2,571	8	0.25	5,142
Board [179]	418	24	0.25	2,508
OCC	1,399	69	0.25	24,133
NCUA	2,437	6	0.25	3,656
Total	9,810			35,780
Investigate and Verify Requirement for Additional Written Appraisal				
Bureau.				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	20.05	0.25	662
Non-Depository Inst. and Credit Unions	2,853	1.22	0.25	435
FDIC	2,571	15	0.25	9,641
Board	418	24	0.25	2,508
OCC	1,399	69	0.25	24,133
NCUA	2,437	6	0.25	3,656
Total	9,810			41,035
Review and Provide a Copy of Additional Written Appraisal				
Bureau.				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	0.64	0.25	21
Non-Depository Inst. and Credit Unions	2,853	0.04	0.25	14
FDIC	2,571	1	0.25	643
Board	418	1	0.25	105
OCC	1,399	3	0.25	1,049
NCUA	2,437	0.3	0.25	183
Total	9,810			2,015

Notes:
(1) Respondents include all institutions estimated to originate HPMLs that are subject to 12 CFR 1026.35(c).
(2) There may be an additional ongoing burden of roughly 75 hours for privately-insured credit unions estimated to originate HPMLs that are subject to 12 CFR 1026.35(c). The Bureau will assume half of the burden for non-depository institutions and the privately-insured credit unions.

Finally, respondents must also review the instructions and legal guidance

[174] The ''Estimated Number of Appraisals Per Respondent'' reflects the estimated number of Written Appraisals and Additional Written Appraisals that will be performed solely to comply with the final rule. It does not include the number of appraisals that will continue to be performed under current industry practice, without regard to the final rule's requirements.

[175] The information collection requirements (ICs) in this final rule will be incorporated with the Bureau's existing collection associated with Truth in Lending Act (Regulation Z) 12 CFR 1026 (OMB No. 3170–0015).

[176] The burden estimates allocated to the Bureau are updated using the data described in the Bureau's section 1022 analysis above, including significant burden reductions after accounting for qualified mortgages that are exempt from the final rule, and burden reductions after accounting for loans in rural areas that are exempt from the Additional Written Appraisal requirement in the final rule.

[177] There are 153 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. In addition, there are 146 privately-insured credit unions that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau's respondents under Regulation Z are 135 depository institutions that originate either open or closed-end mortgages; 77 privately-insured credit unions that originate either open or closed-end mortgages; and an estimated 2,787 non-depository institutions that are subject to the Bureau's administrative enforcement authority. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection under Regulation Z are based on a calculation that includes half of the burden for the estimated 2,787 non-depository institutions and 77 privately-insured credit unions.

[178] The Bureau assumes half of the burden for the IMBs and the credit unions supervised by the Bureau. The FTC assumes the burden for the other half.

Continued

associated with the final rule and train loan officers regarding the requirements of the final rule. The Agencies estimate that these one-time costs are as follows: Bureau: 36,383 hours; FDIC: 10,284 hours; Board 3,344 hours; OCC: 19,586 hours; NCUA: 7,311 hours.[180]

The Agencies have a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to *http://oira_submission@omb.eop.gov*, with copies to the Agencies at the addresses listed in the **ADDRESSES** section of this **SUPPLEMENTARY INFORMATION**.

FHFA

The final rule does not contain any collections of information applicable to the FHFA, requiring review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Therefore, FHFA has not submitted any materials to OMB for review.

VIII. Section 302 of the Riegle Community Development and Regulatory Improvement Act

Section 1400 of the Dodd Frank Act requires this rule to take effect not later than 12 months after the date of issuance of the final rule. This rule is issued on January 18, 2013 and will become effective on January 18, 2014. Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (''RCDRIA'') requires that, subject to certain exceptions, regulations issued by the OCC, the Board and the FDIC that impose additional reporting, disclosure, or other requirements on insured depository institutions, shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. This effective date requirement does not apply if the issuing agency finds for good cause that the regulation should become effective before such time. 12 U.S.C. 4802.

The OCC, the Board and the FDIC find that good cause exists to establish an effective date for this rule other than the first date of a calendar quarter, specifically January 18, 2014. This rule incorporates key definitions from, and is designed to accommodate combined disclosures with, other new mortgage-related rules being issued by the Bureau that also have effective dates on and around January 18, 2014. The consistent application of these rules will permit depository institutions to implement the systems, policies and procedures required to comply with this group of regulations in a coordinated and efficient way. In addition, insured depository institutions wishing to comply at the beginning of a calendar quarter prior to the effective date retain the flexibility to do so.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in Lending.

12 CFR Part 164

Appraisals, Mortgages, Reporting and recordkeeping requirements, Savings associations, Truth in Lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 722

Appraisal, Credit, Credit unions, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1222

Government sponsored enterprises, Mortgages, Appraisals.

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR parts 34 and 164, as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a,371, 1463, 1464, 1465,1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. Subpart G to part 34 is added to read as follows:

Subpart G— Appraisals for Higher-Priced Mortgage Loans

Sec.
34.201 Authority, purpose, and scope.
34.202 Definitions applicable to higher-priced mortgage loans.
34.203 Appraisals for higher-priced mortgage loans.
Appendix A to Subpart G—Higher-Priced Mortgage Loan Appraisal Safe Harbor Review
Appendix B to Subpart G—Illustrative Written Source Documents for Higher-priced Mortgage Loan Appraisal Rules
Appendix C to Subpart G—OCC Interpretations

Subpart G—Appraisals for Higher-Priced Mortgage Loans

§ 34.201 Authority, purpose and scope.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the Currency under 12 U.S.C. 93a, 12 U.S.C. 1463, 1464 and 15 U.S.C. 1639h.

(b) *Purpose.* The OCC adopts this subpart pursuant to the requirements of section 129H of the Truth in Lending Act (15 U.S.C. 1639h) which provides that a creditor, including a national bank or operating subsidiary, a Federal branch or agency or a Federal savings association or operating subsidiary, may not extend credit in the form of a higher-risk mortgage without complying with the requirements of section 129H of the Truth in Lending Act (15 U.S.C. 1639h) and this subpart G. The definition of a higher-risk mortgage in section 129H is consistent with the definition of a higher-priced mortgage loan under Regulation Z, 12 CFR part 1026. Specifically, 12 CFR 1026.35 defines a higher-priced mortgage loan as a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable

[179] The ICs in this rule will be incorporated with the Board's Reporting, Recordkeeping, and Disclosure Requirements associated with Regulation Z (Truth in Lending), 12 CFR part 226, and Regulation AA (Unfair or Deceptive Acts or Practices), 12 CFR part 227 (OMB No. 7100–0199). The burden estimates provided in this rule pertain only to the ICs associated with this final rule.

[180] Estimated one-time burden is calculated assuming a fixed burden per institution to review the regulations and fixed burden per estimated loan officer in training costs. As a result of the different size and mortgage activities across institutions, the average per-institution one-time burdens vary across the Agencies.

transaction as of the date the interest rate is set:

(1) By 1.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(2) By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(3) By 3.5 or more percentage points, for a loan secured by a subordinate lien.

(c) *Scope.* This subpart applies to higher-priced mortgage loan transactions entered into by national banks and their operating subsidiaries, Federal branches and agencies and Federal savings associations and operating subsidiaries of savings associations.

(d) *Official Interpretations.* Appendix C to this subpart sets out OCC Interpretations of the requirements imposed by the OCC pursuant to this subpart.

§ 34.202 Definitions applicable to higher-priced mortgage loans.

(a) Creditor has the same meaning as in 12 CFR 1026.2(a)(17).

(b) Higher-priced mortgage loan has the same meaning as in 12 CFR 1026.35(a)(1).

(c) Reverse mortgage has the same meaning as in 12 CFR 1026.33(a).

§ 34.203 Appraisals for higher-priced mortgage loans.

(a) *Definitions.* For purposes of this section:

(1) *Certified or licensed appraiser* means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification.

(2) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(3) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(4) *State agency* means a ''State appraiser certifying and licensing agency'' recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(b) *Exemptions.* The requirements in paragraphs (c) through (f) of this section do not apply to the following types of transactions:

(1) A qualified mortgage as defined in 12 CFR 1026.43(e).

(2) A transaction secured by a new manufactured home.

(3) A transaction secured by a mobile home, boat, or trailer.

(4) A transaction to finance the initial construction of a dwelling.

(5) A loan with a maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

(6) A reverse-mortgage transaction subject to 12 CFR 1026.33(a).

(c) *Appraisals required*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

(2) *Safe harbor.* A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(1) of this section if the creditor:

(i) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;

(ii) Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;

(iii) Confirms that the elements set forth in appendix A to this subpart are addressed in the written appraisal; and

(iv) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

(d) *Additional appraisal for certain higher-priced mortgage loans*—(1) *In general.* Except as provided in paragraphs (b) and (d)(7) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(i) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or

(ii) The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

(2) *Different certified or licensed appraisers.* The two appraisals required under paragraph (d)(1) of this section may not be performed by the same certified or licensed appraiser.

(3) *Relationship to general appraisal requirements.* If two appraisals must be obtained under paragraph (d)(1) of this section, each appraisal shall meet the requirements of paragraph (c)(1) of this section.

(4) *Required analysis in the additional appraisal.* One of the two required appraisals must include an analysis of:

(i) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;

(ii) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and

(iii) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

(5) *No charge for the additional appraisal.* If the creditor must obtain two appraisals under paragraph (d)(1) of this section, the creditor may charge the consumer for only one of the appraisals.

(6) *Creditor's determination of prior sale date and price*—(i) *Reasonable diligence.* A creditor must obtain two written appraisals under paragraph (d)(1) of this section unless the creditor can demonstrate by exercising reasonable diligence that the

requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in appendix B to this subpart.

(ii) *Inability to determine prior sale date or price—modified requirements for additional appraisal.* If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (d)(1)(i) and (d)(1)(ii) are present and therefore must obtain two written appraisals in accordance with paragraphs (d)(1) through (d)(5) of this section, one of the two appraisals shall include an analysis of the factors in paragraph (d)(4) of this section only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

(7) *Exemptions from the additional appraisal requirement.* The additional appraisal required under paragraph (d)(1) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:

(i) From a local, State or Federal government agency;

(ii) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;

(iii) From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;

(iv) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

(v) From an employer or relocation agency in connection with the relocation of an employee;

(vi) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;

(vii) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or

(viii) Located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A).

(e) *Required disclosure*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.'' Compliance with the disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2), satisfies the requirements of this paragraph.

(2) *Timing of disclosure.* The disclosure required by paragraph (e)(1) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to this section. In the case of a loan that is not a higher-priced mortgage loan subject to this section at the time of application, but becomes a higher-priced mortgage loan subject to this section after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to this section.

(f) *Copy of appraisals*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c) and (d) of this section.

(2) *Timing.* A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (f)(1) of this section:

(i) No later than three business days prior to consummation of the loan; or

(ii) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

(3) *Form of copy.* Any copy of a written appraisal required by paragraph (f)(1) of this section may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(4) *No charge for copy of appraisal.* A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (f)(1) of this section.

(g) *Relation to other rules.* The rules in this section 34.203 were adopted jointly by the Board of Governors of the Federal Reserve System (the Board), the OCC, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Consumer Financial Protection Bureau (Bureau). These rules are substantively identical to the Board's and the Bureau's higher-priced mortgage loan appraisal rules published separately in 12 CFR 226.43 (for the Board) and 12 CFR 1026.35(a) and (c) (for the Bureau).

Appendix A to Subpart G — Higher-Priced Mortgage Loan Appraisal Safe Harbor Review

To qualify for the safe harbor provided in § 34.203(c)(2), a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property's neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
6. Provides an opinion of the property's market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

Appendix B to Subpart G—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules

A creditor acts with reasonable diligence under § 34.203(d)(6)(i) if the creditor bases its determination on information contained in written source documents, such as:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller's acquisition (*i.e.,* the HUD–1 or any successor form).
5. A property sales history report or title report from a third-party reporting service.

6. Sales price data recorded in multiple listing services.

7. Tax assessment records or transfer tax records obtained from local governments.

8. A written appraisal performed in compliance with § 34.203(c)(1) for the same transaction.

9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.

10. A property abstract.

Appendix C to Subpart G—OCC Interpretations

Section 34.202—Definitions applicable to higher-priced mortgage loans

1. *Staff Interpretations.* Section 34.202 incorporates definitions from Regulation Z, 12 CFR part 1026. These OCC Interpretations of 12 CFR part 34, subpart G, incorporate the Official Staff Interpretations to the Bureau's Regulation Z associated with those definitions, at 12 CFR part 1026, Supplement I.

Section 34.203—Appraisals for higher-priced mortgage loans

34.203(a) Definitions.

34.203(a)(1) Certified or licensed appraiser.

1. *USPAP.* The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under § 34.203(a)(1), the relevant USPAP standards are those found in the edition of USPAP in effect at the time the appraiser signs the appraiser's certification.

2. *Appraiser's certification.* The appraiser's certification refers to the certification that must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2–3.

3. *FIRREA title XI and implementing regulations.* The relevant regulations are those prescribed under section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under § 34.203(a)(1).

34.203(b) Exemptions.

Paragraph 34.203(b)(2).

1. *Secured by new manufactured home.* A transaction secured by a new manufactured home, regardless of whether the transaction is also secured by the land on which it is sited, is not a ''higher-priced mortgage loan'' subject to the appraisal requirements of § 34.203.

Paragraph 34.203(b)(3).

1. *Secured by a mobile home.* For purposes of the exemption in § 34.203(b)(3), a mobile home does not include a manufactured home, as defined in § 34.203(a)(2).

Paragraph 34.203(b)(4).

1. *Construction-to-permanent loans.* Section 34.203 does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 34.203 does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of § 34.203. *See* § 34.203(b). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit pursuant to Regulation Z (12 CFR 1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See* 12 CFR 1026.17(c)(6)(ii) and the Official Staff Interpretations to the Bureau's Regulation Z, comment 17(c)(6)–2. Which disclosure option a creditor elects under § 1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to § 34.203. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 34.203. When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with 12 CFR 1026.35(a)(1) (incorporated into 12 CFR part 34, subpart G by § 34.202) and appendix D to 12 CFR part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 34.203. If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under § 34.203(b), only the permanent phase is subject to the requirements of § 34.203.

34.203(c) Appraisals required.

34.203(c)(1) In general.

1. *Written appraisal—electronic transmission.* To satisfy the requirement that the appraisal be ''written,'' a creditor may obtain the appraisal in paper form or via electronic transmission.

34.203(c)(2) Safe harbor.

1. *Safe harbor.* A creditor that satisfies the safe harbor conditions in § 34.203(c)(2)(i) through (iv) complies with the appraisal requirements of § 34.203(c)(1). A creditor that does not satisfy the safe harbor conditions in § 34.203(c)(2)(i) through (iv) does not necessarily violate the appraisal requirements of § 34.203(c)(1).

2. *Appraiser's certification.* For purposes of § 34.203(c)(2), the appraiser's certification refers to the certification specified in item 9 of appendix A to this subpart. *See also* comment 34.203(a)(1)–2.

Paragraph 34.203(c)(2)(iii).

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix A to this subpart are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.

34.203(d) Additional appraisal for certain higher-priced mortgage loans.

1. *Acquisition.* For purposes of § 34.203(d), the terms ''acquisition'' and ''acquire'' refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

34.203(d)(1) In general.

1. *Appraisal from a previous transaction.* An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under § 34.203(d)(1).

2. *90-day, 180-day calculation.* The time periods described in § 34.203(d)(1)(i) and (ii) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.

3. *Date seller acquired the property.* For purposes of § 34.203(d)(1)(i) and (ii), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. *Date of the consumer's agreement to acquire the property.* For the date of the consumer's agreement to acquire the property under § 34.203(d)(1)(i) and (ii), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of § 34.203(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. *Price at which the seller acquired the property.* The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. *Price the consumer is obligated to pay to acquire the property.* The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of § 34.203(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what

extent the agreement is legally binding on both parties. *See also* comment 34.203(d)(1)–4.

34.203(d)(2) Different certified or licensed appraisers.

1. *Independent appraisers.* The requirements that a creditor obtain two separate appraisals under § 34.203(d)(1), and that each appraisal be conducted by a different licensed or certified appraiser under § 34.203(d)(2), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

34.203(d)(3) Relationship to general appraisal requirements.

1. *Safe harbor.* When a creditor is required to obtain an additional appraisal under § 34.203(d)(1), the creditor must comply with the requirements of both § 34.203(c)(1) and § 34.203(d)(2) through (5) for that appraisal. The creditor complies with the requirements of § 34.203(c)(1) for the additional appraisal if the creditor meets the safe harbor conditions in § 34.203(c)(2) for that appraisal.

34.203(d)(4) Required analysis in the additional appraisal.

1. *Determining acquisition dates and prices used in the analysis of the additional appraisal.* For guidance on identifying the date on which the seller acquired the property, see comment 34.203(d)(1)–3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 34.203(d)(1)–4. For guidance on identifying the price at which the seller acquired the property, see comment 34.203(d)(1)–5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 34.203(d)(1)–6.

34.203(d)(5) No charge for additional appraisal.

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under § 34.203(d)(1), including by imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

34.203(d)(6) Creditor's determination of prior sale date and price.

34.203(d)(6)(i) In general.

1. *Estimated sales price.* If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

2. *Reasonable diligence—oral statements insufficient.* Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under § 34.203(d)(6)(i).

3. *Lack of information and conflicting information—two appraisals required.* If a creditor is unable to demonstrate that the requirement to obtain two appraisals under § 34.203(d)(1) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of § 34.203 *See also* comment 34.203(d)(6)(ii)–1. For example:

i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to § 34.203(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 34.203, the creditor must either: perform additional diligence to ascertain the seller's acquisition price and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with § 34.203(d)(6). *See also* comment 34.203(d)(6)(ii)–1.

ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to § 34.203(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 34.203, the creditor must either: perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with § 34.203(d)(6). *See also* comment 34.203(d)(6)(ii)–1.

34.203(d)(6)(ii) Inability to determine prior sales date or price—modified requirements for additional appraisal.

1. *Required analysis.* In general, the additional appraisal required under § 34.203(d)(1) should include an analysis of the factors listed in § 34.203(d)(4)(i) through (iii). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in § 34.203(d)(1)(i) or (ii) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under § 34.203(d)(4)(i) through (iii) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under § 34.203(d)(4)(ii) and (iii) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under § 34.203(d)(4)(i) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

34.203(d)(7) Exemptions from the additional appraisal requirement.

Paragraph 34.203(d)(7)(iii).

1. *Non-profit entity.* For purposes of § 34.203(d)(7)(iii), a ''non-profit entity'' is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (12 U.S.C. 501(c)(3)).

Paragraph 34.203(d)(7)(viii).

1. *Bureau table of rural counties.* The Bureau publishes on its Web site a table of rural counties under 12 CFR 1026.35(b)(2)(iv)(A) for each calendar year by the end of that calendar year. *See* Official Staff Interpretations to the Bureau's Regulation Z, comment 35(b)(2)(iv)–1. A property securing an HPML subject to § 34.203 is in a rural county under § 34.203(d)(7)(viii) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of § 34.203(d)(7)(viii) if the county is on the table of rural counties published by the Bureau at the end of 2014.

34.203(e) Required disclosure.

34.203(e)(1) In general.

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.

2. *Appraisal independence requirements not affected.* Nothing in the text of the consumer notice required by § 34.203(e)(1) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisals or restrictions on the use of borrower-ordered appraisals by creditors.

34.203(f) Copy of appraisals.

34.203(f)(1) In general.

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

34.203(f)(2) Timing.

1. *''Provide.''* For purposes of the requirement to provide a copy of the appraisal within a specified time under

§ 34.203(f)(2), ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.

2. *''Receipt'' of the appraisal.* For appraisals prepared by the creditor's internal appraisal staff, the date of ''receipt'' is the date on which the appraisal is completed.

3. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 34.203. A consumer of a higher-priced mortgage loan subject to § 34.302 may not waive the timing requirement to receive a copy of the appraisal under § 34.203(f)(1).

34.203(f)(4) No charge for copy of appraisal.

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under § 34.203(f)(1), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

Appendix B—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules

1. *Title commitment report.* The ''title commitment report'' is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. This document is issued by the title insurance company prior to the company's issuance of an actual title insurance policy to the property's transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred to by different terms, such as a title commitment, title binder, title opinion, or title report.

PART 164—APPRAISALS

■ 3. The authority citation for Part 164 is revised to read as follows:

Authority: 12 U.S.C.1462, 1462a, 1463,1464, 1828(m), 3331 *et seq.,* 5412(b)(2)(B), 15 U.S.C. 1639h.

§§ 164.1–164.8 [Designated as Subpart A]

■ 4. Sections 164.1 through 164.8 are designated as Subpart A to part 164.

Subpart A—Appraisals

■ 5. The heading of subpart A is added to read as set forth above.

■ 6. Subpart B to part 164 is added to read as follows:

Subpart B—Appraisals for Higher-Priced Mortgage Loans

Sec.
164.20 Authority, purpose and scope.
164.21 Application of appraisal requirements for higher-priced mortgage loans to Federal savings associations and their operating subsidiaries.

§ 164.20 Authority, purpose and scope.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the Currency under 12 U.S.C. 1463, 1464 and 15 U.S.C. 1639h.

(b) *Purpose.* The OCC adopts this subpart pursuant to the requirements of section 129H of the Truth in Lending Act (15 U.S.C. 1639h) which provides that a creditor, including a Federal savings association or its operating subsidiary, may not extend credit in the form of a higher-priced mortgage loan without complying with the requirements of section 129H of the Truth in Lending Act (15 U.S.C. 1639h) and these implementing regulations.

(c) *Scope.* This subpart applies to higher priced mortgage loan transactions entered into by Federal savings associations and operating subsidiaries of savings associations.

§ 164.21 Application of appraisal requirements for higher-priced mortgage loans to Federal savings associations and their operating subsidiaries.

Federal savings associations and their operating subsidiaries may not extend credit in the form of a higher-priced mortgage loan without complying with the requirements of Section 129H of the Truth in Lending Act (15 U.S.C. 1639h) and the implementing regulations adopted by the OCC at 12 CFR part 34, subpart G.

Board of Governors of the Federal Reserve System

Authority and Issuance

For the reasons stated above, the Board of Governors of the Federal Reserve System amends Regulation Z, 12 CFR part 226, as follows:

PART 226—TRUTH IN LENDING ACT (REGULATION Z)

■ 7. The authority citation for part 226 is revised to read as follows:

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

■ 8. New § 226.43 is added to read as follows:

§ 226.43 Appraisals for higher-priced mortgage loans.

(a) *Definitions.* For purposes of this section:

(1) *Certified or licensed appraiser* means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification.

(2) *Creditor* has the same meaning as in 12 CFR 1026.2(a)(17).

(3) *Higher-priced mortgage loan* means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(i) By 1.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(ii) By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points, for a loan secured by a subordinate lien.

(4) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(5) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(6) *State agency* means a ''State appraiser certifying and licensing agency'' recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(b) *Exemptions.* The requirements in paragraphs (c)(3) through (6) of this section do not apply to the following types of transactions:

(1) A qualified mortgage as defined in 12 CFR 1026.43(e).

(2) A transaction secured by a new manufactured home.

(3) A transaction secured by a mobile home, boat, or trailer.

(4) A transaction to finance the initial construction of a dwelling.

(5) A loan with maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

(6) A reverse-mortgage transaction subject to 12 CFR 1026.33(a).

(c) *Appraisals required*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

(2) *Safe harbor.* A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(1) of this section if the creditor:

(i) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;

(ii) Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;

(iii) Confirms that the elements set forth in appendix N to this part are addressed in the written appraisal; and

(iv) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

(d) *Additional appraisal for certain higher-priced mortgage loans*—(1) *In general.* Except as provided in paragraphs (b) and (d)(7) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(i) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or

(ii) The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

(2) *Different certified or licensed appraisers.* The two appraisals required under paragraph (d)(1) of this section may not be performed by the same certified or licensed appraiser.

(3) *Relationship to general appraisal requirements.* If two appraisals must be obtained under paragraph (d)(1) of this section, each appraisal shall meet the requirements of paragraph (c)(1) of this section.

(4) *Required analysis in the additional appraisal.* One of the two required appraisals must include an analysis of:

(i) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;

(ii) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and

(iii) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

(5) *No charge for the additional appraisal.* If the creditor must obtain two appraisals under paragraph (d)(1) of this section, the creditor may charge the consumer for only one of the appraisals.

(6) *Creditor's determination of prior sale date and price*—(i) *Reasonable diligence.* A creditor must obtain two written appraisals under paragraph (d)(1) of this section unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in Appendix O to this part.

(ii) *Inability to determine prior sale date or price—modified requirements for additional appraisal.* If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (d)(1)(i) and (d)(1)(ii) are present and therefore must obtain two written appraisals in accordance with paragraphs (d)(1) through (5) of this section, one of the two appraisals shall include an analysis of the factors in paragraph (d)(4) of this section only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

(7) *Exemptions from the additional appraisal requirement.* The additional appraisal required under paragraph (d)(1) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:

(i) From a local, State or Federal government agency;

(ii) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;

(iii) From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;

(iv) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

(v) From an employer or relocation agency in connection with the relocation of an employee;

(vi) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;

(vii) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or

(viii) Located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A).

(e) *Required disclosure*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional

appraisal for your own use at your own cost.'' Compliance with the disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2), satisfies the requirements of this paragraph.

(2) *Timing of disclosure.* The disclosure required by paragraph (e)(1) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to this section. In the case of a loan that is not a higher-priced mortgage loan subject to this section at the time of application, but becomes a higher-priced mortgage loan subject to this section after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to this section.

(f) *Copy of appraisals*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c) and (d) of this section.

(2) *Timing.* A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (f)(1) of this section:

(i) No later than three business days prior to consummation of the loan; or

(ii) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

(3) *Form of copy.* Any copy of a written appraisal required by paragraph (f)(1) of this section may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(4) *No charge for copy of appraisal.* A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (f)(1) of this section.

(g) *Relation to other rules.* The rules in this section were adopted jointly by the Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Consumer Financial Protection Bureau (Bureau). These rules are substantively identical to the OCC's and the Bureau's higher-priced mortgage loan appraisal rules published separately in 12 CFR part 34, subpart G and 12 CFR part 164, subpart B (for the OCC) and 12 CFR 1026.35(a) and (c) (for the Bureau). The Board's rules apply to all creditors who are State member banks, bank holding companies and their subsidiaries (other than a bank), savings and loan holding companies and their subsidiaries (other than a savings and loan association), and insured branches and agencies of foreign banks. Compliance with the Board's rules satisfies the requirements of 15 U.S.C. 1639h.

■ 9. Appendix N to Part 226 is added to read as follows:

Appendix N to Part 226—Higher-Priced Mortgage Loan Appraisal Safe Harbor Review

To qualify for the safe harbor provided in § 226.43(c)(2), a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property's neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
6. Provides an opinion of the property's market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

■ 10. Appendix O to Part 226 is added to read as follows:

Appendix O to Part 226—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules

A creditor acts with reasonable diligence under § 226.43(d)(6)(i) if the creditor bases its determination on information contained in written source documents, such as:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller's acquisition (*i.e.,* the HUD–1 or any successor form).
5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with § 226.43(c)(1) for the same transaction.
9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
10. A property abstract.

■ 11. In Supplement I to part 226:

■ a. New *Section 226.43—Appraisals for Higher-Priced Mortgage Loans* is added.

■ b. New *Appendix O—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules* is added.

The additions read as follows:

Supplement I to Part 226—Official Interpretations

* * * * *

Section 226.43—Appraisals for Higher-Risk Mortgage Loans

43(a) Definitions.

43(a)(1) Certified or licensed appraiser.

1. *USPAP.* The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under § 226.43(a)(1), the relevant USPAP standards are those found in the edition of USPAP in effect at the time the appraiser signs the appraiser's certification.

2. *Appraiser's certification.* The appraiser's certification refers to the certification that must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2–3.

3. *FIRREA title XI and implementing regulations.* The relevant regulations are those prescribed under section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under § 226.43(a)(1).

43(a)(3) Higher-priced mortgage loan.

1. *Principal dwelling.* The term ''principal dwelling'' has the same meaning under § 226.43(a)(3) as under 12 CFR 1026.2(a)(24). *See* the Official Staff Interpretations to the Bureau's Regulation Z (Supplement I to Part 1026), comment 2(a)(24)–3.

2. *Average prime offer rate.* For guidance on average prime offer rates, see the Official Staff Interpretations to the Bureau's Regulation Z, comments 35(a)(2)–1 and –3.

3. *Comparable transaction.* For guidance on determining the average prime offer rate for comparable transactions, see the Official Staff Interpretations to the Bureau's Regulation Z, comments 35(a)(1)–1 and 35(a)(2)–2.

4. *Rate set.* For guidance on the date the annual percentage rate is set, see the Official Staff Interpretations to the Bureau's Regulation Z, comment 35(a)(1)–2.

5. *Threshold for ''jumbo'' loans.* For guidance on determining whether a transaction's principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac, see the Official Staff Interpretations to the Bureau's Regulation Z, comment 35(a)(1)–3.

43(b) Exemptions.

Paragraph 43(b)(2).

1. *Secured by new manufactured home.* A transaction secured by a new manufactured home, regardless of whether the transaction is also secured by the land on which it is sited, is not a ''higher-priced mortgage loan'' subject to the appraisal requirements of § 226.43.

Paragraph 43(b)(3).

1. *Secured by a mobile home.* For purposes of the exemption in § 226.43(b)(3), a mobile home does not include a manufactured home, as defined in § 226.43(a)(3).

Paragraph 43(b)(4)

1. *Construction-to-permanent loans.* Section 226.43 does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 226.43 does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of § 226.43. *See* § 226.43(b). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit pursuant to Regulation Z (12 CFR 1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See* 12 CFR 1026.17(c)(6)(ii) and the Official Staff Interpretations to the Bureau's Regulation Z, comment 17(c)(6)–2. Which disclosure option a creditor elects under § 1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to § 226.43. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 226.43. When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with § 226.43(a)(3) and appendix D to 12 CFR part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 226.43. If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under § 226.43(b), only the permanent phase is subject to the requirements of § 226.43.

43(c) Appraisals required.

43(c)(1) In general.

1. *Written appraisal—electronic transmission.* To satisfy the requirement that the appraisal be ''written,'' a creditor may obtain the appraisal in paper form or via electronic transmission.

43(c)(2) Safe harbor.

1. *Safe harbor.* A creditor that satisfies the safe harbor conditions in § 226.43(c)(2)(i) through (iv) complies with the appraisal requirements of § 226.43(c)(1). A creditor that does not satisfy the safe harbor conditions in § 226.43(c)(2)(i) through (iv) does not necessarily violate the appraisal requirements of § 226.43(c)(1).

2. *Appraiser's certification.* For purposes of § 226.43(c)(2), the appraiser's certification refers to the certification specified in item 9 of appendix N. *See also* comment 43(a)(1)–2.

Paragraph 43(c)(2)(iii).

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix N to this part are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.

43(d) Additional appraisal for certain higher-priced mortgage loans.

1. *Acquisition.* For purposes of § 226.43(d), the terms ''acquisition'' and ''acquire'' refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

43(d)(1) In general.

1. *Appraisal from a previous transaction.* An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under § 226.43(d)(1).

2. *90-day, 180-day calculation.* The time periods described in § 226.43(d)(1)(i) and (ii) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.

3. *Date seller acquired the property.* For purposes of § 226.43(d)(1)(i) and (ii), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. *Date of the consumer's agreement to acquire the property.* For the date of the consumer's agreement to acquire the property under § 226.43(d)(1)(i) and (ii), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of § 226.43(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. *Price at which the seller acquired the property.* The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. *Price the consumer is obligated to pay to acquire the property.* The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of § 226.43(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. *See also* comment 43(d)(1)–4.

43(d)(2) Different certified or licensed appraisers.

1. *Independent appraisers.* The requirements that a creditor obtain two separate appraisals under § 226.43(d)(1), and that each appraisal be conducted by a different licensed or certified appraiser under § 226.43(d)(2), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

43(d)(3) Relationship to general appraisal requirements.

1. *Safe harbor.* When a creditor is required to obtain an additional appraisal under § 226(d)(1), the creditor must comply with the requirements of both § 226.43(c)(1) and § 226.43(d)(2) through (5) for that appraisal. The creditor complies with the requirements of § 226.43(c)(1) for the additional appraisal if the creditor meets the safe harbor conditions in § 226.43(c)(2) for that appraisal.

43(d)(4) Required analysis in the additional appraisal.

1. *Determining acquisition dates and prices used in the analysis of the additional appraisal.* For guidance on identifying the date on which the seller acquired the property, see comment 43(d)(1)–3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 43(d)(1)–4. For guidance on identifying the price at which the seller acquired the property, see comment 43(d)(1)–5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 43(d)(1)–6.

43(d)(5) No charge for additional appraisal.

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under § 226.43(d)(1), including by

imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

43(d)(6) Creditor's determination of prior sale date and price.

43(d)(6)(i) In general.

1. *Estimated sales price.* If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

2. *Reasonable diligence—oral statements insufficient.* Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under § 226.43(d)(6)(i).

3. *Lack of information and conflicting information—two appraisals required.* If a creditor is unable to demonstrate that the requirement to obtain two appraisals under § 226.43(d)(1) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of § 226.43. *See also* comment 43(d)(6)(ii)–1. For example:

i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to § 226.43(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 226.43, the creditor must either: perform additional diligence to ascertain the seller's acquisition price and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with § 226.43(d). *See also* comment 43(d)(6)(ii)–1.

ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to § 226.43(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 226.43, the creditor must either: (1) Perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or (2) obtain two written appraisals in compliance with § 226.43(d). *See also* comment 43(d)(6)(ii)–1.

43(d)(6)(ii) Inability to determine prior sales date or price—modified requirements for additional appraisal.

1. *Required analysis.* In general, the additional appraisal required under § 226.43(d)(1) should include an analysis of the factors listed in § 226.43(d)(4)(i) through (iii). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in § 226.43(d)(1)(i) or (ii) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under § 226.43(d)(4)(i) through (iii) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under § 226.43(d)(4)(ii) and (iii) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under § 226.43(d)(4)(i) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

43(d)(7) Exemptions from the additional appraisal requirement.

Paragraph 43(d)(7)(iii).

1. *Non-profit entity.* For purposes of § 226.43(d)(7)(iii), a ''non-profit entity'' is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (12 U.S.C. 501(c)(3)).

Paragraph 43(d)(7)(viii).

1. *Bureau table of rural counties.* The Bureau publishes on its Web site a table of rural counties under § 226.43(d)(7)(viii) for each calendar year by the end of the calendar year. *See* Official Staff Interpretations to the Bureau's Regulation Z, comment 35(b)(2)(iv)–1. A property securing an HPML subject to § 226.43 is in a rural county under § 226.43(d)(7)(viii) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of § 226.43(d)(7)(viii) if the county is on the table of rural counties published by the Bureau at the end of 2014.

43(e) Required disclosure.

43(e)(1) In general.

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.

2. *Appraisal independence requirements not affected.* Nothing in the text of the consumer notice required by § 226.43(e)(1) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or restrictions on the use of borrower-ordered appraisals by creditors.

43(f) Copy of appraisals.

43(f)(1) In general.

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

43(f)(2) Timing.

1. *''Provide.''* For purposes of the requirement to provide a copy of the appraisal within a specified time under § 226.43(f)(2), ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.

2. *''Receipt'' of the appraisal.* For appraisals prepared by the creditor's internal appraisal staff, the date of ''receipt'' is the date on which the appraisal is completed.

3. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 226.43. A consumer of a higher-priced mortgage loan subject to § 226.43 may not waive the timing requirement to receive a copy of the appraisal under § 226.43(f)(1).

43(f)(4) No charge for copy of appraisal.

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under § 226.43(f)(1), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

* * * * *

Appendix O—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules

1. *Title commitment report.* The ''title commitment report'' is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. This document is issued by the title insurance company prior to the company's issuance of an actual title insurance policy to the property's transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred

to by different terms, such as a title commitment, title binder, title opinion, or title report.

National Credit Union Administration

Authority and Issuance

For the reasons discussed above, NCUA amends 12 CFR part 722 as follows:

PART 722—APPRAISALS

■ 12. The authority citation for part 722 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 3339. Section 722.3(f) is also issued under 15 U.S.C. 1639h.

■ 13. In § 722.3, add paragraph (f) to read as follows:

§ 722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(f) *Higher-priced mortgage loans.* A credit union may not extend credit to a consumer in the form of a ''higher-priced mortgage loan'' as defined in 12 CFR 1026.35(a)(1), without meeting the requirements of section 129H of the Truth in Lending Act, 15 U.S.C. 1639h, and its implementing regulations in Regulation Z, 12 CFR 1026.35(c).

Bureau of Consumer Financial Protection

Authority and Issuance

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

PART 1026—TRUTH IN LENDING ACT (REGULATION Z)

■ 14. The authority citation for part 1026 continues to read as follows:

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

Subpart C—Closed-End Credit

■ 15. Section 1026.35 is amended by republishing paragraphs (a) introductory text and (a)(1), and adding paragraph (c) as follows:

* * * * *

§ 1026.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

(a) *Definitions.* For purposes of this section:

(1) ''Higher-priced mortgage loan'' means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(i) By 1.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(ii) By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points, for a loan secured by a subordinate lien.

* * * * *

(c) *Appraisals for higher-priced mortgage loans*—(1) *Definitions.* For purposes of this section:

(i) *Certified or licensed appraiser* means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification.

(ii) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(iii) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(iv) *State agency* means a ''State appraiser certifying and licensing agency'' recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(2) *Exemptions.* The requirements in paragraphs (c)(3) through (6) of this section do not apply to the following types of transactions:

(i) A qualified mortgage as defined in 12 CFR 1026.43(e).

(ii) A transaction secured by a new manufactured home.

(iii) A transaction secured by a mobile home, boat, or trailer.

(iv) A transaction to finance the initial construction of a dwelling.

(v) A loan with maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

(vi) A reverse-mortgage transaction subject to 12 CFR 1026.33(a).

(3) *Appraisals required*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

(ii) *Safe harbor.* A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(3)(i) of this section if the creditor:

(A) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;

(B) Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;

(C) Confirms that the elements set forth in appendix N to this part are addressed in the written appraisal; and

(D) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

(4) *Additional appraisal for certain higher-priced mortgage loans*—(i) *In general.* Except as provided in paragraphs (c)(2) and (c)(4)(vii) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(A) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or

(B) The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the

property exceeds the seller's acquisition price by more than 20 percent.

(ii) *Different certified or licensed appraisers.* The two appraisals required under paragraph (c)(4)(i) of this section may not be performed by the same certified or licensed appraiser.

(iii) *Relationship to general appraisal requirements.* If two appraisals must be obtained under paragraph (c)(4)(i) of this section, each appraisal shall meet the requirements of paragraph (c)(3)(i) of this section.

(iv) *Required analysis in the additional appraisal.* One of the two required appraisals must include an analysis of:

(A) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;

(B) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and

(C) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

(v) *No charge for the additional appraisal.* If the creditor must obtain two appraisals under paragraph (c)(4)(i) of this section, the creditor may charge the consumer for only one of the appraisals.

(vi) *Creditor's determination of prior sale date and price*—(A) *Reasonable diligence.* A creditor must obtain two written appraisals under paragraph (c)(4)(i) of this section unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in Appendix O to this part.

(B) *Inability to determine prior sale date or price—modified requirements for additional appraisal.* If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) are present and therefore must obtain two written appraisals in accordance with paragraphs (c)(4)(i) through (v) of this section, one of the two appraisals shall include an analysis of the factors in paragraph (c)(4)(iv) of this section only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

(vii) *Exemptions from the additional appraisal requirement.* The additional appraisal required under paragraph (c)(4)(i) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:

(A) From a local, State or Federal government agency;

(B) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;

(C) From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;

(D) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

(E) From an employer or relocation agency in connection with the relocation of an employee;

(F) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;

(G) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or

(H) Located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A).

(5) *Required disclosure*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.'' Compliance with the disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2), satisfies the requirements of this paragraph.

(ii) *Timing of disclosure.* The disclosure required by paragraph (c)(5)(i) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to paragraph (c) of this section. In the case of a loan that is not a higher-priced mortgage loan subject to paragraph (c) of this section at the time of application, but becomes a higher-priced mortgage loan subject to paragraph (c) of this section after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to paragraph (c) of this section.

(6) *Copy of appraisals*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c)(3) and (c)(4) of this section.

(ii) *Timing.* A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (c)(6)(i) of this section:

(A) No later than three business days prior to consummation of the loan; or

(B) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

(iii) *Form of copy.* Any copy of a written appraisal required by paragraph (c)(6)(i) of this section may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(iv) *No charge for copy of appraisal.* A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (c)(6)(i) of this section.

(7) *Relation to other rules.* The rules in this paragraph (c) were adopted jointly by the Federal Reserve Board (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Bureau. These rules are substantively identical to the Board's and the OCC's higher-priced mortgage loan appraisal rules published separately in 12 CFR 226.43 (for the Board) and in 12 CFR part 34, subpart

G and 12 CFR part 164, subpart B (for the OCC).

* * * * *

■ 16. Appendix N to Part 1026 is added to read as follows:

Appendix N to Part 1026—Higher-Priced Mortgage Loan Appraisal Safe Harbor Review

To qualify for the safe harbor provided in § 1026.35(c)(3)(ii), a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property's neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
6. Provides an opinion of the property's market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

■ 17. Appendix O to Part 1026 is added to read as follows:

Appendix O to Part 1026—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules

A creditor acts with reasonable diligence under § 1026.35(c)(4)(vi)(A) if the creditor bases its determination on information contained in written source documents, such as:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller's acquisition (*i.e.,* the HUD–1 or any successor form).
5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with § 1026.35(c)(3)(i) for the same transaction.
9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
10. A property abstract.

■ 18. In Supplement I to part 1026,

■ A. Under *Section 1026.35—Prohibited Acts or Practices in Connection with Higher-Priced Mortgage Loans,* as amended January 22, 2013 (78 FR 4754):

■ i. Under *35(a) Definitions,* the heading of *Paragraph 35(a)(1)* and paragraphs 1, 2, and 3 are republished.

■ ii. New *35(c) Appraisals* is added.

■ B. New *Appendix O—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules* is added.

The revisions, additions, and removals read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

35(a) Definitions

Paragraph 35(a)(1)

1. *Comparable transaction.* A higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by the specified margin. The table of average prime offer rates published by the Bureau indicates how to identify the comparable transaction.

2. *Rate set.* A transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or ''locked'') before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

3. *Threshold for ''jumbo'' loans.* Section 1026.35(a)(1)(ii) provides a separate threshold for determining whether a transaction is a higher-priced mortgage loan subject to § 1026.35 when the principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac (a ''jumbo'' loan). The Federal Housing Finance Agency (FHFA) establishes and adjusts the maximum principal obligation pursuant to rules under 12 U.S.C. 1454(a)(2) and other provisions of Federal law. Adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a ''jumbo'' loan to which the separate coverage threshold in § 1026.35(a)(1)(ii) applies.

* * * * *

35(c)—Appraisals

35(c)(1) Definitions

35(c)(1)(i) Certified or Licensed Appraiser

1. *USPAP.* The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under § 1026.35(c)(1)(i), the relevant USPAP standards are those found in the edition of USPAP and that are in effect at the time the appraiser signs the appraiser's certification.

2. *Appraiser's certification.* The appraiser's certification refers to the certification that must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2–3.

3. *FIRREA title XI and implementing regulations.* The relevant regulations are those prescribed under section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under § 1026.35(c)(1)(i).

35(c)(2) Exemptions

Paragraph 35(c)(2)(ii)

1. *Secured by new manufactured home.* A transaction secured by a new manufactured home, regardless of whether the transaction is also secured by the land on which it is sited, is not a ''higher-priced mortgage loan'' subject to the appraisal requirements of § 1026.35(c).

Paragraph 35(c)(2)(iii)

1. *Secured by a mobile home.* For purposes of the exemption in § 1026.35(c)(2)(iii), a mobile home does not include a manufactured home, as defined in § 1026.35(c)(1)(ii).

Paragraph 35(c)(2)(iv)

1. *Construction-to-permanent loans.* Section 1026.35(c) does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 1026.35(c) does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of § 1026.35(c). *See* § 1026.35(c)(2). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit (§ 1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See* § 1026.17(c)(6)(ii) and comment 17(c)(6)–2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-to-permanent transaction. Which disclosure option a creditor elects under § 1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to § 1026.35(c). When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable

to the permanent financing to determine coverage under § 1026.35(c). When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with § 1026.35 and appendix D to part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under § 1026.35(c). If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under § 1026.35(c)(2), only the permanent phase is subject to the requirements of § 1026.35(c).

35(c)(3) Appraisals Required

35(c)(3)(i) In General

1. *Written appraisal—electronic transmission.* To satisfy the requirement that the appraisal be ''written,'' a creditor may obtain the appraisal in paper form or via electronic transmission.

35(c)(3)(ii) Safe Harbor.

1. *Safe harbor.* A creditor that satisfies the safe harbor conditions in § 1026.35(c)(3)(ii)(A) through (D) complies with the appraisal requirements of § 1026.35(c)(3)(i). A creditor that does not satisfy the safe harbor conditions in § 1026.35(c)(3)(ii)(A) through (D) does not necessarily violate the appraisal requirements of § 1026.35(c)(3)(i).

2. *Appraiser's certification.* For purposes of § 1026.35(c)(3)(ii), the appraiser's certification refers to the certification specified in item 9 of appendix N. *See also* comment 35(c)(1)(i)–2.

Paragraph 35(c)(3)(ii)(C)

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix N to this part are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.

35(c)(4) Additional Appraisal for Certain Higher-Priced Mortgage Loans

1. *Acquisition.* For purposes of § 1026.35(c)(4), the terms ''acquisition'' and ''acquire'' refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

35(c)(4)(i) In General

1. *Appraisal from a previous transaction.* An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under § 1026.35(c)(4)(i).

2. *90-day, 180-day calculation.* The time periods described in § 1026.35(c)(4)(i)(A) and (B) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.

3. *Date seller acquired the property.* For purposes of § 1026.35(c)(4)(i)(A) and (B), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. *Date of the consumer's agreement to acquire the property.* For the date of the consumer's agreement to acquire the property under § 1026.35(c)(4)(i)(A) and (B), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of § 1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. *Price at which the seller acquired the property.* The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. *Price the consumer is obligated to pay to acquire the property.* The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of § 1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. *See also* comment 35(c)(4)(i)–4.

35(c)(4)(ii) Different Certified or Licensed Appraisers

1. *Independent appraisers.* The requirements that a creditor obtain two separate appraisals under § 1026.35(c)(4)(i), and that each appraisal be conducted by a different licensed or certified appraiser under § 1026.35(c)(4)(ii), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

35(c)(4)(iii) Relationship to General Appraisal Requirements

1. *Safe harbor.* When a creditor is required to obtain an additional appraisal under § 1026(c)(4)(i), the creditor must comply with the requirements of both § 1026.35(c)(3)(i) and § 1026.35(c)(4)(ii) through (v) for that appraisal. The creditor complies with the requirements of § 1026.35(c)(3)(i) for the additional appraisal if the creditor meets the safe harbor conditions in § 1026.35(c)(3)(ii) for that appraisal.

35(c)(4)(iv) Required Analysis in the Additional Appraisal

1. *Determining acquisition dates and prices used in the analysis of the additional appraisal.* For guidance on identifying the date on which the seller acquired the property, see comment 35(c)(4)(i)–3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 35(c)(4)(i)–4. For guidance on identifying the price at which the seller acquired the property, see comment 35(c)(4)(i)–5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 35(c)(4)(i)–6.

35(c)(4)(v) No Charge for Additional Appraisal

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under § 1026.35(c)(4)(i), including by imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

35(c)(4)(vi) Creditor's Determination of Prior Sale Date and Price

35(c)(4)(vi)(A) In General

1. *Estimated sales price.* If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

2. *Reasonable diligence—oral statements insufficient.* Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under § 1026.35(c)(4)(vi)(A).

3. *Lack of information and conflicting information—two appraisals required.* If a creditor is unable to demonstrate that the requirement to obtain two appraisals under § 1026.35(c)(4)(i) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of § 1026.35(c). *See also* comment 35(c)(4)(vi)(B)–1. For example:

i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to § 1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 1026.35(c), the creditor must either: (1) Perform additional diligence to ascertain the seller's acquisition price and, based on this information,

determine whether two written appraisals are required; or (2) obtain two written appraisals in compliance with § 1026.35(c)(4). *See also* comment 35(c)(4)(vi)(B)–1.

ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to § 1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 1026.35(c), the creditor must either: perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with § 1026.35(c)(4). *See also* comment 35(c)(4)(vi)(B)–1.

35(c)(4)(vi)(B) Inability To Determine Prior Sales Date or Price—Modified Requirements for Additional Appraisal

1. *Required analysis.* In general, the additional appraisal required under § 1026.35(c)(4)(i) should include an analysis of the factors listed in § 1026.35(c)(4)(iv)(A) through (C). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in § 1026.35(c)(4)(i)(A) or (B) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under § 1026.35(c)(4)(iv)(A) through (C) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under § 1026.35(c)(4)(iv)(B) and (c)(4)(iv)(C) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under § 1026.35(c)(4)(iv)(A) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

35(c)(4)(vii) Exemptions From the Additional Appraisal Requirement

Paragraph 35(c)(4)(vii)(C)

1. *Non-profit entity.* For purposes of § 1026.35(c)(4)(vii)(C), a ''non-profit entity'' is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

Paragraph 35(c)(4)(vii)(H)

1. *Bureau table of rural counties.* The Bureau publishes on its Web site a table of rural counties under § 1026.35(c)(4)(vii)(H) for each calendar year by the end of that calendar year. *See* comment 35(b)(2)(iv)–1. A property securing an HPML subject to § 1026.35(c) is in a rural county under § 1026.35(c)(4)(vii)(H) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of § 1026.35(c)(4)(vii)(H) if the county is on the table of rural counties published by the Bureau at the end of 2014.

35(c)(5) Required Disclosure

35(c)(5)(i) In General

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.

2. *Appraisal independence requirements not affected.* Nothing in the text of the consumer notice required by § 1026.35(c)(5)(i) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or restrictions on the use of borrower-ordered appraisals by creditors.

35(c)(6) Copy of Appraisals

35(c)(6)(i) In General

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

35(c)(6)(ii) Timing

1. *''Provide.''* For purposes of the requirement to provide a copy of the appraisal within a specified time under § 1026.35(c)(6)(ii), ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.

2. *''Receipt'' of the appraisal.* For appraisals prepared by the creditor's internal appraisal staff, the date of ''receipt'' is the date on which the appraisal is completed.

3. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 1026.35(c). A consumer of a higher-priced mortgage loan subject to § 1026.35(c) may not waive the timing requirement to receive a copy of the appraisal under § 1026.35(c)(6)(i).

35(c)(6)(iv) No Charge for Copy Of Appraisal

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under § 1026.35(c)(6)(i), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

* * * * *

Appendix O—Illustrative Written Source Documents for Higher-Priced Mortgage Loan Appraisal Rules

1. *Title commitment report.* The ''title commitment report'' is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. This document is issued by the title insurance company prior to the company's issuance of an actual title insurance policy to the property's transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred to by different terms, such as a title commitment, title binder, title opinion, or title report.

Federal Housing Finance Agency

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 15 U.S.C. 1639h and 12 U.S.C. 4511(b), 4526, and 4617, the Federal Housing Finance Agency adds Part 1222 to subchapter B of chapter XII of title 12 of the Code of the Federal Regulations as follows:

PART 1222—APPRAISALS

Subpart A—Requirements for Higher-Priced Mortgage Loans

Sec.
1222.1 Purpose and scope.
1222.2 Reservation of authority.

Subparts B to Z—[Reserved]

Authority: 12 U.S.C. 4511(b), 4526, and 4617; 15 U.S.C. 1639h (TILA).

Subpart A—Requirements for Higher-Priced Mortgage Loans

§ 1222.1 Purpose and scope.

This subpart cross-references the requirement that creditors extending

credit in the form of higher-priced mortgage loans comply with Section 129H of the Truth-in-Lending Act (TILA), 15 U.S.C. 1639h, and its implementing regulations in Regulation Z, 12 CFR 1026.35. Neither the Banks nor the Enterprises are subject to Section 129H of TILA or 12 CFR 1026.35. Originators of higher-priced mortgage loans, including Bank members and institutions that sell mortgage loans to the Enterprises, are subject to those provisions. A failure of those institutions to comply with Section 129H of TILA and 12 CFR 1026.35 may limit their ability to sell such loans to the Banks or Enterprises or to pledge such loans to the Banks as collateral, to the extent provided in the parties' agreements.

§ 1222.2 Reservation of authority.

Nothing in this subpart A shall be read to limit the authority of the Director of the Federal Housing Finance Agency to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law. In addition, nothing in this subpart A shall be read to limit the authority of the Director to impose requirements for any purchase of higher-priced mortgage loans by an Enterprise or a Federal Home Loan Bank, or acceptance of higher-priced mortgage loans as collateral to secure advances by a Federal Home Loan Bank.

Subparts B to Z—[Reserved]

Dated: January 18, 2013.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, January 16, 2013.

Robert deV. Frierson,

Secretary of the Board.

By the National Credit Union Administration Board on January 11, 2013.

Mary Rupp,

Secretary of the Board.

Dated: January 18, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

This rule is being adopted by the FDIC jointly with the other agencies as mandated by section 129H of the Truth in Lending Act as added by section 1471 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Dated at Washington, DC, this 15th day of January, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: January 18, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–01809 Filed 2–12–13; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Astragalus lentiginosus var. coachellae (Coachella Valley Milk-Vetch); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0064; 4500030114]

RIN 1018–AX40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch) under the Endangered Species Act of 1973, as amended. In total, approximately 9,603 acres (3,886 hectares) in the Coachella Valley area of Riverside County, California, fall within the boundaries of this critical habitat designation.

DATES: This rule becomes effective on March 15, 2013.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at *http://www.regulations.gov*. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

The coordinates or plot points or both from which the maps included in the regulation are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/carlsbad/GIS/CFWOGIS.html, http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0064, and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). All additional tools or supporting information developed for this critical habitat designation are also available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for *Astragalus lentiginosus* var. *coachellae*. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We listed *Astragalus lentiginosus* var. *coachellae* as an endangered species on October 6, 1998 (63 FR 53596). On August 25, 2011, we published in the **Federal Register** a proposed critical habitat designation for *A. l.* var. *coachellae* (76 FR 53224). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for *Astragalus lentiginosus* var. *coachellae*. Here we are designating approximately 9,603 ac (3,886 ha), in 4 units as critical habitat for the taxon.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designation. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on May 16, 2012 (77 FR 28846), allowing the public to provide comments on our analysis. We considered all comments and information received from the public during the comment period, incorporated the comments as appropriate, and completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We invited three knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. We received responses from two peer reviewers, who generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information received from the public during the comment period.

Previous Federal Actions

The following section summarizes the previous Federal actions since *Astragalus lentiginosus* var. *coachellae* was listed as an endangered species on October 6, 1998 (63 FR 53596); please refer to the final listing rule for a discussion of Federal actions that occurred prior to the taxon's listing.

At the time of listing, we determined that designation of critical habitat was ''not prudent'' (63 FR 53596). On November 15, 2001, the Center for Biological Diversity and the California Native Plant Society filed a lawsuit against the Secretary of the Interior and the Service challenging our not prudent determinations for eight plant taxa, including *Astragalus lentiginosus* var. *coachellae* (*Center for Biological Diversity, et al.* v. *Norton,* case number 01–cv–2101 (S.D. Cal.)). A second lawsuit asserting the same challenge was filed on November 21, 2001, by the Building Industry Legal Defense Foundation (*Building Industry Legal Defense Foundation* v. *Norton,* case number 01–cv–2145 (S.D. Cal.)). On May 9, 2002, all parties agreed to consolidate the suits and remand the critical habitat determinations for the eight plant taxa at issue to the Service for reconsideration. On July 1, 2002, the Court directed us to reconsider our not prudent determination and if we determined that designation was prudent, submit to the **Federal Register** for publication a proposed critical habitat designation for *A. l.* var. *coachellae* by November 30, 2004, and to submit to the **Federal Register** for publication a final rule designating critical habitat by November 30, 2005. The proposed rule to designate critical habitat for *A. l.* var. *coachellae* published in the **Federal Register** on December 14, 2004 (69 FR 74468). The final rule designating critical habitat for *A. l.* var. *coachellae* published in the **Federal Register** on December 14, 2005 (70 FR 74112).

The Center for Biological Diversity filed a lawsuit on January 14, 2009,

claiming the Service failed to designate adequate critical habitat for *Astragalus lentiginosus* var. *coachellae* (*Center for Biological Diversity* v. *Kempthorne,* case number ED–cv–09–0091 VAP (AGRx) (C.D. Cal.)). In a settlement agreement dated November 14, 2009, we agreed to reconsider the critical habitat designation for *A. l.* var. *coachellae*. The settlement required the Service to submit a proposed revised critical habitat designation for *A. l.* var. *coachellae* to the **Federal Register** by August 18, 2011, and submit a final revised critical habitat designation to the **Federal Register** by February 14, 2013. The proposed revised critical habitat designation was delivered to the **Federal Register** on August 17, 2011, and published on August 25, 2011 (76 FR 53224). A notice announcing the availability of the draft economic analysis for the proposed revised critical habitat designation was published in the **Federal Register** on May 16, 2012 (77 FR 28846). This final rule complies with the terms of the settlement agreement.

Background

It is our intent to discuss in this final rule only those topics directly relevant to the revision of critical habitat for *Astragalus lentiginosus* var. *coachellae* under the Act (16 U.S.C. 1531 *et seq.*). For more information on the taxonomy, biology, and ecology of *A. l.* var. *coachellae,* please refer to: the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596); the first rule proposing designation of critical habitat published in the **Federal Register** on December 14, 2004 (69 FR 74468); the subsequent critical habitat final rule published in the **Federal Register** on December 14, 2005 (70 FR 74112); and the recent proposed rule to designate critical habitat published in the **Federal Register** on August 25, 2011 (76 FR 53224). Additionally, more information on the taxon can be found in the *A. l.* var. *coachellae* 5-year review (Service 2009).

Except when referencing statutory language, we refer to *Astragalus lentiginosus* var. *coachellae* as a taxon in this document because it is not a species itself, but rather a variety of the species *Astragalus lentiginosus.* Information on the associated draft economic analysis for the proposed rule to designate revised critical habitat was published in the **Federal Register** on May 16, 2012 (77 FR 28846).

To ensure clarity of habitat discussions in the remainder of this rule, in the following paragraphs we have included a description of the sand transport system that sustains the sand formations that form the basis of *A. l.* var. *coachellae* habitat in the Coachella Valley.

Sand Transport System

Most of the sand in the northern Coachella Valley is derived from drainages within the Indio Hills, the San Bernardino Mountains, the Little San Bernardino Mountains, and the San Jacinto Mountains. This sand is moved into and through the valley by the sand transport system. The sand transport system consists of two main parts: (1) The fluvial (water) portion (headwaters, tributaries, and the stream channels within the various drainages surrounding Coachella Valley) and (2) the aeolian (wind) portion (predominantly westerly and northwesterly winds moving through the valley) (Griffiths *et al.* 2002, pp. 5–7). The fluvial and aeolian portions of the systems are capable of moving sand until the velocity of the water or wind decreases to a point that sand is deposited.

Fluvial Portion of the Sand Transport System

The water that forms the basis of the fluvial portion of the sand transport system in the Coachella Valley enters the system as precipitation during storm events (Griffiths *et al.* 2002, p. 5). These storm events cause flash flooding, which facilitates the erosion that generates sediment, and moves that sediment downstream in ephemeral streams and washes and eventually into the aeolian transport corridor. Most flooding events only transport small amounts of sediment to the valley floor; flooding events large enough to move large amounts of sediment are very infrequent (for example, the last large flooding event on the Whitewater River occurred in 1938) (Griffiths *et al.* 2002, p. 5).

Fluvial sand transport areas are stream channels that convey sediment downstream to fluvial sand depositional areas. In the portions of the Coachella Valley containing Units 1, 2, and 3, very little erosion of parent rock or sediment deposits takes place in fluvial transport areas compared to areas upstream where the sediment is generated. In Unit 4, sediment is generated in the same area where fluvial sand transport occurs. Fluvial transport channels include portions of the lower reaches of San Gorgonio River and Snow Creek (Unit 1), Whitewater River (Unit 2), Mission Creek and Morongo Wash (Unit 3), and unnamed channels through the alluvial valley floor deposits (relatively flat areas (< 10 percent slope)) at the base of the Indio Hills (Unit 4). Fluvial sand transport areas do not provide habitat for *Astragalus lentiginosus* var. *coachellae* and are not considered to be within the geographical area occupied by the taxon at the time of listing.

Fluvial sand depositional areas are broad, flat, depositional plains or channel terraces where sediment carried by fluvial sand transport channels is deposited (Griffiths *et al.* 2002, p. 5). During larger flood events, sediment can be deposited on bajada (large, coalescing alluvial fans) surfaces as floodplain deposits. There are four main fluvial sand depositional areas in the Coachella Valley: (1) In the Snow Creek/Windy Point area, which receives sediment from the San Gorgonio River and Snow Creek (Unit 1); (2) in the Whitewater Floodplain area, which receives sediment from the Whitewater River (Unit 2); (3) in the Willow Hole area, which receives sediment from Mission Creek and Morongo Wash (Unit 3); and (4) in the Thousand Palms area, which receives sediment from washes that move sediment from the alluvial deposits at the base of the Indio Hills (Unit 4). The fluvial sand depositional areas associated with Units 1, 2, and 3 do provide habitat for *Astragalus lentiginosus* var. *coachellae,* are currently occupied, and were within the geographical area occupied by the taxon at the time of listing. The fluvial sand depositional areas associated with Unit 4 are not known to provide habitat for the taxon, and are not considered to be within the geographical area occupied by the taxon at the time of listing.

Aeolian Portion of the Sand Transport System

The aeolian portion of the sand transport system begins where the fluvial portion of the system ends. Northerly and northwesterly winds pick up sand-sized grains of sediment accumulated in fluvial sand depositional areas, and carry them south/southeast through the valley and into aeolian depositional areas where they form sand fields and dunes (Griffiths *et al.* 2002, p. 7).

Aeolian sand source areas are the portions of the fluvial depositional areas that are subject to wind erosion. Winds erode these sediment accumulations and carry sand across aeolian sand transport areas. Between flooding events, which replenish the sediment in fluvial sand depositional areas, sand available for aeolian transport can be depleted by wind erosion. Aeolian sand source areas provide habitat for *Astragalus lentiginosus* var. *coachellae,* are currently occupied, and were within the geographical area occupied by the taxon at the time of listing.

Sand eroded from the aeolian sand source areas is blown into and across the aeolian sand transport areas. Sand may accumulate in aeolian transport areas when ample sand is available in upwind source areas; conversely, aeolian transport areas may be depleted of sand when sand is lacking upwind. Aeolian sand transport areas provide habitat for *Astragalus lentiginosus* var. *coachellae,* are currently occupied, and were within the geographical area occupied by the taxon at the time of listing.

Sand carried by wind through the aeolian sand transport areas is deposited when the velocity of the wind decreases sufficiently. This occurs mainly where wind is slowed by vegetation (for example, honey mesquite in the Willow Hole area), other objects, or geological features. In general, sand formations (for example, sand dunes and sand fields) persist in aeolian sand depositional areas, whereas sand accumulations in transport areas are more ephemeral. Aeolian sand depositional areas provide habitat for *Astragalus lentiginosus* var. *coachellae,* and support the highest numbers of the taxon within the geographical area occupied by the taxon currently and at the time of listing.

The fluvial and aeolian processes discussed above have been disrupted in many areas by development, alteration of stream flow, and the proliferation of nonnative plants. These threats to the persistence of *Astragalus lentiginosus* var. *coachellae* habitat are discussed further in the *Special Management Considerations or Protection* section below.

The sandy substrates suitable for *Astragalus lentiginosus* var. *coachellae* are dynamic in terms of spatial mobility and tendency to change back and forth from active to stabilized (Lancaster 1995, p. 231). This has significant consequences for *A. l.* var. *coachellae* because the plant's population densities differ on different types of sandy substrates, and the dynamics of the fluvial and aeolian sand transport processes create the variety of substrate types that support occurrences of the taxon.

Dynamics of sandy substrates in the Coachella Valley are controlled by two main factors: (1) The supply of sand-sized sediment released, transported, and deposited by the fluvial system (water-transported); and (2) the rate of aeolian (windblown) transport (Griffiths *et al.* 2002, pp. 4–8). The latter is affected primarily by wind fetch (the length of unobstructed area exposed to the wind).

As discussed above, most of the suitable sandy habitats in the Coachella Valley are generated from several drainage basins in the San Bernardino, Little San Bernardino, and San Jacinto Mountains and the Indio Hills (Lancaster *et al.* 1993, pp. i–ii; Griffiths *et al.* 2002, p. 10). Sediment is eroded and washed from hill slopes and channels in the local hills and alluvial sand deposits in the Thousand Palms area (Unit 4), and is transported downstream in stream channels and within alluvial fans during infrequent flood events (Lancaster *et al.* 1993, p. 28; Griffiths *et al.* 2002, p. 7). Fluvial sand transport is the dominant mechanism that moves sediment into fluvial sand depositional areas in the Coachella Valley (Griffiths *et al.* 2002, p. 7). The largest sand depositional area in the Coachella Valley is in the Whitewater River floodplain, northwest of the City of Palm Springs (Griffiths *et al.* 2002, p. 5).

The San Gorgonio Pass is between the two highest peaks in southern California: San Gorgonio Mountain (11,510 feet (ft) (3,508 meters (m))) to the north and San Jacinto Mountain (10,837 ft (3,303 m)) to the south. Westerly winds funneling through San Gorgonio Pass are the dominant mechanism by which aeolian sands are transported from bajadas and fluvial sand depositional areas to aeolian sand deposits in the Coachella Valley (Sharp and Saunders 1978, p. 12; Griffiths *et al.* 2002, p. 1). *Astragalus lentiginosus* var. *coachellae* is associated with various types of sand formations that are formed by these aeolian sand deposits (Sanders and Thomas Olsen Associates 1996, p. 3).

Summary of Changes From Proposed Rule

In the notice announcing the availability of the draft economic analysis for public review (77 FR 28846, May 16, 2012), we made a correction to the proposed revised critical habitat for *Astragalus lentiginosus* var. *coachellae* as identified and described in the preamble to the proposed rule published in the **Federal Register** on August 25, 2011 (76 FR 53224). The correction was to the description of Unit 1 (76 FR 53240). We proposed 316 acres (ac) (128 hectares (ha)) of tribal land (Morongo Band of Mission Indians) and 1,791 ac (725 ha) of private land as critical habitat in Unit 1. Of this area, we characterized 156 ac (63 ha) of tribal land and 1 ac (0.4 ha) of private land as being covered under the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP), due to an incorrect interpretation of GIS data. These lands are within the boundaries of the Western Riverside County MSHCP, but they are inholdings (that is, they are not covered by or subject to the provisions of the Western Riverside County MSHCP or any other habitat conservation plan). All other acreages reported in the proposed rule are correct to the best of our knowledge, and the boundaries of the proposed revised critical habitat remain the same as described in the proposed rule. No part of the proposed critical habitat for *A. l.* var. *coachellae* is covered by the Western Riverside County MSHCP.

Since publication of the proposed revised critical habitat rule for *Astragalus lentiginosus* var. *coachellae* in the **Federal Register** on August 25, 2011 (76 FR 53224), we have received new GIS parcel data describing land ownership in the Coachella Valley. Because we used this new data to generate acreages for the final rule, acreages in the final rule may not match proposed critical habitat acreages for all land ownership categories (see Table 1). The new data also allowed us to remove roads from the acreages calculated for this final rule (critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located). The acreage of lands designated as critical habitat and lands excluded from the critical habitat designation (please see the Exclusions section for a discussion of the lands excluded from the designation under section 4(b)(2) of the Act) still sum to the total acreage of lands proposed as critical habitat, minus the area occupied by roads. A total of 255 ac (103 ha) of roads have been removed from this designation.

Critical Habitat

Background

Critical habitat is defined in section 3(5)(A) of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and

the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement a reasonable and prudent alternative to avoid destruction or adverse modification of critical habitat.

Under section 3(5)(A)(i) of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under section 3(5)(A)(ii) of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

The geographical area occupied by *Astragalus lentiginosus* var. *coachellae* at the time it was listed (1998) that contains the physical or biological features essential to the conservation of the species that may require special management considerations or protection includes ''the Coachella Valley between [the cities of] Cabazon and Indio'' (63 FR 53598). We are designating these areas under section 3(5)(A)(i) of the Act's definition of critical habitat. At the time of listing, the fluvial sand transport areas were not occupied (nor are they occupied today); however, we have identified fluvial sand transport areas as essential for the conservation of *A. l.* var. *coachellae* under section 3(5)(A)(ii) of the Act's definition of critical habitat, *i.e.,*''[s]pecific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.''

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) prohibitions described in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations

at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential to *Astragalus lentiginosus* var. *coachellae* from studies of this taxon's habitat, ecology, and life history as described in the Critical Habitat section of the proposed critical habitat rule published in the **Federal Register** on August 25, 2011 (76 FR 53224), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the 5-year review for *A. l.* var. *coachellae* signed on September 1, 2009 (Service 2009). We have determined that *A. l.* var. *coachellae* requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Astragalus lentiginosus var. *coachellae* has a limited geographical and ecological distribution. Within its limited range, *A. l.* var. *coachellae* requires space for the essential geomorphological processes on which it depends, including natural fluvial (water) and aeolian (wind) transport and deposition of sandy substrates (see the *Habitat* section of the proposed critical habitat rule for *A. l.* var. *coachellae* for more detailed discussion of fluvial and aeolian sand transport in Coachella Valley (76 FR 53226)). Protection of aeolian and fluvial processes is crucial to maintain habitat for *A. l.* var. *coachellae.* These processes are responsible for transporting and depositing sand that is the foundation of habitat for *A. l.* var. *coachellae.* Disruption, redirection, or curtailment of these processes can result in a lack of adequate amounts of sand to produce the different formations that support habitat (for example, active dunes and sand fields). Protecting aeolian sand transport corridors between *A. l.* var. *coachellae* occurrences is also important for the dispersal of the species' windblown fruits into temporally unoccupied habitat to reestablish reproductive occurrences (metapopulation structure). *Astragalus lentiginosus* var. *coachellae* can produce fruit and viable seed at very low rates without the aid of insect pollinators, but is dependent upon insect pollinators to generate the amount of seed typically produced by individuals of the taxon (Meinke *et al.* 2007, p. 37; also see comment number 7 in the Summary of Comments and Recommendations section below). Protecting aeolian sand transport corridors also provides space for pollinator movement between occurrences, which is important for the long-term maintenance of occurrences. Therefore, based on the information above, we identify areas supporting aeolian sand transport corridors that provide space for seed dispersal and pollinator movement, to be physical or biological features essential to the conservation of this taxon.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Astragalus lentiginosus var. *coachellae* is primarily found on various types of sand formations including active sand dunes, stabilized or partially stabilized dunes, active sand fields, stabilized sand fields, shielded sand dunes and fields, ephemeral sand fields, and alluvial sand deposits on floodplain terraces of active washes. Each of these sand deposit formations provides habitat for *A. l.* var. *coachellae* to varying degrees (see *Habitat* section of the proposed critical habitat rule for *A. l.* var. *coachellae* for further discussion of sand formations that support the taxon (76 FR 53226)). The taxon also requires moving water and air to transport sand from areas where the sand originates to occupied habitat areas (depositional areas) (precipitation occurs mostly during large winter storms and intense summer thunderstorms (Griffiths *et al.* 2002, p. 5)). *Astragalus lentiginosus* var. *coachellae* can be found in abundance on shielded sand fields, and the *A. l.* var. *coachellae* plants in these areas are important for the conservation of the taxon. However, we do not consider shielded habitat to contain the physical or biological features essential to the conservation of the taxon because these areas are permanently cut off from the sand transport system. Shielded areas, although they currently contain sand formations, will eventually lose these formations as the winds remove sand over time. Therefore, based on the information above, we identify the other above-mentioned sand formations (active sand dunes, stabilized or partially stabilized dunes, active sand fields, stabilized sand fields, ephemeral sand fields, and alluvial sand deposits on floodplain terraces of active washes) to be a physical or biological feature essential to the conservation of this taxon.

The specific physiological and soil nutritional needs of *Astragalus lentiginosus* var. *coachellae* are not known at this time. The taxon shows variation in productivity and life-history patterns that appear to coincide with local variations in precipitation (wetter years result in higher levels of seed germination (for example, Barrows 1987, p. 2)) and variations across its range (plants in the northwestern portion of the range where rainfall is higher are more likely to grow larger and survive into their second year or longer (Meinke *et al.* 2007, p. 25)). However, the specific optimal soil moisture range for the taxon is unknown.

Additionally, the taxon does not grow in some areas that appear to contain suitable habitat. For example, *Astragalus lentiginosus* var. *coachellae* grows on some portions of the alluvial sand deposits on floodplain terraces of Morongo Wash, but not others, and it does not grow in the bed of the wash when the bed is dry even though the bed contains sandy substrates (J. Avery, USFWS Biologist, pers. obs. 2004–2009). These apparent inconsistencies may be due to microsite differences (such as nutrient availability, soil microflora or microfauna, soil texture, or moisture). Research is needed to determine the specific nutritional and physiological requirements of *A. l.* var. *coachellae.*

Sites for Reproduction

Astragalus lentiginosus var. *coachellae* plants, like most plants, do not require areas for breeding or reproduction other than the areas they occupy and any area necessary for pollinators and seed dispersal. Reproduction sites accommodate all phases of the plant's life history. Seeds likely require certain soil conditions to germinate (for example, moisture and nutrient levels within a certain range or close proximity to the soil surface), but as discussed above, we do not yet know what those requirements are. In addition, wind is important for the dispersal of the windblown fruits into

temporally unoccupied habitat (metapopulation structure) of *A. l.* var. *coachellae.*

The primary visitors of *Astragalus lentiginosus* var. *coachellae* appear to be nonnative honeybees (*Apis mellifera*) (Meinke *et al.* 2007, p. 36). These bees appear to be flexible in their choice of nesting sites. For example, bee nests were found in discarded tires, in *Tamarix* spp. trees, and under a bridge near *A. l.* var. *coachellae* occurrences (Meinke *et al.* 2007, p. 36).

Native solitary bees, which may be the natural pollinators of *Astragalus lentiginosus* var. *coachellae,* utilize several plant species as pollen and nectar sources (Karron 1987, p. 188). Maintaining adequate populations of these bees within or near *A. l.* var. *coachellae* occurrences, as well as between *A. l.* var. *coachellae* occurrences, likely depends on the presence of a variety of native plants in sufficient numbers. We do not know, however, why native bees have not yet been observed pollinating *A. l.* var. *coachellae.* Until specific pollinators for *A. l.* var. *coachellae* are identified, we are unable to consider protection of those pollinators' specific habitat explicitly via this critical habitat designation. Therefore, based on the information above, we identify aeolian sand transport corridors as providing space needed for pollen and seed dispersal and pollinator movement to be a physical or biological feature essential to the conservation of this taxon.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Taxon

Astragalus lentiginosus var. *coachellae* is strongly associated with active, stabilized, ephemeral, and shielded sandy substrates in the Coachella Valley (Sanders and Thomas Olsen Associates 1996, p. 3; Barrows and Allen 2007, p. 323). This taxon is primarily found on loose aeolian (wind transported) or fluvial (water transported) sands that form dunes or sand fields and along margins of sandy washes (Sanders and Thomas Olsen Associates 1996, p. 3). Please see the Background section above for a description of the sand transport system.

In order to maintain adequate replenishment of sands into aeolian sand depositional areas, it is important that sand-transport corridors between fluvial and aeolian sand depositional areas remain unobstructed for wind passage. The strong wind energy in this region can also erode sands from wash margins and suitable *A. l.* var. *coachellae* habitat, temporally shifting *A. l.* var. *coachellae* habitat into other areas, and thereby allowing the taxon to be dispersed and to colonize new areas or recolonize previously occupied areas. As a result, it is also necessary to protect sufficient space to allow for these dynamic aeolian sand deposits to shift in their distribution. Therefore, based on the information above, we identify the fluvial and aeolian portions of the sand transport system that provide habitat protected from disturbance or representative of the historical, geographical, and ecological distributions of the taxon to be a physical or biological feature essential to the conservation of this taxon.

Primary Constituent Element for Astragalus lentiginosus var. coachellae

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* within the geographical area occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the taxon's life-history processes, we determine that the primary constituent element specific to *Astragalus lentiginosus* var. *coachellae* is:

Sand formations associated with the sand transport system in Coachella Valley, California. These sand formations have the following features:

(a) They are active sand dunes, stabilized or partially stabilized sand dunes, active or stabilized sand fields (including hummocks forming on leeward sides of shrubs), ephemeral sand fields or dunes, and fluvial sand deposits on floodplain terraces of active washes.

(b) They are found within the fluvial sand depositional areas, and the aeolian sand source, transport, and depositional areas of the sand transport system.

(c) They comprise sand originating in the hills surrounding Coachella Valley and alluvial deposits at the base of the Indio Hills, which is moved into the valley by water (fluvial transport) and through the valley by wind (aeolian transport).

We consider the fluvial sand depositional areas and the aeolian sand source, transport, and depositional areas of the sand transport system described in (b) to be within the geographical area occupied by *Astragalus lentiginosus* var. *coachellae* at the time the taxon was listed, whereas the fluvial sand transport areas referenced in (c) are considered to be outside the geographical area occupied by the taxon at the time of listing or currently. The sand formations provide substrate components and conditions suitable for growth. The aeolian sand transport corridor also provides space for seed dispersal and pollinator movement needed to maintain sand movement and genetic diversity of the taxon.

With this designation of critical habitat, we identify the physical or biological features essential to the conservation of the taxon, focusing on the identification of the features' primary constituent element sufficient to support the life-history processes of the taxon.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. The features essential to the conservation of this taxon may require special management considerations or protection to reduce the following threats: direct and indirect effects of development (urban and recreational), nonnative plant species, unauthorized off-highway vehicle (OHV) impacts, mining and other activities or structures that may cause alteration of stream flow, and groundwater pumping.

Development

The Coachella Valley continues to attract increasing numbers of people and associated urban development. Urban and recreational development can impact *Astragalus lentiginosus* var. *coachellae* directly by converting suitable, often-occupied, habitat to structures, infrastructure, landscaping, or other nonnatural ground cover that does not support the growth of the taxon. Structures and landscaping can also impact *A. l.* var. *coachellae* habitat indirectly by altering local aeolian and fluvial regimes. Such alterations can result in degraded *A. l.* var. *coachellae* habitat downstream or downwind of developed areas by inhibiting the movement of loose, unconsolidated sands needed for the formation and maintenance of suitable habitat vital to the growth and reproduction of the taxon. If the sand transport system is

altered, sand cannot be moved through the valley effectively to replace sand lost from the system downstream/downwind as a result of ongoing fluvial and aeolian processes.

Special management considerations or protection of the essential physical or biological features within critical habitat areas are needed to address the threats posed to *Astragalus lentiginosus* var. *coachellae* habitat by urban and recreational development. Management actions that could ameliorate these threats include, but are not limited to: Protection of lands that support suitable habitat and associated sand transport systems and siting future development such that disruption of fluvial and aeolian sand transport processes is minimized and deposition areas are preserved. These management actions will protect the essential physical or biological features for the taxon by decreasing the direct loss of habitat to development and by helping to maintain the sand transport system and sand deposition areas that together provide the sand formations that are necessary components of *A. l.* var. *coachellae* habitat.

Preserving large areas of suitable habitat with intact wind and depositional regimes and preserving areas vital to the maintenance of the sand transport system are important to maintain existing habitat and prevent further habitat loss. Preserving a variety of different habitat types (for example, sand dunes, sand fields) throughout the range of the taxon should help maintain the genetic and demographic diversity (individuals in different age classes at any given time) of *Astragalus lentiginosus* var. *coachellae.*

Designing and orienting structures, infrastructure, and landscaping such that they minimize the blockage of sand movement will also help to prevent the disruption of the sand transport system and further habitat loss. For example, orienting a building so that the face of the building is at an oblique angle with the prevailing wind direction may allow more sand to move around the building than would occur if the face of the building were at a right angle with the direction of windblown sand movement. Planning development such that structures and landscaping are located outside of areas vital to sand transport will also help lessen the degradation of *Astragalus lentiginosus* var. *coachellae* habitat.

Nonnative Plants

Invasive nonnative plant species, such as *Brassica tournefortii* (Saharan mustard), *Schismus barbatus* (Mediterranean grass), and *Salsola tragus* (Russian-thistle), can impact *Astragalus lentiginosus* var. *coachellae* habitat by stabilizing loose sediments and reducing transport of sediment to downwind areas, thus making habitat unsuitable for *A. l.* var. *coachellae.* Additionally, *Tamarix* spp. (salt cedar) can create wind breaks in the aeolian transport system and is used to decrease the movement of sand, for example, onto railroad tracks and infrastructure right-of-ways in the Coachella Valley. Dense cover of nonnative taxa may also impede the natural wind dispersal of the mature fruits of *A. l.* var. *coachellae.* This will curtail natural reproduction within a given site and natural dispersal to repopulate temporally unoccupied sites.

Management activities that could ameliorate these threats include, but are not limited to: Active removal of nonnative plant species and targeted herbicide application (provided herbicides can be shown not to negatively impact *Astragalus lentiginosus* var. *coachellae* plants or seeds). These management activities will protect the essential physical or biological features for the taxon by helping to control nonnative plants, which can degrade *Astragalus lentiginosus* var. *coachellae* habitat.

Unauthorized Off-Highway Vehicle (OHV) Impacts

Unauthorized OHV use may impact *Astragalus lentiginosus* var. *coachellae* habitat by making substrate conditions unsuitable for growth through the alteration of the sand transport system, changes in plant community composition, and disruption of the substrate, which can cause soils to lose moisture and may also impact soil microflora or microfauna (USFWS 2008, p. 8766). The native plant community associated with *A. l.* var. *coachellae* habitat allows for sand movement and does not inhibit dispersal. Disturbance from OHV use can affect the plant composition of the native plant community. Management activities that could ameliorate the threat of unauthorized OHV use include fencing and signage of habitat areas to assist in educating the public and engaging local authorities to improve the enforcement of laws prohibiting OHV unauthorized use. Control of unauthorized OHV use in habitat occupied by *A. l.* var. *coachellae* has recently improved through the efforts of a local law enforcement task force in habitat areas including lands managed by the Bureau of Land Management (BLM) in the Willow Hole (depositional area in Unit 3) and Snow Creek (depositional area in Unit 1) areas, although OHV use remains on many privately owned lands.

Alteration of Stream Flow

The construction and operation of water percolation ponds, sand and gravel mines, and, to a lesser degree, dikes and debris dams can negatively impact *Astragalus lentiginosus* var. *coachellae* habitat if they prevent the fluvial transport of sand to habitat areas through diversion, channelization, or damming (Griffiths *et al.* 2002, pp. 13, 23). For example, the percolation ponds constructed on BLM and Coachella Valley Water District lands in the Whitewater River floodplain have substantially altered the transport of sand to habitat areas downstream and downwind, resulting in the severe degradation of sand and loss of *A. l.* var. *coachellae* habitat in these areas (Griffiths *et al.* 2002, pp. 6, 42).

Management activities that could ameliorate the threats posed to *Astragalus lentiginosus* var. *coachellae* habitat by alteration of stream flow include, but are not limited to: Working with concerned parties to find and implement alternatives that allow for the removal or reconfiguration of existing barriers to fluvial sand transport, restoring sand transport to a more natural state, and working with concerned parties to design and implement future projects to maximize conservation/restoration of natural sand transport. These management activities will protect the essential physical or biological features for the taxon by helping to maintain the sand transport system that provides the sand that creates the sand formations that form the basis of *A. l.* var. *coachellae* habitat.

Groundwater Pumping

Hummocks (local accumulations of sand that form when sand accumulates around, and is held in place by, shrubs or clumps of vegetation) formed by *Prosopis* spp. (mesquite, which has deep tap roots to reach groundwater, and is thus adversely impacted when the groundwater table is lowered beyond the reach of its roots) and other shrubs contribute to the creation and stabilization of sand dunes and sand fields by anchoring dunes and making them less vulnerable to wind erosion. Windblown sand accumulates in areas where wind speed is reduced (by topographical features, rocks, shrubs, or other objects) near the ground (Fryberger and Ahlbrandt 1979, p. 440). *Prosopis glandulosa* var. *torreyana* (honey mesquite) is the native mesquite in western Riverside County. The shrubs in the hummock help to stabilize and support sand deposits around the

hummock, which support *Astragalus lentiginosus* var. *coachellae* occurrences and its sand dune and field habitat. These shrubs, unlike nonnative plants used as windbreaks as discussed above, do not degrade *A. l.* var. *coachellae* habitat by substantially blocking movement of sand to habitat areas downwind. The mesquite shrubs in the Banning Fault/Willow Hole area are senescent and appear to be dying, likely due to ongoing artificial lowering of groundwater levels in the subbasin to provide water for human use (Mission Springs Water District 2008, p. 4–97). Similar mesquite hummocks that existed historically have already been lost in and near the Thousand Palms Reserve (in the Thousand Palms Conservation Area), likely due to groundwater withdrawals (based on water well log data, field observation, and aerial photos) (J. Avery, pers. obs. 2006). Loss of the anchoring mesquite shrubs will lead to the loss of the associated hummocks over time by the erosion of sand deposits, therefore affecting *A. l.* var. *coachellae* habitat created or maintained by the trapping of sand.

Management activities that could ameliorate the threats posed to *Astragalus lentiginosus* var. *coachellae* habitat by groundwater pumping include, but are not limited to: Subsurface irrigation of existing mesquite plants, and the planting, restoring, and irrigating of mesquite where needed; and removal of extensive tamarisk, which can compete with *A. l.* var. *coachellae* for groundwater, along railroad rights-of-way, water courses, oases, etc. These management activities will protect the essential physical or biological features for *A. l.* var. *coachellae* by helping to maintain much of the extant mesquite hummocks within the range of the taxon and by restoring an undetermined acreage of historical mesquite hummocks that maintain (or will maintain) portions of *A. l.* var. *coachellae* habitat.

In summary, threats to *Astragalus lentiginosus* var. *coachellae* habitat include urban and recreational development, nonnative plant species, OHV impacts, alteration of stream flow, and groundwater pumping. We find that the areas designated as critical habitat within the geographical area occupied by the taxon at the time of listing contain the physical or biological features essential to the conservation of *A. l.* var. *coachellae* and that these features may require special management considerations or protection. Special management considerations or protection may be required to eliminate, or reduce to a negligible level, the threats affecting each unit or subunit and to preserve and maintain the essential features that the critical habitat units and subunits provide to *A. l.* var. *coachellae.* Additional discussions of threats facing individual sites are provided in the individual unit descriptions in the Critical Habitat Designation section below.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We relied on information in articles in peer-reviewed journals, the Coachella Valley MSHCP/NCCP, survey reports and other unpublished materials, and expert opinion or personal knowledge. We also used the model developed by the Coachella Valley Mountains Conservancy (CVMC) to help identify *Astragalus lentiginosus* var. *coachellae* habitat (CVMC 2004). Finally, we used information from the proposed (69 FR 74468; December 14, 2004) and final (70 FR 74112; December 14, 2005) critical habitat rules, the current 5-year status review (Service 2009), the proposed revised critical habitat rule (76 FR 53224; August 25, 2011), and other information in our files.

We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 1998. We also are designating specific areas outside the geographical area occupied by *A. l.* var. *coachellae* at the time of listing, because we have determined that such areas are essential for the conservation of the taxon. These areas support sand transport processes that are vital to maintaining suitable habitat, and therefore are essential for the conservation of the taxon.

Our use of a habitat model to help identify *Astragalus lentiginosus* var. *coachellae* habitat was supported by a peer reviewer who stated,

> ''Because *A. l.* var. *coachellae* is reliant on specialized, dynamic, habitat where not only the habitat must be preserved but the processes which create the habitat must be preserved[,] prediction of this habitat may be easier than documenting it. Because much of the habitat which is currently occupied by *A. l.* var. *coachellae* may only be occupied by seed in the soil seed bank and not [by an] easily identifiable vegetative form[,] the predictive power of a model is similarly important.'' (Knaus, 2011, p. 1)

Suitable habitat may be occupied by the taxon even if no plants appear above-ground for several years. *Astragalus lentiginosus* var. *coachellae* populations survive seasonal and annual drought periods through dormant seeds in the soil (seed bank) as well as root crowns. Consequently, the number of standing plants at any given time is only a limited indication of population size (Meinke *et al.* 2007, p. 39). It is not known how long *A. l.* var. *coachellae* seeds remain viable, but studies on *A. l.* var. *micans* demonstrate that buried seeds may remain viable for at least 8 years (Pavlik and Barbour 1988, p. 233). A study including *Astragalus lentiginosus* var. *salinus* found that more than 94 percent of seeds remained viable after being buried in the soil for 6 years (Ralphs and Cronin 1987, p. 794). Therefore, we also considered areas to be occupied where suitable habitat did not contain aboveground individuals, but likely contain seed banks and dormant root crowns of *A. l.* var. *coachellae*.

We also determined which areas outside the geographical area occupied by the taxon at the time of listing that provide for the fluvial transport of sand from areas where sediment is generated to fluvial depositional areas occupied by *Astragalus lentiginosus* var. *coachellae* are essential for the conservation of *A. l.* var. *coachellae* because they maintain *A. l.* var. *coachellae* habitat (see steps 1, 2, and 3 under Areas Outside the Geographical Area Occupied at the Time of Listing section below).

We defined the boundaries of each unit using the steps outlined below:

Areas Within the Geographical Area Occupied at the Time of Listing

(1) Potential suitable habitat for *Astragalus lentiginosus* var. *coachellae* was first identified using areas included in the Coachella Valley Mountains Conservancy (CVMC) species distribution model for the taxon (CVMC 2004). The CVMC model was developed using survey data for *A. l.* var. *coachellae* (Bureau of Land Management, unpublished data 2001), habitat variables, and expert opinion, and was created to assist in the design of preserves and to evaluate the potential benefits of the (then) proposed Coachella Valley MSHCP/NCCP for the plant (CVMC 2004). Environmental variables associated with *A. l.* var. *coachellae* occurrence locations were identified, and maps containing those

variables were combined with Geographic Information Systems (GIS) land use and habitat data to create the model. Eight types of habitats were used in the model: (1) Margins of active dunes, (2) active shielded desert dunes, (3) stabilized desert dunes, (4) stabilized sand fields, (5) stabilized shielded sand fields, (6) ephemeral sand fields, (7) active sand fields, and (8) mesquite hummocks. The habitat types used to create the model represented conditions that result from the dynamic process of sand movement in the Coachella Valley floor; these habitat types are found in fluvial sand depositional areas and aeolian sand source, transport, and depositional areas (see *Habitat* section above for a detailed discussion of these habitat types). During our analysis for the 2005 critical habitat designation for *A. l.* var. *coachellae,* we reviewed the validity of the environmental variables used to create the model with occurrence data and information about the plant's ecology. We found documentation of *A. l.* var. *coachellae* occurrences in all of the natural communities used to create the model, and concluded that the model was reasonably capable of identifying suitable habitat for *A. l.* var. *coachellae*. We mapped the modeled habitat using GIS software, and refined the map to include only areas that we estimate contain the physical or biological features essential to the conservation of the taxon.

(2) We analyzed lands covered by the Coachella Valley MSHCP/NCCP, and determined that *Astragalus lentiginosus* var. *coachellae* habitat within the plan's Conservation Areas sufficiently provides for the conservation of the taxon within areas covered by the Coachella Valley MSHCP/NCCP (Conservation Areas are a group of specific areas in which the bulk of the habitat conservation mandated by the HCP is to take place). We have determined that the modeled *A. l.* var. *coachellae* habitat outside of the Conservation Areas does not contain the physical or biological features essential to the conservation of the taxon because these areas exist as small, disjunct patches, other larger areas where sand transport has been blocked, or they do not contain documented occurrences of the taxon.

The modeled *Astragalus lentiginosus* var. *coachellae* habitat areas that are covered by the Coachella Valley MSHCP/NCCP and are within the Conservation Areas are connected to the fluvial portion of the sand transport system. The PCE is found in these modeled habitat areas (fluvial sand transport within Conservation Areas is discussed in Areas Outside the Geographical Area Occupied at the Time of Listing section below). Modeled *A. l.* var. *coachellae* habitat areas that are covered by the Coachella Valley MSHCP/NCCP but are outside of the Conservation Areas may contain the PCE, but for reasons discussed above, we do not consider these areas to meet the definition of critical habitat for *A. l.* var. *coachellae*. Therefore, in areas covered by the Coachella Valley MSHCP/NCCP, we confined the critical habitat designation to lands within the Conservation Areas.

(3) We added areas not covered under the Coachella Valley MSHCP/NCCP, but that have been determined by biologists familiar with the taxon, its habitat, and its distribution, to contain the physical or biological features essential to the conservation of the taxon (see the 2011 proposed critical habitat rule (76 FR 53224 (August 25, 2011)) for further discussion regarding these areas). The biologists used aerial map coverages, Service GIS data, and personal knowledge to determine these areas.

Areas Outside the Geographical Area Occupied at the Time of Listing

We determined that designating only those areas within the geographical area occupied at the time of listing (also identified as the occupied fluvial and aeolian depositional areas and intervening areas needed for aeolian sand transport, pollen and seed dispersal, and pollinator movement) would not sufficiently provide for the conservation of *Astragalus lentiginosus* var. *coachellae* because movement of sand from areas where sediment is generated into areas where the taxon grows is vital to the maintenance of habitat for the taxon. For sufficient fine-grained sands to reach the aeolian system on the valley floor and support *Astragalus lentiginosus* var. *coachellae,* it is necessary to protect major fluvial channels that transport sand from the surrounding drainage basins as well as bajadas and depositional areas. The Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (Coachella Valley MSHCP/NCCP) identifies the protection of the above-mentioned geomorphological processes, including sand transport, as a conservation goal for several taxa, including *A. l.* var. *coachellae*. It will be impossible to conserve or recover this taxon if fluvial sand transport sites and processes are lost. Therefore, we determined that certain fluvial sand transport areas are essential for the conservation of *A. l.* var. *coachellae* and should be designated as critical habitat regardless of the fact that these areas are outside the geographical area occupied by *A. l.* var. *coachellae* at the time the species was listed. We used the following steps to determine which portions of the fluvial sand transport system are essential for the conservation of *A. l.* var. *coachellae:*

Units 1, 2, and 3

(1) We used aerial imagery to determine where the main stream channels conveying sand to the fluvial sand depositional areas in Units 1, 2, and 3 (San Gorgonio River, Whitewater River, Snow Creek, Mission Creek, and Morongo Wash) are located, and used GIS software to draw polygons that define the extent of these streams.

We considered only the lower reaches of main stream channels (fluvial sand transport areas) that move sediment from the base of the surrounding mountains and hills into the fluvial depositional areas on the valley floor to be essential for the conservation of the taxon. If the lower reaches of any of these main stream channels are lost, sand transport to portions of the occupied *Astragalus lentiginosus* var. *coachellae* habitat downstream and downwind will be lost as well. This has occurred where a sand mining operation located in the San Gorgonio River channel cut off delivery of sand from upstream areas, and reduced delivery of sand to the San Gorgonio River fluvial depositional areas by an estimated 14 percent (Griffiths *et al.* 2002, p. 21). Hence, a single project in a fluvial sand transport area could potentially hinder the movement of sand needed to maintain *A. l.* var. *coachellae* habitat.

To determine the upstream extent of the fluvial sand transport areas, we used GIS data to determine where the ground slope of the main stream channels becomes greater than 10 percent. Griffiths *et al.* (2002) found that the majority of the sand reaching the valley floor areas in Units 1, 2, and 3 is generated (eroded from parent rock) in portions of the mountain drainages where the ground slope is greater than 10 percent. We have identified the portions of main stream channels with a ground slope of less than 10 percent as sand transport areas (areas where sand is transported from the base of surrounding mountains and hills, but little sand is generated).

Unit 4

(2) The sand transport system moving sand into and through the Thousand Palms area (which contains Unit 4) differs from the system moving sand into and through Units 1, 2, and 3. In Unit 4, water moving through unnamed

washes erodes and moves sand from alluvial deposits at the base of the Indio Hills. Thus, both generation of sand and fluvial transport of sand into fluvial depositional areas occurs on these alluvial deposits. The occupied areas in Unit 4 depend on large flooding events to wash sands stored in channels on the alluvial valley floor deposits into fluvial sand depositional areas where the sand can be moved by aeolian processes. Therefore, for Unit 4, rather than using the 10 percent slope line to delineate fluvial sand transport areas as we did for Units 1, 2, and 3 (the areas supporting sand generation and fluvial sand transport in Unit 4 are less than 10 percent slope), we used aerial imagery to determine the extent of the alluvial deposits where the sand is stored, and used our GIS software to create a GIS polygon to encompass this area. We proposed this area in Unit 4 as critical habitat for *Astragalus lentiginosus* var. *coachellae* because the area and the fluvial sand transport processes it supports are vital to maintaining sand formations in the occupied portions of Unit 4 that form the basis of *A. l.* var. *coachellae* habitat in that unit.

Final Critical Habitat Designation

In this revised critical habitat designation for *Astragalus lentiginosus* var. *coachellae,* we selected areas based on the best scientific data available that possess those physical or biological features essential to the conservation of the taxon and that may require special management considerations or protection and other areas essential for the conservation of *A. l.* var. *coachellae*. When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for *Astragalus lentiginosus* var. *coachellae*. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0064, on our Internet sites *http://www.fws.gov/carlsbad/GIS/CFWOGIS.html,* and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above).

We are designating as critical habitat lands that we have determined are within the geographical area occupied at the time of listing and contain sufficient elements of the physical or biological features to support life-history processes essential to the conservation of the taxon, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of *Astragalus lentiginosus* var. *coachellae*.

We are designating four units as critical habitat for *Astragalus lentiginosus* var. *coachellae*. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those four units are: (1) San Gorgonio River/Snow Creek System, (2) Whitewater River System, (3) Mission Creek/Morongo Wash System, and (4) Thousand Palms System. Table 1 shows acres of land proposed as critical habitat in the 2011 proposed revised critical habitat rule for *A. l.* var. *coachellae* (76 FR 53224), acres of land excluded from this critical habitat designation under section 4(b)(2) of the Act (see Exclusions Based on Other Relevant Impacts section below for detailed discussion of exclusions), and acres of land designated as critical habitat for *A. l.* var. *coachellae* as a result of this revised critical habitat rule for all four units. We are designating 7,550 ac (3,055 ha) in accordance with section 3(5)(A)(i) of the Act (specific areas within the geographical area occupied by the taxon at the time of listing) and 2,053 ac (831 ha) in accordance with section 3(5)(A)(ii) of the Act (specific areas outside the geographical area occupied by the taxon at the time of listing).

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Table 1. Critical habitat units and their ownership for *Astragalus lentiginosus* var. *coachellae*.

			Ownership										Total Area**	
			Federal*		State Government*		Local Government*		Private*		Tribal*			
			ac	ha	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Unit 1	depositional/ occupied	Proposed	970	393	164	66	70	28	1,301	526	9	4	2,515	1,018
		Excluded	0	0	166	67	69	28	1,160	469	9	4	1,405	568
		Designated	993	402	0	0	64	26	40	16	0	0	1,097	444
	fluvial sand transport/ unoccupied	Proposed	179	72	0	0	63	25	490	198	307	124	1,039	420
		Excluded	0	0	0	0	25	10	469	190	304	123	798	323
		Designated	179	72	0	0	38	15	21	9	0	0	238	96
	Total	Proposed	1,149	465	164	66	134	54	1,791	725	316	128	3,553	1,438
		Excluded	0	0	166	67	94	38	1,629	659	313	127	2,203	891
		Designated	1,172	474	0	0	102	41	61	25	0	0	1,335	540

			Ownership										Total Area**	
			Federal*		State Government*		Local Government*		Private*		Tribal*			
			ac	ha	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Unit 2	depositional/ occupied	Proposed	1,544	625	13	5	3,338	1,351	869	352	580	235	6,344	2,567
		Excluded	0	0	28	11	3,516	1,423	591	239	579	234	4,714	1,908
		Designated	1,558	631	0	0	18	7	19	8	0	0	1,596	646
	fluvial sand transport/ unoccupied	Proposed	397	161	8	3	133	54	417	169	0	0	954	386
		Excluded	0	0	8	3	0	0	382	154	0	0	389	157
		Designated	397	161	0	0	157	64	0	0	0	0	554	224
	Total	Proposed	1,941	786	20	8	3,471	1,405	1,286	520	580	235	7,298	2,953
		Excluded	0	0	35	14	3,516	1,423	973	394	0	0	5,103	2,065
		Designated	1,955	791	0	0	176	71	19	8	579	234	2,150	870

			Ownership										Total Area**	
			Federal*		State Government*		Local Government*		Private*		Tribal*			
			ac	ha	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Unit 3	depositional/ occupied	Proposed	361	146	199	81	1,159	469	3,363	1,361	0	0	5,083	2,057
		Excluded	0	0	135	55	1,470	595	2,181	883	0	0	3,787	1,532
		Designated	361	146	0	0	50	21	800	324	0	0	1,211	490
	fluvial sand transport/ unoccupied	Proposed	140	57	0	0	669	271	1,912	774	0	0	2,722	1,101
		Excluded	0	0	0	0	706	286	885	358	0	0	1,591	644
		Designated	141	57	0	0	217	88	697	282	0	0	1,055	427
	Total	Proposed	501	203	199	81	1,829	741	5,275	2,135	0	0	7,805	3,158
		Excluded	0	0	135	55	2,176	880	3,067	1,241	0	0	5,378	2,176
		Designated	502	203	0	0	268	108	1,497	606	0	0	2,266	917

			Ownership										Total Area**	
			Federal*		State Government*		Local Government*		Private*		Tribal*			
			ac	ha	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Unit 4	depositional/ occupied	Proposed	3,618	1,464	787	319	165	66	333	135	0	0	4,902	1,984
		Excluded	0	0	787	319	165	66	282	114	0	0	1,234	499
		Designated	3,621	1,465	0	0	0	0	25	10	0	0	3,646	1,475
	fluvial sand transport/ unoccupied	Proposed	49	20	911	369	272	109	914	370	0	0	2,146	868
		Excluded	0	0	911	369	377	152	642	260	0	0	1,929	781
		Designated	49	20	0	0	0	0	157	63	0	0	206	83
	Total	Proposed	3,667	1,484	1,698	687	436	176	1,247	505	0	0	7,048	2,852
		Excluded	0	0	1,698	687	541	218	924	374	0	0	3,163	1,280
		Designated	3,670	1,485	0	0	0	0	182	74	0	0	3,851	1,559

			Ownership										Total Area**	
			Federal*		State Government*		Local Government*		Private*		Tribal*			
			ac	ha	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Totals	Subtotal: depositional/ occupied	Proposed	6,493	2,628	1,163	471	4,732	1,916	5,865	2,374	589	238	18,843	7,626
		Excluded	0	0	1,117	452	5,219	2,112	4,214	1,706	589	238	11,139	4,508
		Designated	6,534	2,644	0	0	133	54	884	358	0	0	7,550	3,055
	Subtotal: fluvial sand transport/ unoccupied	Proposed	765	309	918	372	1,137	460	3,734	1,511	307	124	6,861	2,776
		Excluded	0	0	918	372	1,108	448	2,377	962	304	123	4,707	1,905
		Designated	765	310	0	0	413	167	875	354	0	0	2,053	831
	Total	Proposed	7,258	2,937	2,081	842	5,870	2,376	9,599	3,885	896	363	25,704	10,402
		Excluded	0	0	2,035	823	6,327	2,561	6,592	2,668	893	361	15,847	6,413
		Designated	7,299	2,954	0	0	545	220	1,759	712	0	0	9,603	3,886

*The new GIS data used to determine the "Excluded" and "Designated" acreages reflect changes in ownership or more accurate characterization of ownership in the Coachella Valley since the previous data were compiled. Because of this, "Excluded" and "Designated" acreages in each column may not sum to the corresponding "Proposed" acreages, and "Excluded" or "Designated" acreages in some columns may be greater than the corresponding "Proposed" acreages.

**Roads have been removed from the "Excluded" and "Designated" acreages, due to availability of new GIS data. Because roads could not be removed from "Proposed" acreages (this data was not available until after the proposed revised critical habitat rule was published), "Excluded" and "Designated" acreages in the "Total Area" column do not sum to the corresponding "Proposed" acreages.

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We present brief descriptions of all units, and reasons why they meet the definition of critical habitat, for *Astragalus lentiginosus* var. *coachellae* below.

Unit 1: San Gorgonio River/Snow Creek System

Unit 1 consists of 1,172 ac (474 ha) of Federal land, 61 ac (25 ha) of private land, and 102 ac (41 ha) of local government-owned land in the Coachella Valley, Riverside County. Unit 1 contains approximately 238 ac (96 ha) of unoccupied fluvial sand transport area associated with the San Gorgonio River and Snow Creek drainages. These areas are being designated under section 3(5)(A)(ii) of the Act, because they are specific areas outside the geographical area occupied by the species at the time of listing and are essential for the conservation of the species. The remainder of Unit 1 consists of approximately 1,097 ac (444 ha) of occupied suitable habitat extending approximately from the eastern edge of the community of Cabazon to just west of Whitewater River, and is approximately bound by State Route 111 to the north and the foot of the San Jacinto Mountains to the south. These areas are being designated under section 3(5)(A)(i) of the Act, because they are within the geographical area occupied by the species at the time of listing and contain those physical or biological features essential to the conservation of the species. In total, Unit 1 consists of 1,335 ac (540 ha) of land.

Unoccupied fluvial sand transport areas in this unit contain active washes associated with San Gorgonio River and Snow Creek, which carry substrates created by fluvial erosion of the surrounding hills to occupied fluvial deposition areas in Unit 1 on the valley floor (Griffiths *et al.* 2002, pp. 10–11). The unoccupied areas in Unit 1 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they support the fluvial sand transport process crucial to the maintenance of the sand formations that form the foundation of *A. l.* var. *coachellae* habitat in the occupied areas of Unit 1.

Occupied habitat areas of Unit 1 constitute one of the four main habitat areas supporting *Astragalus lentiginosus* var. *coachellae* (Coachella Valley MSHCP/NCCP, p. 9–21) and contain the physical or biological features essential to the conservation of *A. l.* var. *coachellae,* including active sand dunes, sand fields, and stabilized and partially stabilized sand fields that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2008, Table 10–1a) and areas over which unobstructed aeolian sand transport can occur. The essential features in Unit 1 may require special management considerations or protection to address threats from nonnative invasive plants and unauthorized OHV activity in the occupied areas and threats from alteration of stream flow in the unoccupied areas that impact habitat in the occupied areas. Please see the *Special Management Considerations or Protection* section of this rule for a discussion of the threats to *A. l.* var. *coachellae* habitat and potential management considerations.

The physical or biological features in the occupied areas in Unit 1 are also essential to the conservation of *Astragalus lentiginosus* var. *coachellae* because they support the westernmost occurrences of the taxon. Because of their geographic location, these plants and their habitat receive more rainfall than occurrences and suitable habitat farther east, which allows many individuals to survive more than one year, grow larger, and produce more seed, all of which promote the stability and reduce the chance of extirpation of the occurrences in this unit (Meinke *et al.* 2007, p. 33). Also, due to strong winds moving through this area from the west to east, the occupied habitat in Unit 1 likely acts as a source of seed (and hence, a source of genetic diversity) for areas of suitable habitat to the southeast (Meinke *et al.* 2007, p. 40). Unit 1 likely also contributes to the maintenance of genetic diversity in other occupied areas through the movement of pollinators (Meinke *et al.* 2007, p. 37).

Unit 2: Whitewater River System

Unit 2 consists of 1,955 ac (791 ha) of Federal land; 19 ac (8 ha) of private land; and 176 ac (71 ha) of local government-owned land in the Coachella Valley, Riverside County. Unit 2 contains approximately 554 ac (224 ha) of unoccupied fluvial sand transport areas associated with the Whitewater River watershed. These areas are being designated under section 3(5)(A)(ii) of the Act because they are specific areas outside the geographical area occupied by the species at the time of listing and are essential for the conservation of the taxon. The remainder of Unit 2 consists of approximately 1,596 ac (646 ha) of occupied suitable habitat and is approximately bound by State Route 111 to the west, the Southern Pacific Railroad to the north and east, and dense urban development in the cities of Palm Springs and Cathedral City to the south. These areas are being designated under section 3(5)(A)(i) of the Act because they are within the geographical area occupied by the species at the time of listing and contain those physical or biological features essential to the conservation of the species. In total, Unit 2 consists of 2,150 ac (870 ha) of land.

Unoccupied fluvial sand transport areas in this unit contain active washes associated with Whitewater River, which carry substrates created by fluvial erosion of the surrounding hills to occupied fluvial deposition areas in Unit 2 on the valley floor (Griffiths *et al.* 2002, pp. 10–11). The unoccupied areas in Unit 2 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain portions of the Whitewater River that support the fluvial sand transport process crucial to the maintenance of the sand formations that form the foundation of *A. l.* var. *coachellae* habitat in the occupied areas of Unit 2.

Occupied habitat areas of Unit 2 constitute one of the four main habitat areas supporting *Astragalus lentiginosus* var. *coachellae* (Coachella Valley MSHCP/NCCP, p. 9–21) and contain the physical or biological features essential to the conservation of *A. l.* var. *coachellae,* including active and ephemeral sand fields and stabilized and partially stabilized sand fields that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2008, Table 10–1a) and areas over which unobstructed aeolian sand transport can occur. The essential features in Unit 2 may require special management considerations or protection to address threats from nonnative plants, urban development, alteration of stream flow, unauthorized OHV activity in the occupied depositional areas, and threats from alteration of stream flow that impact habitat in occupied areas. Please see the *Special Management Considerations or Protection* section of this rule for a discussion of the threats to *A. l.* var. *coachellae* habitat and potential management considerations.

The physical or biological features in the occupied areas in Unit 2 are also essential to the conservation of *Astragalus lentiginosus* var. *coachellae* because they serve as a corridor between the habitat and occurrences to the west in Unit 1 and the habitat and occurrences to the east in Unit 3. Although Unit 2 does not serve as a substantial source of aeolian sand to Unit 3 relative to the onsite fluvial sand transport areas in Unit 3 (Mission Creek and Morongo Wash), it may serve as a corridor for gene flow by means of pollen and seed dispersal between Units 1, 2, and 3 due to dispersal of seeds from Unit 1 into Unit 2 and from Unit 2 into Unit 3, combined with movement of pollinators among the three units (Meinke *et al.* 2007, p. 37).

Unit 3: Mission Creek/Morongo Wash System

Unit 3 consists of 502 ac (203 ha) of Federal land, 1,497 ac (606 ha) of private land, and 268 ac (108 ha) of local government-owned land in the Coachella Valley, Riverside County. Unit 3 contains approximately 1,055 ac (427 ha) of unoccupied fluvial sand transport area associated with the Mission Creek watershed and a portion of the Morongo Wash watershed (north of Pierson Boulevard). These areas are being designated under section 3(5)(A)(ii) of the Act because they are specific areas outside the geographical area occupied by the species at the time of listing and are essential for the conservation of the taxon. The remainder of Unit 3 consists of approximately 1,211 ac (490 ha) of occupied habitat and includes sand deposits on the floodplain terraces of Morongo Wash south of Pierson Boulevard, and fluvial depositional areas and aeolian transport and depositional areas approximately bound (clockwise from the western boundary) by Little Morongo Road, 18th Avenue, Palm Drive, 20th Avenue, Artesia Road, and Mihalyo Road, in or near the City of Desert Hot Springs. These areas are being designated under section 3(5)(A)(i) of the Act, because they are within the geographical area occupied by the species at the time of listing. In total, Unit 3 consists of 2,313 ac (936 ha) of land.

Unoccupied fluvial sand transport areas in this unit contain active washes associated with Mission Creek and Morongo Wash (north of Pierson Boulevard), which carry substrates created by fluvial erosion of the surrounding hills to occupied fluvial deposition areas in Unit 3 on the valley floor (Griffiths *et al.* 2002, pp. 10–11). The unoccupied areas in Unit 3 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain portions of Mission Creek and Morongo Wash that support the fluvial sand transport process crucial to the maintenance of the sand formations that form the foundation of *A. l.* var. *coachellae* habitat in the occupied areas of Unit 3.

Occupied habitat areas of Unit 3 constitute one of the four main habitat areas supporting *Astragalus lentiginosus* var. *coachellae* (Coachella Valley MSHCP/NCCP, pp. 9–21–9–22) and contain the physical or biological features essential to the conservation of *A. l.* var. *coachellae* including stabilized and partially stabilized sand dunes, active and ephemeral sand fields, stabilized and partially stabilized sand fields, fluvial sand deposits on floodplain terraces of active washes (certain areas of Morongo Wash), and mesquite hummocks that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2008, Table 10–1a). Unit 3 also contains areas over which unobstructed aeolian sand transport can occur. The essential features in Unit 3 may require special management considerations or protection to address threats from nonnative plants, urban development, OHV use in the occupied floodplain terrace areas, and threats from alteration of stream flow that impact habitat in occupied areas. Please see the *Special Management Considerations or Protection* section of this rule for a discussion of the threats to *A. l.* var. *coachellae* habitat and potential management considerations.

The physical or biological features in occupied areas in Unit 3 are also essential to the conservation of *Astragalus lentiginosus* var. *coachellae* because they support the northernmost extent of the taxon's range and large occurrences containing high densities of the taxon. Each of these factors contributes to the overall genetic diversity of *A. l.* var. *coachellae* (Meinke *et al.* 2007, p. 35) and the maintenance of genetic diversity via the movement of seeds and pollinators (Meinke *et al.* 2007, p. 37). The large numbers of individuals also likely contribute numerous seeds to the soil seed bank. Unit 3 also contains the only area where *A. l.* var. *coachellae* is known to occur in large numbers on floodplain terraces of an active wash (Morongo Wash).

Unit 4: Thousand Palms System

Unit 4 consists of 3,670 ac (1,485 ha) of Federal land, and 182 ac (74 ha) of private land in the Coachella Valley, Riverside County. Unit 4 contains approximately 206 ac (83 ha) of unoccupied lands supporting fluvial sand transport and fluvial deposition (this unit contains alluvial sand deposition areas that are not occupied) associated with drainages originating in the Indio Hills. These areas are being designated under section 3(5)(A)(ii) of the Act because they are specific areas outside the geographical area occupied by the species at the time of listing and are essential for the conservation of the species. The remainder of Unit 4 consists of approximately 3,646 ac (1,475 ha) of occupied habitat area in the Thousand Palms Preserve along Ramon Road. These areas are being designated under section 3(5)(A)(i) of the Act because they are within the geographical area occupied by the

species at the time of listing and contain those physical or biological features essential to the conservation of the species. In total, Unit 4 consists of 3,851 ac (1,559 ha) of land.

Unoccupied areas in this unit contain active ephemeral washes that carry substrates from alluvial deposits to alluvial fan areas where they can be transported to occupied habitat areas via wind (Lancaster *et al.* 1993, p. 28). The unoccupied areas in Unit 4 are essential for the conservation of *Astragalus lentiginosus* var. *coachellae* because they contain alluvial sand deposits that support the fluvial and aeolian sand transport processes crucial to the maintenance of the sand formations that form the foundation of *A. l.* var. *coachellae* habitat in the occupied areas of Unit 4.

Occupied habitat areas of Unit 4 constitute one of the four main habitat areas supporting *Astragalus lentiginosus* var. *coachellae* (Coachella Valley MSHCP/NCCP, p. 9–22) and contain the physical or biological features essential to the conservation of *A. l.* var. *coachellae,* including active dunes, active sand fields, and mesquite hummocks that provide substrate components and conditions suitable for the growth of *A. l.* var. *coachellae* (Coachella Valley MSHCP/NCCP 2008, Table 10–1a), and areas over which unobstructed aeolian sand transport can occur. The essential features in the occupied portion of Unit 4 may require special management considerations or protection to address threats from nonnative plants. According to Meinke *et al.* (2007, p. 18), this area supports infestations of *Brassica tournefortii* (Saharan mustard); researchers observed thousands of acres of *A. l.* var. *coachellae* habitat inundated with dense populations of this nonnative plant species. Existing suburban development may require active management measures (for example, collection of sand from developed areas for redistribution within the wind movement corridor). The expansion of new urban development in areas supporting fluvial sand transport and deposition is also a threat to the essential features in this unit that may require special management considerations or protection, as are unauthorized OHV activity and a proposed flood control project that could disrupt or permanently destroy the sand transport system in the Thousand Palms area by diverting drainages that provide sand to occupied areas during large flooding events. Please see the *Special Management Considerations or Protection* section of this rule for a discussion of the threats to *A. l.* var. *coachellae* habitat and potential management considerations.

The physical or biological features in the occupied areas of Unit 4 are also essential to the conservation of the species because they support occurrences containing large numbers of the taxon that contribute to the overall genetic diversity of *Astragalus lentiginosus* var. *coachellae* (Meinke *et al.* 2007, p. 35) and because they are located in the southeasternmost portion of the taxon's range that is hydrologically independent and physically isolated from the other units. As such, this unit is important to help buffer excessive losses in other parts of the range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or

control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Astragalus lentiginosus* var. *coachellae.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species. For *A. l.* var. *coachellae,* this includes supporting the sand formations that form the basis of the taxon's habitat and the areas over which the associated sand transport processes that sustain these sand formations occur.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Astragalus lentiginosus* var. *coachellae.* These activities include, but are not limited to:

(1) Actions that would interrupt the fluvial or aeolian transport of sand to areas occupied by *A. l.* var. *coachellae.* Such actions would lead to the degradation of the sand formations that form the basis of *A. l.* var. *coachellae* habitat by blocking sand from replenishing occupied areas where the sand is being removed by aeolian processes.

(2) Actions that would damage or kill plants that trap sand and create sand formations that support *A. l.* var. *coachellae* (such as hummocks that contain *Prosopis glandulosa* var. *torreyana* (honey mesquite)). These include actions that lower the groundwater table below the reach of root systems of plants such as *P. g.* var. *torreyana,* which results in the death of the plants, and the loss of the sand formations to wind erosion.

(3) Actions that alter waterways. Such actions could decrease the amount or alter the deposition location of sand entering the sand transport system, and thus reduce the amount of sand available for *A. l.* var. *coachellae* habitat.

(4) Actions that contribute to the introduction or proliferation of nonnative plants, such as *Brassica tournefortii* (Saharan mustard) and trees planted as windbreaks. Such actions may interfere with the movement of sand, which would prevent sand from moving downwind and contributing to the sand formations that form the basis of *A. l.* var. *coachellae* habitat.

(5) Actions such as development and landscaping that cover or remove substrate. Such actions convert suitable *A. l.* var. *coachellae* habitat to groundcover that does not support the taxon.

(6) Actions such as OHV use that disrupt substrates. Such actions can cause sufficient alteration of sand formations supporting *A. l.* var. *coachellae* occurrences to make the habitat unsuitable to support the taxon.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands that meet the definition of critical habitat and, as a result, no lands have been exempted under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area

would receive from the protection from destruction or adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of *Astragalus lentiginosus* var. *coachellae,* the benefits of critical habitat include public awareness of *A. l.* var. *coachellae* presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *A. l.* var. *coachellae* due to the protection from destruction or adverse modification of critical habitat. In practice, a Federal nexus exists only on Federal land or for projects undertaken, funded, or requiring authorization by a Federal agency.

When we evaluate the existence of a conservation plan, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in critical habitat Units 1 through 4 were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. The Secretary is exercising his discretion to exclude several areas from critical habitat designation for *Astragalus lentiginosus* var. *coachellae.* Table 2 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but are excluded under section 4(b)(2) of the Act in this final critical habitat rule.

TABLE 2—AREA EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

Unit	Specific area	Area meeting the definition of critical habitat		Area excluded from critical habitat	
		acres	hectares	acres	hectares
1	Coachella Valley MSHCP/NCCP	1,898	768	1,898	768
	Morongo Band of Mission Indians Lands	313	127	313	127
	Unit 1 total	2,212	895	2,212	895
2	Coachella Valley MSHCP/NCCP	4,558	1,844	4,558	1,844
	Agua Caliente Band of Cahuilla Indians Lands	579	234	579	234
	Unit 2 total	5,137	2,078	5,137	2,078
3	Coachella Valley MSHCP/NCCP	5,491	2,222	5,491	2,222
4	Coachella Valley MSHCP/NCCP	3,193	1,292	3,193	1,292
Subtotal Coachella Valley MSHCP/NCCP		15,140	6,127	15,140	6,127
Subtotal Tribal lands		893	361	893	361
Total		15,874	6,413	15,874	6,413

We believe these areas are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act because:

(1) Their value for conservation will be preserved into the future by existing protective actions.

(2) Exclusion of these areas could help preserve the partnerships we developed with local stakeholders and encourage the establishment of future conservation and management of habitat for *Astragalus lentiginosus* var. *coachellae* and other sensitive taxa.

(3) Exclusion of these areas could help preserve our partnerships with tribes and foster future dialog and cooperative actions as well as development of habitat management plans on tribal lands.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation (Industrial Economics, Inc. (IEc) 2012). The draft analysis, dated May 11, 2012, was made available for public review and comment from May 16 through June 15, 2012 (77 FR 28846; May 16, 2011). Following the close of the comment period, a final economic analysis (FEA) (dated January 29, 2013) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEc 2013).

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for *Astragalus lentiginosus* var. *coachellae;* some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those

not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1998 (63 FR 53596, October 6, 1998), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because a 20-year analysis period reflects the maximum amount of time under which future activities and economic impacts associated with the designation can be reliably projected, given available data and information. The FEA quantifies economic impacts of *Astragalus lentiginosus* var. *coachellae* conservation efforts associated with the following categories of activity: (1) Residential, commercial, and industrial development; (2) water management and use; (3) transportation activities; (4) energy development; (5) sand and gravel mining; and (6) Tribal activities.

The economic analysis includes high- and low-end estimates of incremental costs. Both estimates include the incremental impacts associated with addressing adverse modification in section 7 consultation. The high-end estimate also includes project modification costs associated with development in the City of Desert Hot Springs and railroad upgrades not covered by the Coachella Valley MSHCP/NCCP, as well as potential administrative costs incurred by the Agua Caliente Band of Cahuilla Indians. These costs are only included in the high estimate because of uncertainty over whether Desert Hot Springs will develop within the 100-year floodplain and whether railroad upgrades are likely, and because a public comment submitted by the Agua Caliente Band of Cahuilla Indians suggests that development may not occur within proposed revised critical habitat. As a result, the low-end impacts consist solely of administrative costs, except those that may be incurred by the Agua Caliente Band of Cahuilla Indians (IEc 2013, p. 4–2).

Implementation of conservation activities for residential, commercial, and industrial development is the largest cost category in the high-end estimate of incremental impacts. All of these costs are projected to occur in the unoccupied portion of Unit 3, within the City of Desert Hot Springs. Proponents of transportation activities, such as road and bridge construction and maintenance, are likely to experience the next largest impacts after residential, commercial, and industrial development. No incremental project modification costs are estimated for water management activities. Although two water districts, Metropolitan Water District of Southern California and the Desert Water Agency, may experience incremental impacts for projects occurring in unoccupied, fluvial habitat, characteristics of potential projects and specific project modifications that could be recommended for projects are uncertain. Project modification costs therefore could not be estimated. The FEA does not estimate any incremental project modification costs for energy projects, because these projects are located within occupied habitat, where we cannot reasonably differentiate between actions that avoid jeopardy to the species and actions needed solely to avoid destruction or adverse modification of critical habitat, and because the construction and development of new wind energy facilities is a covered activity under the MSHCP/NCCP. No incremental project modification costs are anticipated for mining activities.

The FEA also does not anticipate any incremental project modification costs on Agua Caliente Band of Cahuilla Indians lands because the proposed revised critical habitat on those lands is occupied habitat, where we cannot reasonably differentiate between actions that avoid jeopardy to the species and actions needed solely to avoid destruction or adverse modification of critical habitat. The Morongo Band of Mission Indians do not anticipate economic activity within proposed revised critical habitat on Morongo Band of Mission Indians lands, because these areas are located entirely within the floodplain; therefore, the FEA does not estimate any incremental project modification costs for Tribal activities. The total incremental impacts are estimated to be $270,000 to $880,000 ($24,000 to $77,000 annualized) in present-value terms using a 7 percent discount rate over the next 20 years (2012 to 2032) in areas proposed as revised critical habitat (IEc 2012, pp. ES–2–ES–3, ES–7–ES–9).

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary has determined not to exercise his discretion to exclude any areas from this designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* based on economic impacts.

A copy of the FEA with supporting documents is available at *http://www.fws.gov/carlsbad/GIS/CFWOGIS.html, http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0064, and at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands meeting the definition of critical habitat for *Astragalus lentiginosus* var. *coachellae* are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also

consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

When we evaluate whether a current land management or conservation plan (HCPs as well as other types) provides adequate management or protection, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

We believe that the Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan (Coachella Valley MSHCP/NCCP) provides adequate management or protection for the taxon, and, to continue and strengthen our conservation partnerships with the plan's participants and to foster additional partnerships, the Secretary is exercising his discretion to exclude lands covered by this plan that provide for the conservation of *Astragalus lentiginosus* var. *coachellae*. Details of our analysis for this plan are described below.

Exclusions Under Section 4(b)(2) of the Act—Coachella Valley MSHCP/NCCP

The Coachella Valley MSHCP/NCCP is a large-scale, multijurisdictional habitat conservation plan encompassing about 1.1 million ac (445,156 ha) in the Coachella Valley of central Riverside County. The Coachella Valley MSHCP/NCCP is also a ''Subregional Plan'' under the State of California's Natural Community Conservation Planning (NCCP) Act, as amended. An additional 69,000 ac (27,923 ha) of tribal reservation lands distributed within the plan area boundary are not included in the Coachella Valley MSHCP/NCCP. The Coachella Valley MSHCP/NCCP addresses 27 listed and unlisted ''covered species,'' including *Astragalus lentiginosus* var. *coachellae*. On October 1, 2008, the Service issued a single incidental take permit (TE–104604–0) under section 10(a)(1)(B) of the Act to 19 permittees under the Coachella Valley MSHCP/NCCP for a period of 75 years. Participants in the Coachella Valley MSHCP/NCCP include eight cities (Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage); the County of Riverside, including the Riverside County Flood Control and Water Conservation District, Riverside County Parks and Open Space District, and Riverside County Waste Management District; the Coachella Valley Association of Governments; Coachella Valley Water District; Imperial Irrigation District; California Department of Transportation; California State Parks; Coachella Valley Mountains Conservancy; and the Coachella Valley Conservation Commission (the created joint powers regional authority). The Coachella Valley MSHCP/NCCP was designed to establish a multiple-species habitat conservation program that minimizes and mitigates the expected loss of habitat and incidental take of covered species, including *A. l.* var. *coachellae* (USFWS 2008, pp. 1–207, and Appendix A, pp. 10–50).

The permit covers incidental take resulting from habitat loss and disturbance associated with urban development and other proposed covered activities. These activities include public and private development within the plan area that requires discretionary and ministerial actions by permittees subject to consistency with the Coachella Valley MSHCP/NCCP policies. An associated Management and Monitoring Program is also included in the Coachella Valley MSHCP/NCCP and identifies specific management actions for the conservation of *Astragalus lentiginosus* var. *coachellae*.

Approximately 36,398 ac (14,730 ha) of modeled habitat for *Astragalus lentiginosus* var. *coachellae* occurs in the Coachella Valley MSHCP/NCCP Plan Area (Coachella Valley MSHCP/NCCP 2008, p. 9–25). Under the Coachella Valley MSHCP/NCCP, approximately 15,706 ac (6,356 ha) of modeled *A. l.* var. *coachellae* habitat will be lost to development. To mitigate this loss, the Coachella Valley MSHCP/NCCP will preserve 7,176 ac (2,904 ha) of modeled habitat for the taxon in perpetuity. Another 4,497 ac (1,820 ha) are anticipated to be conserved through complementary and cooperative efforts by Federal and State agencies and nongovernmental organizations. Additionally, 7,707 ac (3,118 ha) of *A. l.* var. *coachellae* modeled habitat within the Plan Area were preserved prior to completion of the Coachella Valley MSHCP/NCCP (acres which coincidentally occur on three Coachella Valley fringe-toed lizard (*Uma inornata*) reserves in the Coachella Valley Preserve System). These lands and the 11,650 ac (4,715 ha) of lands yet to be conserved under the Coachella Valley MSHCP/NCCP will total 19,357 ac (7,833 ha) of *A. l.* var. *coachellae* modeled habitat within the Coachella Valley MSHCP/NCCP Reserve System.

As habitat areas are acquired under the Coachella Valley MSHCP/NCCP, they are legally protected within the Reserve System and the direct impacts of development are precluded. All areas covered under the Coachella Valley MSHCP/NCCP that meet the definition of critical habitat for *A. l.* var. *coachellae* fall within the Conservation Areas of the HCP. The Conservation Areas of the Coachella Valley MSHCP/NCCP are predetermined areas that provide habitat for species covered under the plan; these areas are designed to conserve natural communities, ecological processes, and biological corridors and linkages between major habitat areas. The Coachella Valley MSHCP/NCCP Reserve System will be assembled from land conserved within these Conservation Areas. This protection, as well as implementation of the avoidance, minimization, and mitigation measures and management and monitoring programs identified in the Coachella Valley MSHCP/NCCP, will reduce impacts to this taxon compared to what would have occurred otherwise.

Benefits of Inclusion—Coachella Valley MSHCP/NCCP

Regulatory Benefits (Endangered Species Act)

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standards are different, as the jeopardy analysis

investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

For some species (including *Astragalus lentiginosus* var. *coachellae*), and in some locations (in particular, those occupied by the taxon), the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species and it is often difficult or impossible to differentiate between actions that avoid jeopardy to the species and actions needed solely to avoid destruction or adverse modification of critical habitat. However, much of the land considered for exclusion from this critical habitat designation is not occupied by the taxon (areas supporting fluvial sand transport processes). In these areas, impacts to critical habitat will not result in direct impacts to *A. l.* var. *coachellae* plants. Therefore, the outcome of an adverse modification analysis in these areas would differ from the outcome of a jeopardy analysis.

Critical habitat may provide a regulatory benefit for *Astragalus lentiginosus* var. *coachellae* when there is a Federal nexus present for a project that might adversely modify critical habitat. A Federal nexus generally exists where land is federally owned, or where actions proposed on non-Federal lands require a Federal permit or Federal funding. In the absence of a Federal nexus, the regulatory benefit provided through section 7 consultation under the Act does not exist. Any activities over which a Federal agency has discretionary involvement or control affecting designated critical habitat on Federal land would trigger a duty to consult under section 7. However, no Federal lands are covered under the Coachella Valley MSHCP/NCCP.

The potential for a Federal nexus for activities proposed on non-Federal lands varies widely and depends on the particular circumstances of each case. Nevertheless, because the breadth of potential Federal actions that may trigger a duty to consult under section 7 is quite broad, we cannot say with certainty that future development of, or activities on, non-Federal lands will always lack a Federal nexus. In some portions of the lands identified as critical habitat for *Astragalus lentiginosus* var. *coachellae* that are covered under the Coachella Valley MSHCP/NCCP, a Federal nexus seems possible despite the areas in question not being on Federal lands. The unoccupied fluvial sand transport areas of the essential habitat covered under the Coachella Valley MSHCP/NCCP may fall within the jurisdiction of the U.S. Army Corps of Engineers (Corps) pursuant to section 404 of the Clean Water Act. Therefore, we expect there will be a Federal nexus for projects in the fluvial sand transport areas, as projects that impact these areas may require Corps permits. Also, highway or railroad improvement projects on lands adjacent to Interstate Highway 10 or the Southern Pacific railway line that are covered by the Coachella Valley MSHCP/NCCP may have a Federal nexus via the U.S. Department of Transportation. Thus, designation of these areas as critical habitat for *A. l.* var. *coachellae* could provide a regulatory benefit. However, where there is no discernible Federal nexus on lands covered under the Coachella Valley MSHCP/NCCP that we've identified as critical habitat for *A. l.* var. *coachellae,* we consider the regulatory benefit of designation of those non-Federal lands to be small.

If protections provided by critical habitat designation are redundant with protections already in place on lands identified as areas that meet the definition of critical habitat for *Astragalus lentiginosus* var. *coachellae,* the benefits of inclusion in critical habitat are reduced. All areas that meet the definition of critical habitat covered under the Coachella Valley MSHCP/NCCP fall within the Conservation Areas of the HCP. Within the Conservation Areas, protections afforded *Astragalus lentiginosus* var. *coachellae* and its habitat by the Coachella Valley MSHCP/NCCP include, for example, requiring permittees to comply with applicable avoidance, minimization, and mitigation measures and land-use adjacency guidelines (standards delineated for land uses adjacent to or within Conservation Areas necessary to avoid or minimize edge effects), and conservation of suitable habitat and those areas supporting the geomorphologic processes sustaining the sand formations in those areas (sand transport system) (Coachella Valley MSHCP/NCCP 2008, Section 4 and Section 9.2.2).

Protective measures required by the Coachella Valley MSHCP/NCCP for the conservation of *Astragalus lentiginosus* var. *coachellae* habitat in the Conservation Areas are similar to protections that we would require through consultation provisions under section 7(a)(2) of the Act for *A. l.* var. *coachellae* critical habitat. Adding another layer of regulatory protections by designating critical habitat on lands in the Conservation Areas of the Coachella Valley MSHCP/NCCP, therefore, will not likely add any protection for the taxon. In some rare cases, the amount or type of protection required by a consultation under section 7(a)(2) of the Act to address impacts to critical habitat could differ from the protective measures provided by the Coachella Valley MSHCP/NCCP; however, we do not know under what circumstances this would occur, if ever. For these reasons, we believe the protections provided by the Coachella Valley MSHCP/NCCP in the Conservation Areas substantially diminish any regulatory benefits of designating critical habitat on these lands.

Educational Benefit

Designating critical habitat also can be beneficial because the process of proposing critical habitat provides the opportunity for peer review and public comment on lands we propose to designate as critical habitat, our criteria used to identify those lands, potential impacts from the proposal, and information on the taxon itself. The designation of critical habitat may generally provide previously unavailable information to the public. Public education regarding the potential conservation value of an area may also help focus conservation and management efforts on areas of high conservation value for certain species. Information about *Astragalus lentiginosus* var. *coachellae* and its habitat that reaches a wide audience, including parties concerned about and engaged in conservation activities, is valuable because the public may not be aware of documented (or undocumented) *A. l.* var. *coachellae* occurrences and unoccupied areas supporting sand transport processes that have not been conserved or are not being managed.

However, the educational benefits of designating critical habitat for *Astragalus lentiginosus* var. *coachellae* are small and largely redundant to those derived through conservation efforts currently being implemented in the private and permittee-owned or controlled lands covered under the Coachella Valley MSHCP/NCCP. As described above, the process of developing the Coachella Valley MSHCP/NCCP has involved several partners including (but not limited to) the eight participating local jurisdictions, Riverside County,

California Department of Fish and Game, and Federal agencies. The educational benefits of critical habitat designation derived through informing Coachella Valley MSHCP/NCCP partners and other members of the public of areas important for the long-term conservation of *A. l.* var. *coachellae* have already been and continue to be achieved through development and implementation of the Coachella Valley MSHCP/NCCP. We, therefore, believe that the educational benefits of designating critical habitat for *A. l.* var. *coachellae* on lands covered under the Coachella Valley MSHCP/NCCP are small.

Educational benefits of designating critical habitat for *Astragalus lentiginosus* var. *coachellae* are also largely redundant to those derived through the publication of the previous proposed and final critical habitat rules for *A. l.* var. *coachellae.* These documents discuss *A. l.* var. *coachellae* biology and habitat requirements, the location of areas containing the physical or biological features essential to the conservation of the taxon, and the importance of areas supporting sand transport processes needed to maintain suitable habitat for the taxon. Because this information was made available to the public in these documents, we believe there is little educational benefit of designating critical habitat for *A. l.* var. *coachellae.*

Regulatory Benefit (Other State, Local, and Federal Laws)

The designation of critical habitat for some species may also strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA). These laws analyze the potential for projects to significantly affect the environment. To date, the local jurisdictions have not required additional measures associated with critical habitat for any species in their discretionary approval processes (for example, pursuant to CEQA), and are unlikely to do so in the future. This potential benefit is, therefore, negligible in the Coachella Valley.

In summary, we believe that the regulatory benefit through section 7(a)(2) of the Act of designating critical habitat is small on non-Federal lands covered under the Coachella Valley MSHCP/NCCP and occupied by *Astragalus lentiginosus* var. *coachellae* because the likelihood of a future Federal nexus in these areas is small, and because the existing protections afforded the taxon and its habitat by the Coachella Valley MSHCP/NCCP likely diminish any regulatory benefits that might be gained. The regulatory benefit of designation is likely higher in unoccupied fluvial sand transport areas, due to the greater possibility for a Federal nexus (via permits required for impacts to ''Waters of the United States'' by the Corps). However, the benefits of inclusion are similarly diminished in the fluvial sand transport areas by the protections provided by the Coachella Valley MSHCP/NCCP. Additionally, we believe the educational benefits of designating critical habitat for *A. l.* var. *coachellae* on lands covered by the Coachella Valley MSHCP/NCCP are small due to stakeholder involvement in the design and implementation of the Coachella Valley MSHCP/NCCP and publication of relevant information in the previous proposed and final critical habitat rules in 2004 and 2005. There are no potential ancillary benefits under other laws that would result from designation of non-Federal lands in the Coachella Valley.

Benefits of Exclusion—Coachella Valley MSHCP/NCCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* on lands covered by the Coachella Valley MSHCP/NCCP, including: (1) Continuance and strengthening of our effective working relationships with all Coachella Valley MSHCP/NCCP jurisdictions and stakeholders to promote conservation of the *A. l.* var. *coachellae,* its habitat, and 26 other taxa covered by the HCP and their habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward protecting and recovering this taxon and the many other taxa covered by the HCP, including conservation benefits that might not otherwise occur; (3) encouragement for local jurisdictions to fully participate in the Coachella Valley MSHCP/NCCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive taxa.

In the case of *Astragalus lentiginosus* var. *coachellae* in the Coachella Valley, the partnership and commitment by the permittees of the Coachella Valley MSHCP/NCCP resulted in lands being conserved and managed for the long term that will contribute to the recovery of the taxon.

We developed a close partnership with the permittees of the Coachella Valley MSHCP/NCCP through the development of the HCP, which incorporates protections (conserved lands) and management for *Astragalus lentiginosus* var. *coachellae,* its habitat, the fluvial sand transport areas, and the physical or biological features essential to the conservation of this taxon. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Coachella Valley MSHCP/NCCP (as discussed further in Comment 15 below in the Summary of Comments and Recommendations section of this rule). Exclusion of Coachella Valley MSHCP/NCCP lands could help preserve the partnerships we developed with the County of Riverside, Coachella Valley Association of Governments, and other local jurisdictions in the development of the HCP, foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for *A. l.* var. *coachellae* and other sensitive taxa.

The Coachella Valley MSHCP/NCCP provides substantial protection and management for *Astragalus lentiginosus* var. *coachellae,* the fluvial sand transport areas, and the physical or biological features essential to the conservation of the taxon. It also addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under section 7 of the Act or through smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of *A. l.* var. *coachellae* and other listed taxa. Also, because impacts to plant species do not require an incidental take permit, protections that plants receive under HCPs related to covered activities without a Federal nexus are benefits that most likely would not be realized otherwise. Additionally, in order for the conservation anticipated by the Coachella Valley MSHCP/NCCP to be fully realized, it is vital that permittees continue to work with the Service during the implementation process to ensure the goals of the plan are met despite unanticipated issues that are likely to arise given the scope and complexity of the plan. Therefore, it is important that we encourage full participation in such plans and encourage voluntary coverage of listed plant taxa in such plans.

In summary, we believe excluding land covered by the Coachella Valley MSHCP/NCCP from critical habitat will

provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Coachella Valley MSHCP/NCCP

We reviewed and evaluated the exclusion of approximately 15,140 ac (6,127 ha) of land within the boundaries of the Coachella Valley MSHCP/NCCP from our revised designation of critical habitat, and we determined the benefits of excluding these lands outweigh the benefits of including them. The regulatory benefits of including the portion of these lands occupied by *Astragalus lentiginosus* var. *coachellae* in the designation are small because of the unlikelihood of a Federal nexus. The regulatory benefits of including the portion of these lands not occupied by the taxon (areas supporting fluvial sand transport processes) are greater due to the possibility of a Federal nexus through the Corps. However, these benefits are reduced by the existence of protections provided through the Coachella Valley MSHCP/NCCP that are mostly redundant to the regulatory protections that would be achieved through designation of critical habitat. The educational benefits of including lands covered under the Coachella Valley MSHCP/NCCP are small in occupied areas and unoccupied areas.

We believe the benefits of excluding lands covered by the Coachella Valley MSHCP/NCCP from critical habitat are more significant. Exclusion of these lands from critical habitat will help preserve the partnerships we have developed with local jurisdictions and project proponents through the development and ongoing implementation of the Coachella Valley MSHCP/NCCP and aid in fostering future partnerships for the benefit of listed species. Designation of lands covered by the Coachella Valley MSHCP/NCCP may discourage other partners from seeking, amending, or completing HCCP/NCCP plans that cover *Astragalus lentiginosus* var. *coachellae* and other listed taxa. Designation of critical habitat does not require that management or recovery actions take place on the lands included in the designation. The Coachella Valley MSHCP/NCCP, however, will provide for significant conservation and management of *A. l.* var. *coachellae* and its habitat and help achieve recovery of this species through habitat enhancement and restoration, functional connections to adjoining habitat, and monitoring efforts. Additional HCPs or other management plans potentially fostered by this exclusion would also help to recover this and other federally listed species. Therefore, in consideration of the relevant impact to current and future partnerships, as summarized in the *Benefits of Exclusion—Coachella Valley MSHCP/NCCP* section above, we determined the significant benefits of exclusion outweigh the benefits of critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Coachella Valley MSHCP/NCCP

We determined that the exclusion of 15,140 ac (6,127 ha) of land within the boundaries of the Coachella Valley MSHCP/NCCP from the designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* will not result in extinction of the taxon. Protections afforded the taxon and its habitat by the Coachella Valley MSHCP/NCCP provide assurances that the taxon will not go extinct as a result of excluding these lands from the critical habitat designation. The jeopardy standard of section 7 of the Act will also provide protection in occupied areas when there is a Federal nexus. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude 15,140 ac (6,127 ha) of land within the boundaries of the Coachella Valley MSHCP/NCCP from this final critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act—Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to federally listed species. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We take into consideration our partnerships and existing conservation actions that tribes have implemented or are currently implementing when conducting our analysis under section 4(b)(2) of the Act in this final revised critical habitat designation. We also take into consideration conservation actions that are planned as part of our ongoing commitment to the government-to-government relationship with tribes. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat based on economic impacts, impacts to National security, or other relevant impacts if the Secretary determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat. However, an exclusion cannot occur if it will result in the extinction of the species concerned.

We determined approximately 893 ac (361 ha) of lands owned by or under the jurisdiction of two Tribes meet the definition of critical habitat under the Act. These tribal lands are found within Units 1 and 2, and are owned by or under the jurisdiction of the Morongo Band of Mission Indians and the Agua Caliente Band of Cahuilla Indians. In making our final decision with regard to these tribal lands, we considered the factors listed above. Under section 4(b)(2) of the Act, the Secretary is exercising his discretion to exclude approximately 893 ac (361 ha) of land comprised of all reservation lands from this final revised critical habitat designation (this is all of the tribal land proposed as critical habitat for *A. l.* var. *coachellae*). As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

For our 4(b)(2) balancing analysis we considered our partnership with the Agua Caliente Band of Cahuilla Indians and analyzed the benefits of including and excluding those lands within the Agua Caliente Band of Cahuilla Indians Reservation boundary that meet the definition of critical habitat. The Agua Caliente Indian Reservation consists of approximately 31,500 acres of land in a checkerboard of parcels found primarily in the City of Palm Springs, and the Cities of Cathedral City and Rancho Mirage, and unincorporated Riverside County, California. This area includes approximately 579 ac (234 ha) that meet the definition of *Astragalus lentiginosus* var. *coachellae* critical habitat in Unit 2, all of which are within the Agua Caliente Band of Cahuilla Indians

Reservation boundary. The Agua Caliente Band of Cahuilla Indians has worked with our office to develop a draft HCP that includes *A. l.* var. *coachellae* as a covered taxon, and includes conservation measures for the taxon and its habitat. Although the Agua Caliente Band of Cahuilla Indians notified us in a letter dated October 6, 2010, that they suspended their pursuit of a Section 10(a) permit for their draft HCP (ACBCI 2010a, p. 1), they consider the draft plan to be a Tribal-approved, final document and implement it as such for land-use planning on all Reservation lands. The Tribe is continuing to implement the conservation strategies outlined in the document, and has expressed their intention to continue to do so (Park 2011, p. 1; pers. com. J. McBride, 2012) and protect and manage natural resources within their jurisdiction (ACBCI 2010b, p. ES–1; Park 2011, p. 1).

The Tribe is implementing numerous provisions aimed specifically at protecting *Astragalus lentiginosus* var. *coachellae* habitat (ACBCI 2010b, pp. 2–3, 4–32, 4–53, 4–67, 4–106)), including in areas meeting the definition of critical habitat for the taxon. Conservation objectives for *A. l.* var. *coachellae* include avoidance, minimization, and/or mitigation of impacts to active or ephemeral sand fields within the Section 6 Target Acquisition Area (most of the Agua Caliente Band of Cahuilla Indians lands that meet the definition of critical habitat for *A. l.* var. *coachellae* are within the Section 6 (Township 4 South, Range 5 East) Target Acquisition Area, which contains the sand formations that form the basis of *A. l.* var. *coachellae* habitat (see *Primary Constituent Element for* Astragalus lentiginosus *var.* coachellae section above)). Within the Section 6 Target Acquisition Area, acquisition or dedication of lands to the Habitat Preserve and management in perpetuity is targeted to occur for mitigation of impacts to covered species (including *A. l.* var. *coachellae*). The Tribe anticipates conservation of at least 177 acres within the Section 6 Target Acquisition Area, and acquisition of a minimum of 640 acres of habitat for conservation in other areas that are potentially suitable to support the taxon. We anticipate that these provisions and others aimed at avoiding direct and indirect impacts to the taxon and avoiding, minimizing, or mitigating impacts to its habitat, sand sources, and sand transport will play an important role in conserving the taxon and preventing adverse alteration of *A. l.* var. *coachellae* habitat.

We determined approximately 313 ac (127 ha) of lands owned by or under the jurisdiction of the Morongo Band of Mission Indians meet the definition of critical habitat under the Act for *Astragalus lentiginosus* var. *coachellae.* For our section 4(b)(2) balancing analysis we considered our partnership with the Tribe and analyzed the benefits of including and excluding those lands within the Morongo Band of Mission Indians Reservation boundary that meet the definition of critical habitat.

The Morongo Band of Mission Indians (formerly the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation) Reservation consists of over 35,000 ac of land on the western end of the Coachella Valley. This area includes approximately 313 ac (12 ha) that meet the definition of *Astragalus lentiginosus* var. *coachellae* critical habitat in Unit 1. Almost all (97 percent) of these Tribal lands identified as essential for the conservation of *A. l.* var. *coachellae* are fluvial sand transport areas not occupied by the taxon. The Morongo Band of Mission Indians has not completed a management plan that specifically provides for conservation of processes contributing to the maintenance of *A. l.* var. *coachellae* habitat. However, the Tribe has land designations and management policies and practices that contribute to the conservation of the fluvial sand transport areas identified as essential habitat for *A. l.* var. *coachellae* (Martin 2011, pp. 1–2).

For example, human impacts will be limited in the areas meeting the definition of critical habitat due to their significant value to the Tribe in their natural state, and because they are subject to natural hazards, minimizing their development value. Also, the Morongo Band of Mission Indians have instituted an ordinance limiting recreational OHV use to areas where such activities will not impact fluvial sand transport or habitat areas. Additionally, the Morongo Environmental Protection Department—Resource Conservation program has implemented nonnative species removal projects throughout Morongo Band of Mission Indians lands with consultation from the Inland Empire Resource Conservation District and the Natural Resources Conservation Service (U.S. Department of Agriculture). Over 65 percent of the Morongo Band of Mission Indians lands are listed as ''Open Space/Conservation element areas'' in the Morongo Band of Mission Indians General Plan, including active ephemeral washes that contribute to the San Gorgonio River fluvial sand transport system and large areas unobstructed by development, that contain suitable habitat with intact wind and depositional regimes. We anticipate that the Morongo Band of Mission Indians' dedication to maintaining natural resources and minimizing impacts to those resources on their lands will contribute greatly to the conservation of *A. l.* var. *coachellae,* its habitat, and sand transport processes on the Morongo Band of Mission Indians Reservation.

Most of the lands that meet the definition of critical habitat within the Morongo Band of Mission Indians Reservation are areas supporting the fluvial transport of sand carried by the San Gorgonio River into areas occupied by major occurrences of *Astragalus lentiginosus* var. *coachellae.* Lands that meet the definition of critical habitat within the Agua Caliente Indian Reservation are all areas with sand formations that form the basis of suitable habitat for *A. l.* var. *coachellae.* Activities on lands that meet the definition of critical habitat within these tribal reservations could affect the taxon directly and also affect sand transport processes. Therefore, we want to foster strong partnerships with these Tribes and work cooperatively toward conservation of *A. l.* var. *coachellae.*

Benefits of Inclusion—Tribal Lands

Regulatory Benefits (Endangered Species Act)

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standards are different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to

conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone, especially in instances when critical habitat has been designated where the species does not occur.

Critical habitat may provide a regulatory benefit for *Astragalus lentiginosus* var. *coachellae* when there is a Federal nexus present for a project that might adversely modify critical habitat. On tribal reservations there is a Federal nexus through the Bureau of Indian Affairs (BIA) for projects that could adversely modify critical habitat. Therefore, there may be a regulatory benefit of including the tribal lands in the designation, as some projects on tribal lands identified as essential habitat within Units 1 and 2 may require consultation with the Service.

However, if protections provided by critical habitat are redundant with protections already in place, the benefits of inclusion in critical habitat are reduced. As discussed above, although the Agua Caliente Band of Cahuilla Indians are no longer pursuing a Section 10(a) permit for their draft HCP (ACBCI 2010a, p. 1), the Tribe is continuing to implement the conservation strategies outlined in the document, and plans to continue doing so (Park 2011, p. 1; pers. com. J. McBride, 2012). The protections afforded sand transport processes and *Astragalus lentiginosus* var. *coachellae* habitat by these conservation strategies provide for avoidance, minimization, and mitigation of impacts to *A. l.* var. *coachellae* habitat, and habitat conservation and management (see above discussion of conservation objectives on Agua Caliente Band of Cahuilla Indians lands for more detail). Morongo Band of Mission Indians also provides protection for sand transport processes and *A. l.* var. *coachellae* habitat through Tribal ordinances, management activities, protections provided in the Tribe's General Plan, and the fact that the Tribe considers Tribal lands meeting the definition of critical habitat to be of significant value in their natural state. The regulatory benefits of designating critical habitat for *A. l.* var. *coachellae* on Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands are reduced by these protections, which are to some extent redundant to the regulatory protections provided by critical habitat designation. We expect that the avoidance and minimization of impacts to, and conservation of, *A. l.* var. *coachellae* habitat that would likely result from consultation under section 7 of the Act on designated Tribal lands where there is a Federal nexus would be similar to the protections already put in place by the Tribes. Therefore, we anticipate the regulatory benefit of including the tribal lands in the designation to be small.

Educational Benefit

Designating critical habitat also can be beneficial because the process of proposing critical habitat provides the opportunity for peer review and public comment on lands we propose to designate as critical habitat, our criteria used to identify those lands, potential impacts from the proposal, and information on the taxon itself. We believe the designation of critical habitat may generally provide previously unavailable information to the public. Public education regarding the potential conservation value of an area may also help focus conservation and management efforts on areas of high conservation value for certain species. Information about *Astragalus lentiginosus* var. *coachellae* and its habitat that reaches a wide audience, including parties concerned about and engaged in conservation activities, is valuable because the public may not be aware of documented (or undocumented) *A. l.* var. *coachellae* occurrences and unoccupied areas supporting sand transport processes that have not been conserved or are not being managed.

Due to the existence of survey data and development of the Agua Caliente Band of Cahuilla Indians' draft HCP, stakeholders in the region are likely aware of the existence of *A. l.* var. *coachellae* on the portions of Agua Caliente Band of Cahuilla Indians lands proposed as critical habitat and the importance of these areas to the conservation of the taxon. Morongo Band of Mission Indians lands in Unit 1 consist entirely of areas not occupied by *A. l.* var. *coachellae* that support fluvial sand transport processes crucial to maintaining the sand formations in Unit 1 upon which the taxon depends. During the development of the proposed revised critical habitat rule, we met with representatives from the Morongo Band of Mission Indians and the BIA to inform them of the proposal. As a result of this meeting and further interactions with tribal representatives and the BIA, we believe the importance of the fluvial sand transport areas on Morongo Band of Mission Indians lands to the conservation of *A. l.* var. *coachellae* has been amply communicated to those with the most direct influence over the management of these areas. The public and local stakeholders have also been made aware of the importance of these areas to *A. l.* var. *coachellae* conservation through the development and implementation of the Coachella Valley MSHCP/NCCP. We, therefore, believe there is no significant educational benefit to including Tribal lands in the designation.

Educational benefits of designating critical habitat for *Astragalus lentiginosus* var. *coachellae* are also largely redundant to those derived through the publication of the previous proposed and final critical habitat rules for *A. l.* var. *coachellae.* These documents discuss *A. l.* var. *coachellae* biology and habitat requirements, the location of areas containing the physical or biological features essential to the conservation of the taxon, and the importance of areas supporting sand transport processes needed to maintain suitable habitat for the taxon. Because this information was made available to the public in these documents, we believe there is little educational benefit of designating critical habitat for *A. l.* var. *coachellae.*

Regulatory Benefit (Other State, Local, and Federal Laws)

The designation of critical habitat for some species may also strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA). These laws analyze the potential for projects to significantly affect the environment. To date, the local jurisdictions have not required additional measures associated with critical habitat in their discretionary approval processes (for example, pursuant to the California Environmental Quality Act), and are unlikely to do so in the future. This potential benefit is, therefore, negligible in the Coachella Valley.

In summary, we believe there would likely only be a minimal regulatory benefit of *Astragalus lentiginosus* var. *coachellae* critical habitat designation on Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands, and no significant educational benefits.

Benefits of Exclusion—Tribal Lands

We believe significant benefits would be realized by forgoing designation of critical habitat on reservation lands managed by the Agua Caliente Band of Cahuilla Indians and the Morongo Band of Mission Indians. These benefits include:

(1) Continuance and strengthening of our effective working relationships with all tribes to promote conservation of

Astragalus lentiginosus var. *coachellae* and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward recovering this species, including conservation benefits that might not otherwise occur; and

(3) Encouragement of this and other tribes to complete management plans for this and other federally listed and sensitive species and habitats, and engage in collaboration and cooperation with the Service and other organizations and individuals interested in conservation of the taxon, its habitat, and other biota of mutual interest.

We believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. We are committed to ongoing meaningful collaboration and cooperation with all the affected tribes. For land on the Morongo Band of Mission Indians Reservation, which is not currently covered by an HCP, we will continue to work with BIA and the Tribe to develop species and habitat management plans to promote *Astragalus lentiginosus* var. *coachellae* conservation. For land on the Agua Caliente Band of Cahuilla Indians Reservation, where development and natural resources are being managed in accordance with the Tribe's conservation strategies, which include protections for *A. l.* var. *coachellae,* we will continue to work with the Tribe as they implement these strategies.

Critical habitat designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. For example, in comments submitted during the public comment periods, the Morongo Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the U.S. Bureau of Indian Affairs indicated designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* on tribal lands would negatively impact tribal relations. Both affected tribes submitted comments indicating they were opposed to critical habitat designation or believed their lands should be excluded. Exclusion of tribal reservation lands from critical habitat will help preserve the partnerships we have developed, reinforce those relationships we are building with tribes, and foster future partnerships and development of future management plans. Therefore, we believe excluding tribal reservation lands from critical habitat provides the significant benefit of maintaining and strengthening existing conservation partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Tribal Lands

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of Agua Caliente Band of Cahuilla Indians reservation lands and Morongo Band of Mission Indians reservation lands as critical habitat for *Astragalus lentiginosus* var. *coachellae.* Including these areas in the critical habitat designation for *A. l.* var. *coachellae* may provide some additional protection under section 7(a)(2) of the Act when there is a Federal nexus, although we expect any benefits to be small, because they would be at least partially redundant to existing protections provided by the Tribes. We do not anticipate educational benefits or ancillary regulatory benefit from other laws such as CEQA from designating these areas as critical habitat.

The benefits of excluding Agua Caliente Band of Cahuilla Indians reservation lands and Morongo Band of Mission Indians reservation lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnerships we have developed and reinforce those we are building with the Tribes, and exclusion will foster future partnerships and development of management plans. As discussed above, both Tribes are implementing measures that further the conservation of *Astragalus lentiginosus* var. *coachellae* habitat and land supporting sand transport processes needed to maintain that habitat. Damaging our partnerships with the Tribes could have the effect of dissuading the Tribes from continuing these conservation efforts. Agua Caliente Band of Cahuilla Indians, Morongo Band of Mission Indians, and BIA emphasized through comment letters provided during the public comment period their belief that designation of critical habitat on tribal lands undermines tribal sovereign governmental authority and interferes with the cooperative government-to-government trust relationship between the tribes and the United States. We have excluded tribal lands from previous critical habitat designations, which has provided the benefit of strengthening our partnerships with tribal interests in the past, and we are committed to working with our tribal partners to further the conservation of *Astragalus lentiginosus* var. *coachellae* and other endangered and threatened species. Therefore, in consideration of the relevant impact to our government-to-government relationship with tribes and our current and future conservation partnerships, we determined the significant benefits of exclusion outweigh the benefits of critical habitat designation.

In summary, we find that the exclusion of Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians reservation lands from this final critical habitat designation will preserve our partnerships with tribes and foster future dialog and cooperative actions as well as development of habitat management plans. These partnership benefits are significant and outweigh the potential regulatory benefits and any small educational benefits of including these portions of Unit 1 and Unit 2 in critical habitat for *Astragalus lentiginosus* var. *coachellae.*

Exclusion Will Not Result in Extinction of the Species—Tribal Lands

We determined that the exclusion of 893 ac (361 ha) of Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians reservation land from the revised designation of *Astragalus lentiginosus* var. *coachellae* critical habitat will not result in extinction of the taxon for the following reasons. First, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to occupancy of *Astragalus lentiginosus* var. *coachellae* will provide protection to the taxon on Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands occupied by the taxon where there is a Federal nexus. Also, on the Morongo Band of Mission Indians lands, most of which support fluvial sand transport processes, the Tribe's intention to maintain the areas in their natural state will help ensure the movement of sand into occupied areas will continue unimpeded. Additionally, both Tribes provide protection for the taxon, its habitat, and the processes supporting its habitat via the avenues of conservation discussed above. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 893 ac (361 ha) of Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians reservation land from this revised critical habitat designation.

Summary of Comments and Recommendations

We requested comments or information from the public on the proposed revised designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* during two comment periods. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed revised rule and draft economic analysis during these comment periods. The first comment period, associated with the publication of the proposed revised rule (76 FR 53224), opened on August 25, 2011, and closed on October 24, 2011. The Service published a notice announcing the publication of the proposed revised critical habitat designation in The Press-Enterprise on September 2, 2011. We also requested comments on the proposed revised critical habitat designation and associated draft economic analysis during a comment period that opened May 16, 2012, and closed on June 15, 2012 (a notice announcing the availability of the draft economic analysis for the proposed revised critical habitat designation was published in the **Federal Register** on May 16, 2012 (77 FR 28846)). We received one request for a public hearing. The public hearing was conducted on May 31, 2012, in Palm Springs, California. No comments were received during the public hearing.

During the first comment period, we received 17 comment letters directly addressing the proposed revised critical habitat designation. During the second comment period, we received three comment letters addressing the proposed revised critical habitat designation or the draft economic analysis. All substantive information provided during comment periods has either been incorporated directly into this designation or addressed below. Comments received were grouped into five general issues specifically relating to the proposed revised critical habitat designation for *Astragalus lentiginosus* var. *coachellae* and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from two experts in plant biology and one expert in the geomorphology of the Coachella Valley, all of whom are knowledgeable individuals with scientific expertise that included familiarity with the geographic region in which *Astragalus lentiginosus* var. *coachellae* occurs and the geological processes that sustain its habitat. We received responses from two peer reviewers.

We reviewed all comments received from the two peer reviewers for substantive issues and new information regarding critical habitat for *Astragalus lentiginosus* var. *coachellae.* In general, the peer reviewers supported the methods used to determine the proposed revised critical habitat boundaries, but disagreed with our decision not to propose the hills and mountains where sediment is generated via water erosion, and disagreed with the potential for any exclusions in the final designation. The peer reviewers also provided additional information, clarification, and suggestions to improve the final critical habitat rule. Peer reviewer comments, additional information, clarification, and suggestions are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: One peer reviewer expressed strong support for the geo-biological approach we used to identify critical habitat for *Astragalus lentiginosus* var. *coachellae.*

Another peer reviewer expressed support of our use of modeled habitat to identify critical habitat for *Astragalus lentiginosus* var. *coachellae.*

Response to Comment 1: We appreciate the peer reviewers' comments. We believe the methods used to produce the revised critical habitat designation are well-supported and both peer reviewers generally agreed on the validity of our methods.

Comment 2: One peer reviewer pointed out that there may be higher quality GIS data available now than were available at the time the model was generated, and that there might be relevant GIS data available now that did not exist or was not accessible when the model was generated. The peer reviewer stated that the modeled habitat we used for this analysis ''should be presented as a dynamic perspective of habitat which may change in the future''—in other words, that we should clearly state that the data informing the model that serve as part of the basis for this critical habitat designation may change over time.

Response to Comment 2: Any future improvements in the quality of the data available to inform habitat models of the type used in part to identify critical habitat for *Astragalus lentiginosus* var. *coachellae* may be used to create future models to guide future actions for the conservation of the taxon. However, discussions of these potential improvements are beyond the scope of this critical habitat rule.

Comment 3: One peer reviewer expressed concern that we did not propose sand source areas in the hills and mountains surrounding the Coachella Valley, where sediment is generated via water erosion (areas having 10 percent slope or more) on the basis of presumed redundancy of transport channels and eroding uplands (which, according to the reviewer, could be reduced with inappropriate development). The reviewer urged us to make certain that the critical habitat designation includes all possible sand source areas, especially in light of the degree of existing impairment of the sand supply system. Additionally, the reviewer stated that if specific areas of critical habitat are subsequently excluded by the Secretary under section 4(b)(2) of the Act, protection of all possible source areas will become that much more urgent.

Response to Comment 3: The extensive areas in the hills and mountains that are ten percent slope or greater and generate sediment via erosion are important, but including all possible sand source areas in the critical habitat designation is not essential for the conservation of *Astragalus lentiginosus* var. *coachellae.* We have determined that the areas supporting fluvial sand transport processes (i.e., main stream channels in Units 1, 2, and 3; and alluvial deposits containing multiple washes in Unit 4) are essential for the conservation of *A. l.* var. *coachellae* because without these areas, sand would not be moved from the base of hills and mountains into the areas occupied by *A. l.* var. *coachellae,* which would result in serious degradation of *A. l.* var. *coachellae* habitat. We therefore did not propose areas with ten percent slope or greater as critical habitat for the taxon (see *Criteria Used To Identify Critical Habitat* section above for more discussion).

Comment 4: One peer reviewer expressed concern regarding the exclusions we considered in the proposed rule. The peer reviewer urged caution regarding exclusions that might, according to the reviewer, compromise the sand supply system. The peer reviewer also was not convinced that the Coachella Valley MSHCP/NCCP provides adequate levels of funding, implementation, and oversight of management actions required to maintain or improve habitat for *Astragalus lentiginosus* var. *coachellae* (for example, removal of nonnative

plants, modifications to groundwater availability, and mesquite restoration).

Response to Comment 4: Please see the Exclusions section above for our explanation of why we do not expect the exclusions we have made in this critical habitat designation to compromise the sand transport system. In that section, we also discuss implementation of the Coachella Valley MSHCP/NCCP and why we believe the HCP adequately provides for the conservation of *Astragalus lentiginosus* var. *coachellae* and its habitat.

Comment 5: One peer reviewer feels that redundancy is an important aspect of building a robust system for the protection of biological resources, and that the Service should contribute to this redundancy by including areas in this critical habitat designation that are already receiving protection under HCPs. This peer reviewer pointed out the need for redundancy of protections if we are interested in building robust systems of conservation and was concerned that protections afforded *Astragalus lentiginosus* var. *coachellae* through the Coachella Valley fringe-toed lizard HCP could be lost if the fringe-toed lizard is delisted.

Response to Comment 5: We also agree that redundancy of protections can be beneficial. However, the lands acquired under the Coachella Valley fringe-toed lizard HCP have been subsumed into and are managed as part of the Coachella Valley MSHCP/NCCP reserve system, which we believe adequately provides for the protection of *Astragalus lentiginosus* var. *coachellae* and its habitat regardless of the listing status of the Coachella Valley fringe-toed lizard. Part of the incentive for land managers to participate in the HCP process is the prospect of streamlining regulatory oversight of development and conservation planning. Critical habitat designated for a plant does not always add an extra regulatory layer (for example, when there is no Federal nexus triggering section 7 consultation). However, land managers may view designation of critical habitat as adding an extra layer of costly and time-consuming regulatory procedure. This perception may dissuade some land managers in other areas from considering HCPs worth pursuing for other species. Designation of critical habitat for a plant within an operable established HCP could jeopardize future conservation actions by other potential applicants by reducing the perceived value of the HCP process for stakeholders.

Comment 6: One peer reviewer stated that the Service should determine what we would like to propose as critical habitat before soliciting opinions. The reviewer stated that because a large portion of the proposed critical habitat may be excluded, those reviewing the proposal cannot have a concrete idea of how many acres will be included and where these acres exist, which, according to the reviewer, makes it very difficult to judge the merits of the proposal.

This peer reviewer also requested we clarify the fact that all Tribal lands that were proposed as critical habitat for *Astragalus lentiginosus* var. *coachellae* were also considered for exclusion from the designation.

Response to Comment 6: We provided the acreage of areas being considered for exclusion from the critical habitat designation in the proposed critical habitat rule for *Astragalus lentiginosus* var. *coachellae.* We do not know at the time the proposal is published, which, if any, of these areas will be excluded from the final designation because we rely in part on comments received during the comment period following publication of the proposed rule to determine which areas being considered for exclusion in fact warrant exclusion from the designation. We did not indicate lands being considered for exclusion on the maps in the proposed rule.

In the Exclusions section above, we have clarified the fact that all Tribal lands that were proposed as critical habitat for *Astragalus lentiginosus* var. *coachellae* were also considered for exclusion from the designation.

Comment 7: One peer reviewer asserted that much more is known about the pollination and reproductive biology of other desert *Astragalus* taxa at Ash Meadows NWR, and that this information could be of use in Coachella Valley. The reviewer recommended the Pavlik and Barbour (1986) report (Biological Conservation 46 (1988), pp. 217–242) for further information.

This peer reviewer also asserted that we were incorrect when we stated in the proposed critical habitat rule that Mazer and Travers found *Astragalus lentiginosus* var. *piscinensis* to be incapable of autogamy (the reviewer sited Mazer and Travers 1992, p. 91). The reviewer points out that Mazer and Travers (1992) reported *A. l.* var. *piscinensis* to have produced selfed seed at very low levels, which is consistent with the finding of Meinke *et al.* (2007) that *A. l.* var. *coachellae* produces selfed seed at very low levels. The reviewer goes on to state that they observed low levels of selfed seed set in *A. l.* var. *variabilis* in greenhouse studies.

The reviewer also stated that percentages and sample sizes would better summarize data from the pollinator exclusion study of Meinke *et al.* (2007, p. 36), and provided references for our soil seed bank viability discussion including Ziemkiewicz and Cronin (1987) (Journal of Rangeland Management 34(2): pp. 94–97) and Ralphs and Cronin (1987) (Weed Science 35: pp. 792–795).

Response to Comment 7: We appreciate the peer reviewer's suggestions and the information provided. We have incorporated this information into the appropriate sections of this rule.

Comment 8: One peer reviewer noted that much of the work cited in the proposed critical habitat rule is unpublished. This reviewer suggested that perhaps the Service should consider incentivizing publication in a peer-reviewed journal.

Response to Comment 8: We appreciate the peer reviewer's suggestion and will continue to encourage publication of results in peer-reviewed research journals.

Comment 9: One peer reviewer suggested that Table 2 in the proposed rule could be improved by presenting the amount of occupied and modeled lands organized by political categories used in Table 2 of the proposed rule, then listing all of the exclusions, and then presenting what remains as proposed critical habitat. The reviewer stated that it would add greater transparency to know what may be required to ensure for the continued existence of the taxon, and what is actually being protected if this information were in one place.

This peer reviewer suggested the proposed critical habitat rule could also be improved by providing better maps. In these maps, the reviewer feels it would be very valuable to include the considered exclusions and land ownership, particularly Federal lands because of the differences in protection provided to plants by the Act on Federal versus non-Federal lands.

Response to Comment 9: We appreciate the peer reviewer's suggestions. We have organized the land ownership table in this critical habitat final rule as suggested (see Table 1). We will consider adding greater detail to maps included in critical habitat rules, but the printing standards of the **Federal Register** are not compatible with detailed features that would show parcel-level land ownership data. We constructed the critical habitat units using Geographic Information System (GIS). The resulting critical habitat GIS shapefiles are available by request from

the Carlsbad Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment 10: One peer reviewer pointed out that application of herbicide may affect the soil seed bank and suggested we conduct a study which explores the effects of various herbicides on the seed bank of *Astragalus lentiginosus* var. *coachellae* prior to implementing any management activities involving herbicide.

Response to Comment 10: We appreciate the peer reviewer's concern and have edited the appropriate section of this final critical habitat rule to address the potential for herbicides to adversely impact the soil seed bank. Potential impacts from herbicides will be considered during implementation of management activities affecting *Astragalus lentiginosus* var. *coachellae.*

Comment From Tribal Interests

Comment 11: The Agua Caliente Band of Cahuilla Indians asserted that the protections afforded by their draft 2010 Tribal Habitat Conservation Plan (draft 2010 Tribal HCP) are equal to those expected to be provided by a critical habitat designation. Agua Caliente Band of Cahuilla Indians listed the goals for conserving *Astragalus lentiginosus* var. *coachellae* as outlined in the draft 2010 Tribal HCP and described the measures put forth in the draft 2010 Tribal HCP aimed at conserving *A. l.* var. *coachellae* habitat. They also included language from the draft 2010 Tribal HCP describing tribal lands on the Coachella Valley floor and the fluvial sand transport process areas and planned mitigation for development impacts in these areas.

The Agua Caliente Band of Cahuilla Indians also described their relationship with the Service by stating, ''The Tribe has, for the past 14 years, been a consistent partner with the Service to develop and implement a series of increasingly detailed and sophisticated Tribal HCPs that provide protection to endangered and sensitive species on the Reservation. It is important to note that the Tribe has always acted in good faith and chose to develop these plans which include strict provisions for conservation.'' According to the Agua Caliente Band of Cahuilla Indians, the Secretary's decision to include or exclude tribal lands from the critical habitat designation should be based on the adequacy and value of the tribal/Federal partnership, not on the formal approval of the draft Tribal Habitat Conservation Plan. They state that this position is supported by the Secretary's exclusion of Agua Caliente Band of Cahuilla Indians lands from the critical habitat designation for Peninsular bighorn sheep.

Further, Agua Caliente Band of Cahuilla Indians state they would have a disincentive to continue enforcing the draft 2010 Tribal HCP with respect to *Astragalus lentiginosus* var. *coachellae* if critical habitat is designated on Agua Caliente Band of Cahuilla Indians lands. And without enforcement of the draft HCP, ''conservation on the Reservation will proceed in an incomplete and piecemeal fashion, using section 7 consultations where there is a Federal nexus, and no fee collection or mitigation on fee land,'' according to the Agua Caliente Band of Cahuilla Indians.

Although they have not finalized the draft 2010 Tribal HCP and secured a permit under section 10(a)(1)(B) of the Act, Agua Caliente Band of Cahuilla Indians state that because they have been enforcing the terms of the draft 2010 Tribal HCP and continue to maintain their relationship with the Service, Agua Caliente Band of Cahuilla Indians lands should be excluded from the critical habitat designation for *A. l.* var. *coachellae.*

Additionally, Agua Caliente Band of Cahuilla Indians expressed support for exclusion of tribal lands from the designation under section 4(b)(2) of the Act, because such an exclusion would be in keeping with Secretarial Order 3206 (June 5, 1997) entitled, ''American Indian Tribal Rights, Federal-Tribal Trust responsibilities, and the Endangered Species Act'' (discussed in the Exclusions Under Section 4(b)(2) of the Act—Tribal Lands section above).

In summary, Agua Caliente Band of Cahuilla Indians supports exclusion of tribal lands from this critical habitat designation and reliance on the draft 2010 Tribal HCP to avoid ''additional, unnecessary regulatory burden'' they feel would result from designation of critical habitat on their lands.

Response to Comment 11: We understand that the Agua Caliente Band of Cahuilla Indians considers the draft Tribal HCP to be a Tribal-approved, final document and implements it as such for land-use planning on all Reservation lands. We have taken their dedication to implementing their draft Tribal HCP and resulting conservation efforts for *Astragalus lentiginosus* var. *coachellae* and its habitat as well as other taxa and biological resources, their continuing partnership with the Service, and issues of tribal self-governance and government-to-government relations into consideration when comparing the benefits of including Agua Caliente Band of Cahuilla Indians lands to the benefits of excluding those lands. Based on the results of this evaluation, the Secretary is exercising his discretion to exclude all Agua Caliente Band of Cahuilla Indians lands from this final revised critical habitat designation (see Exclusions Under Section 4(b)(2) of the Act—Tribal Lands section above).

Comment 12: The Morongo Band of Mission Indians requested that their lands be excluded from the critical habitat designation for *Astragalus lentiginosus* var. *coachellae.* In support of this request, the Morongo Band of Mission Indians provided descriptions of land designations and management policies and practices they assert will preserve and limit impacts to biological resources including fluvial sand transport processes on Morongo Band of Mission Indians lands. They also described nonnative plant removal projects and a tribal ordinance aimed at controlling OHV use on Morongo Band of Mission Indians lands. They argued that although they have not completed a management plan that specifically provides for conservation of *A. l.* var. *coachellae,* the policies and practices they have implemented contribute to the conservation and continuance of fluvial sand transport and thus eliminate the need for designation of proposed Morongo Band of Mission Indians lands.

The Morongo Band of Mission Indians also provided a discussion of tribal self-governance and the protocols of a government-to-government relationship under Secretarial Order 3206, stating that ''* * * Congressional and Administrative policies should continue to promote tribal self-government, self-sufficiency, and self-determination, recognizing and endorsing the fundamental rights of Morongo to set our own priorities and make decisions affecting our resources and distinctive ways of life. Morongo Band of Mission Indians has the ability and resources to manage [Morongo Band of Mission Indians lands proposed as critical habitat for *Astragalus lentiginosus* var. *coachellae*] and implement reasonable and prudent alternatives to avoid destruction or adverse modifications to fluvial sand transport in [these areas].''

Response to Comment 12: We have taken the Morongo Band of Mission Indians' contributions to the conservation of biological resources on their lands, their continuing partnership with the Service, as well as issues of tribal self-governance and government-to-government relations into consideration when comparing the benefits of including Tribal lands to the benefits of excluding those lands. Based on the results of this evaluation, the Secretary is exercising his discretion to exclude all Morongo Band of Mission

Indians lands from this final revised critical habitat designation (see Exclusions Under Section 4(b)(2) of the Act—Tribal Lands section above).

Comment 13: The U.S. Bureau of Indian Affairs (BIA) expressed their support of comments submitted by Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians regarding the proposed critical habitat for *Astragalus lentiginosus* var. *coachellae* and requested that Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands be excluded from the final critical habitat designation for the taxon. The BIA considers designation of critical habitat on Indian lands as an infringement upon and taking of Indian assets by a fellow trustee (the Service). They outlined a number of Federal policies and congressional actions relevant to Indian tribes regarding the Endangered Species Act, which they feel support their request that Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands be excluded.

The BIA also asserted that Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands should be excluded because designating critical habitat on these lands would jeopardize partnerships between the Service and both tribes. According to the BIA, excluding Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians lands from the critical habitat designation would allow voluntary partnerships to continue, which they feel would have a long-term benefit for *Astragalus lentiginosus* var. *coachellae.*

Response to Comment 13: We evaluated the benefits of exclusion of all reservation lands from this final revised critical habitat designation. Maintaining and fostering partnerships and good working relationships with tribes are benefits of exclusion and are supported by Secretarial Order 3206. Consistent with Secretarial Order 3206 and Executive Order 13175, we also believe tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. We found the benefits of excluding Morongo Band of Mission Indians lands and Agua Caliente Band of Cahuilla Indians lands to be greater than the benefits of including these lands in the critical habitat designation (see Exclusions Under Section 4(b)(2) of the Act—Tribal Lands section above for a detailed discussion). Therefore, the Secretary is exercising his discretion to exclude Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians reservation lands from this final revised critical habitat designation.

We recognize and value our relationships with both tribes and will continue to work cooperatively with them to conserve federally listed species on their lands.

Comment 14: The BIA asserted that it is justified and appropriate to automatically remove lands from a critical habitat designation that are subsequently brought into Trust by a tribe upon incorporation into the Tribal management plan.

Response to Comment 14: The revision of a designation of critical habitat either by the inclusion or exclusion of any specific area is required to be accomplished through a rulemaking process by which the revisions are proposed for public review and comment, and then a final rule is issued following consideration of all comments and best available scientific information. Revisions to critical habitat cannot be automatic.

Comments From HCP Administrators and Permittees

Comment 15: One commenter stated opposition to the Service's proposed critical habitat designation for *Astragalus lentiginosus* var. *coachellae* on approximately 158 ac (64 ha) within Western Riverside County MSHCP boundaries. The commenter provided reasoning in support of their opposition.

Response to Comment 15: The 158 ac (64 ha) to which the commenter refers is not covered under the Western Riverside County MSHCP. The Service was in error when we stated in the proposed critical habitat rule that this area was covered under the Western Riverside County MSHCP; this area is actually Morongo Band of Mission Indians land. We corrected this error in the **Federal Register** notice announcing the availability of the draft Economic Analysis for the proposed revised critical habitat designation published on May 16, 2012 (77 FR 28849), and we explain the error in the Summary of Changes from Proposed Rule section above. No lands covered under the Western Riverside County MSHCP have been proposed or designated as critical habitat for *Astragalus lentiginosus* var. *coachellae.* The commenter's issue is therefore moot.

Comment 16: One commenter provided a description of the Coachella Valley MSHCP/NCCP and explained how the Coachella Valley MSHCP/NCCP is expected to add approximately 175,000 ac to an existing 550,000 ac of public and private conserved land to create a reserve system of 725,000 ac, and they explained how the MSHCP funds ongoing management and biological monitoring and establishes an endowment to continue management and monitoring in perpetuity. The commenter stated that the MSHCP has been and continues to be successful in conserving land to protect *Astragalus lentiginosus* var. *coachellae* and other species and summarized the number of acres conserved within the sand transport system by MSHCP partners since 1996 and by the Coachella Valley Conservation Commission since the MSHCP was permitted. According to the commenter, areas within the sand transport system are considered a conservation priority for the Coachella Valley Conservation Commission, which administers the local implementation of the Coachella Valley MSHCP/NCCP.

The commenter asserted that any designation of critical habitat on land under the jurisdiction of Coachella Valley MSHCP/NCCP permittees is unnecessary and counterproductive to the goal of implementing a comprehensive, landscape-level approach to conservation in the region. The commenter stated that critical habitat designations represent a species-by-species and project-by-project implementation of the Act that fails to provide the landscape-level conservation, with attendant management and monitoring, that is necessary to preserve sensitive species and the natural systems upon which they depend.

The commenter asserted that the Coachella Valley MSHCP/NCCP stakeholders have demonstrated the depth of their commitment to the success of the MSHCP and stated that the addition of another layer of regulation through this critical habitat designation after the stakeholders have demonstrated their dedication to the MSHCP would damage the Service's partnership with MSHCP stakeholders and create a disincentive for participation in the MSHCP.

This commenter's recommendation that lands covered under the Coachella Valley MSHCP/NCCP be excluded from the critical habitat designation for *Astragalus lentiginosus* var. *coachellae* was supported by a second commenter. The second commenter also stated that excluding these lands would not compromise the policies and programs aimed at protecting and restoring the taxon, and that there is no advantage either for the agencies, landowners, and citizens committed to the environmental health of the Coachella Valley or for *A. l.* var. *coachellae* in including these areas in the critical habitat designation.

Additionally, the second commenter stated that, as a Coachella Valley MSHCP/NCCP permittee, the Riverside County Flood Control and Water Conservation District is subject to applicable MSHCP provisions including the requirement to contribute mitigation to assist in achieving the regional conservation objectives identified in the MSHCP, which includes a number of specific regional objectives to ensure long-term conservation of *Astragalus lentiginosus* var. *coachellae.* The commenter went on to state that Riverside County Flood Control and Water Conservation District projects within the proposed revised critical habitat areas are subject to a Joint Project Review process required for projects that are located within Conservation Areas, and that these projects are also subject to review by the Service as described in the MSHCP. Compliance with the MSHCP by the Riverside County Flood Control and Water Conservation District and other Coachella Valley MSHCP/NCCP permittees ensures that the species will be conserved on a regional basis as intended when the Service authorized the final MSHCP, according to the commenter.

Two more commenters also supported the recommendation that lands covered by the Coachella Valley MSHCP/NCCP should be excluded from the critical habitat designation for *Astragalus lentiginosus* var. *coachellae.*

Both the third and fourth commenters expressed concern with the proposed designation of critical habitat on lands covered under the Coachella Valley MSHCP/NCCP, particularly those lands owned and managed by the Riverside County Flood Control and Water Conservation District and the Coachella Valley Water District. The third commenter's issues included their belief that designating critical habitat on lands covered under the Coachella Valley MSHCP/NCCP will—

- Provide negligible, if any, benefits to *Astragalus lentiginosus* var. *coachellae;*
- Negate any benefits to the MSHCP permittees from their efforts to provide regional conservation for *A. l.* var. *coachellae* and invest in establishing a regional habitat-based long-term conservation program; and
- Run counter to statements made in the Implementing Agreement for the Coachella Valley MSHCP/NCCP (commenter cited Section 14.11 of the Coachella Valley MSHCP/NCCP Implementing Agreement and Section 6.8 of the Coachella Valley MSHCP/NCCP).

The fourth commenter stated that the Coachella Valley Water District, another permittee of the Coachella Valley MSHCP/NCCP, has provided a commitment to the success of the MSHCP, including establishing constructed habitat, restoring and enhancing existing habitat, conserving 7,000 ac of Coachella Valley Water District lands (including over 1,800 ac of its land within the Whitewater River floodplain that provides habitat for *Astragalus lentiginosus* var. *coachellae*) and a $3.58 million contribution to an endowment fund for monitoring and adaptive management. This commenter also briefly described the permittees' responsibilities under the Coachella Valley MSHCP/NCCP, stating that the approach to conservation that the permittees have committed to under the MSHCP has been vetted and approved by the Service and California Department of Fish and Game. The commenter asserted that Coachella Valley Water District's commitment to the success of the Coachella Valley MSHCP/NCCP is also demonstrated by their active participation in the development and implementation of the MSHCP and their ongoing cooperation with partners and wildlife agencies.

The fourth commenter expressed concern that the proposed critical habitat designation puts in question the Service's commitment to the Coachella Valley MSHCP/NCCP objectives and implementation, and that designating critical habitat on lands covered under the Coachella Valley MSHCP/NCCP will jeopardize the ultimate success of the MSHCP.

Designating critical habitat on lands covered by the Coachella Valley MSHCP/NCCP would create duplicative and redundant regulatory efforts, according to both the third and fourth commenters (this issue is discussed further in *Response to Comment 18* below). For this reason and those outlined above, the third commenter requested that lands within the Coachella Valley MSHCP/NCCP boundaries be excluded from the final critical habitat designation for *Astragalus lentiginosus* var. *coachellae,* and the fourth commenter requested that the Service terminate efforts to adopt a revised critical habitat designation for *A. l.* var. *coachellae.*

The third and fourth commenters also asserted that designating critical habitat on lands covered by the Coachella Valley MSHCP/NCCP would create a duplicative and redundant regulatory burden, which they suggest could delay efficient and timely operation and maintenance of water and flood control infrastructure on lands covered by the Coachella Valley MSHCP/NCCP.

The third commenter stated that these potential delays could jeopardize public health and safety. This commenter stated that the inclusion of existing flood control facilities within the final critical habitat area would trigger the section 7 consultation process for any Riverside County Flood Control and Water Conservation District maintenance, repair, replacement, and rehabilitation activities. The commenter expressed concern that this may prevent or delay maintenance of these flood control facilities and thereby pose a potential threat to public health and safety. Therefore, the commenter stated that the existing Cabazon Channel, Chino Canyon Levee, Whitewater River Levee, Mission Creek Channel, and Desert Hot Springs Channel Line E facilities should be excluded from the final revised critical habitat designation for *Astragalus lentiginosus* var. *coachellae.*

The fourth commenter asserted that this critical habitat designation is unwarranted, redundant, and counterproductive considering the success they assert has already been achieved conserving critical habitat for *Astragalus lentiginosus* var. *coachellae* through the Coachella Valley MSHCP/NCCP.

Response to Comment 16: We have considered the aforementioned commenters' concerns. In exercising his discretion to exclude areas from critical habitat under section 4(b)(2) of the Act, the Secretary weighed the benefits of exclusion against the benefits of inclusion. We did not exclude areas based on the existence of management plans or other conservation measures; however, we acknowledge that the existence of a plan may reduce the benefits of inclusion of an area in critical habitat to the extent the protections provided under the plan are largely redundant with conservation benefits of the critical habitat designation. Thus, in some cases, the benefits of exclusion in the form of sustaining and encouraging partnerships that result in on-the-ground conservation of listed species may outweigh the benefits of inclusion. Based on the discussion in the Exclusions Under Section 4(b)(2) of the Act—Coachella Valley MSHCP/NCCP section above, the Secretary is exercising his discretion to exclude all lands covered by the Coachella Valley MSHCP/NCCP from this final revised critical habitat designation.

Comment 17: One commenter asserted that because the City of Desert Hot Springs is currently requiring all

projects within Coachella Valley MSHCP/NCCP Conservation Areas to undergo the Joint Project Review process, and is actively working to formally bring their entire city into the MSHCP through a Major Amendment, excluding all land under the jurisdiction of the City of Desert Hot Springs from the critical habitat designation for *Astragalus lentiginosus* var. *coachellae* is warranted.

Response to Comment 17: The City of Desert Hot Springs did not submit comments on the proposed critical habitat designation during either public comment period and did not request exclusion from this designation. We are proceeding with this designation based on the current conditions and participants of the Coachella Valley MSHCP/NCCP in awareness and consideration of changes in participation of Desert Hot Springs.

Comment 18: One commenter asserted that many necessary public infrastructure projects, including flood control and the regional transportation network, must involve Federal land to some degree, and virtually all of the Federal land in the area in question is administered by BLM, whose 2002 BLM California Desert Conservation Area Plan Amendment for the Coachella Valley already requires BLM actions to be consistent with the Coachella Valley MSHCP/NCCP. According to the commenter, including Federal land in the critical habitat designation is redundant and counterproductive to the conservation partnership that currently exists between BLM, State and Federal wildlife agencies, and local jurisdictions. The commenter asserted that Federal lands must, therefore, be excluded from the critical habitat designation.

This commenter's recommendation that Federal lands be excluded from the critical habitat designation for *Astragalus lentiginosus* var. *coachellae* was supported by two other commenters. The second commenter also asserted that excluding these lands would not compromise the policies and programs aimed at protecting and restoring the taxon, and that there is no advantage either for the agencies, landowners, and citizens committed to the environmental health of the Coachella Valley or for *A. l.* var. *coachellae* in including these areas in the critical habitat designation. The third commenter stated that designation of critical habitat on Federal land within the Coachella Valley MSHCP/NCCP plan area would create an additional layer of regulation impacting efficient and timely operation and maintenance of critical water and flood control infrastructure on Coachella Valley Water District lands within the plan area.

Response to Comment 18: We acknowledge that the BLM participates in the management of certain Conservation Areas or portions of Conservation Areas within the reserve system of the Coachella Valley MSHCP/NCCP and provides conservation of biological resources in accordance with the California Desert Conservation Area Plan Amendment for the Coachella Valley. We appreciate and commend the efforts of the BLM to work with the Coachella Valley MSHCP/NCCP permittees and to conserve federally listed species on their lands.

The Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned. Based on the record before us, the Secretary is not exercising his discretion to exclude the BLM lands, and we are designating these lands as critical habitat for *Astragalus lentiginosus* var. *coachellae.*

Comment 19: One commenter stated that Unit 3 of the proposed critical habitat contains the existing Mission Creek Channel and Unit 2 contains the existing Chino Canyon and Whitewater River Levees. According to the commenter, the channel and levees are existing manmade features and structures that do not contain the primary constituent element essential to the conservation of *Astragalus lentiginosus* var. *coachellae.*

Response to Comment 19: The Secretary is exercising his discretion to exclude lands covered under the Coachella Valley MSHCP/NCCP from this critical habitat designation under section 4(b)(2) of the Act. Because Riverside County Flood Control and Water Conservation District is a permittee of the Coachella Valley MSHCP/NCCP, Mission Creek Channel and Chino Canyon and Whitewater River Levees have been excluded from this designation.

Comments Regarding Wind Energy

Comment 20: One commenter stated that although Unit 2 of the proposed critical habitat is characterized as unoccupied in the proposed rule, it contains significant wind energy installations and potential solar energy installations.

Response to Comment 20: Throughout the proposed and final revised critical habitat rules, we use the term ''unoccupied'' to refer to areas that, to our knowledge, are not occupied by the target taxon, in this case *Astragalus lentiginosus* var. *coachellae.* We do not intend the term ''unoccupied'' to imply that an area is not occupied by manmade structures. It seems the commenter was referring to the entirety of Unit 2 as being characterized as unoccupied, which is incorrect; only the fluvial sand transport areas (the Whitewater River channel) of Unit 2 are characterized as unoccupied. To our knowledge, there are no wind energy installations in the unoccupied fluvial sand transport areas of Unit 2.

Comment 21: Five commenters expressed concern that designating critical habitat on lands occupied by wind energy projects would conflict with Federal and California State policies aimed at promoting alternative energy by potentially introducing unknown regulatory burdens and restrictions on the operation of wind energy facilities.

Of these five commenters, four also stated that suitable *Astragalus lentiginosus* var. *coachellae* habitat is found in abundance on wind energy sites along with the aeolian and fluvial sand transport that occurs in these areas. All four commenters explained that wind- and water-borne sands are able to flow freely in between wind turbines, creating suitable habitat for the taxon. Two of these commenters go on to assert that approximately 90 percent of the area occupied by wind power facilities is suitable for *A. l.* var. *coachellae* and sand transport. One commenter also asserted that wind energy is a long-term land use that does not disturb soils or destroy individual plants in the course of daily or yearly operations.

These four commenters also describe how measures in place to protect wind power facilities from vandalism also provide protection for *Astragalus lentiginosus* var. *coachellae* (for example, ''Our wind project is completely fenced off and patrolled against trespassing and illegal dumping. This eliminates off-road vehicles, trash dumping and illegal landscape disposal from this habitat area.'').

For the above reasons, these five commenters asserted that lands containing wind energy facilities should be excluded from the final critical habitat designation for *Astragalus lentiginosus* var. *coachellae.* Four of these commenters go on to recommend the specific areas that should be excluded: The disturbance footprint of

existing roads, wind turbines, foundations, transformers, pole lines, underground and overhead lines, meteorological towers, communication facilities, fences and gates, storage yards, and electrical substations and interconnects.

Response to Comment 21: The Service appreciates any protections that may be provided the taxon and its habitat on wind energy facilities.

The area the commenters referred to in their comment, bounded by Interstate 10 to the west and Indian Canyon Road to the east, has multiple landowners. Some of these landowners are permittees of the Coachella Valley MSHCP/NCCP, others, such as the BLM (a Federal agency), are not. The Secretary has the discretion to exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security, and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of designating such area as critical habitat, unless he determines that the exclusion would result in the extinction of the species concerned. In exercising his discretion to exclude areas from critical habitat under section 4(b)(2) of the Act, the Secretary weighed the benefits of exclusion against the benefits of inclusion, and is exercising his discretion to exclude all lands covered under the Coachella Valley MSHCP/NCCP from this final revised critical habitat designation (see *Response to Comment 16* and Exclusions Under Section 4(b)(2) of the Act—Coachella Valley MSHCP/NCCP section above for more detailed discussion). Any lands covered under the Coachella Valley MSHCP/NCCP containing wind power facilities are, therefore, excluded from this critical habitat designation.

Based on the record before us, the Secretary is not exercising his discretion to exclude lands in the area in question that are not covered by the Coachella Valley MSHCP/NCCP, such as BLM lands, and we are designating these lands as critical habitat for *Astragalus lentiginosus* var. *coachellae.*

However, when determining critical habitat boundaries within this final rule, despite our efforts to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological features for *Astragalus lentiginosus* var. *coachellae,* the scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect the adjacent critical habitat. So although some of the lands containing wind energy facilities have been designated as critical habitat for *A. l.* var. *coachellae* (those lands not covered under the Coachella Valley MSHCP/NCCP), those areas that are covered by pavement or structures are not included in the designation and are excluded by text.

Because the areas in question are occupied by *Astragalus lentiginosus* var. *coachellae,* and any project in these areas with a Federal nexus would require consultation with the Service under section 7 of the Act to address potential impacts to the taxon, the economic analysis for the critical habitat designation did not predict project modification costs to wind energy interests due to the designation of critical habitat, only administrative costs of adding adverse modification analyses to these future section 7 consultations.

Comments From Other Interested Parties

Comment 22: One commenter expressed strong support for our designation of critical habitat for *Astragalus lentiginosus* var. *coachellae,* in particular because of the documented population declines of *A. l.* var. *coachellae* (some up to 77 percent according to the commenter) and the general lack of successful recruitment (the commenter cited USFWS 2009).

This commenter went on to observe that the proposed critical habitat appears to include most of the extant locations for *Astragalus lentiginosus* var. *coachellae* and appears to include the sand transport corridors, sand formations, and alluvial areas that remain viable in the Coachella Valley area, and that these areas are essential to maintaining the unique habitat upon which *A. l.* var. *coachellae* depends.

Response to Comment 22: We appreciate the commenter's support of our proposed designation.

Comment 23: One commenter stated that none of the areas proposed for critical habitat should be considered for exclusion from the final designation. This commenter also strongly recommended we utilize the Service's ''policy for evaluation of conservation efforts when making listing decisions'' (PECE) (68 FR 15100) when considering exclusions from the final critical habitat designation. Although the policy was developed in the context of listing rather than designation of critical habitat, the commenter asserted that the criteria apply equally well to determining the benefits of any conservation plan in the context of considering exclusions.

Response to Comment 23: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat after taking into consideration the economic impacts, national security impacts, and any other relevant impacts of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of designating a particular area as critical habitat, unless the failure to designate will result in the extinction of the species. The exclusions in this final rule are supported under section 4(b)(2) of the Act. After analyzing the benefits of inclusion and exclusion of proposed critical habitat on lands covered by the Coachella Valley MSHCP/NCCP and on Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians reservation lands, we determined that the benefits of exclusion outweigh the benefits of inclusion for all of these areas (see Exclusions Under Section 4(b)(2) of the Act—Coachella Valley MSHCP/NCCP and Exclusions Under Section 4(b)(2) of the Act—Tribal Lands sections above). Service biologists continue to work with the permittees of the Coachella Valley MSHCP/NCCP, the Morongo Band of Mission Indians, and the Agua Caliente Band of Cahuilla Indians to ensure the conservation of *Astragalus lentiginosus* var. *coachellae* and its habitat.

The PECE Policy outlines specific criteria by which conservation or management actions and programs are evaluated for use in making listing determinations under the Act. However, the PECE Policy explicitly states that the Policy is not to be used for evaluating conservation or management actions for critical habitat designations. More appropriately, with regard to critical habitat, these actions and programs should be considered under section 4(b)(2) of the Act, and, if the Secretary wants to exercise his discretion to exclude an area from a critical habitat designation, evaluated through the balancing analysis under section 4(b)(2) of the Act to determine if the benefits of excluding the specific areas covered by them from critical habitat outweigh the benefits of including them in the designation.

Comment 24: One commenter urged us to determine whether the various

conservation and management plans in the Coachella Valley manage for recovery of *Astragalus lentiginosus* var. *coachellae.* The commenter expressed concern that many habitat conservation plans allow what the commenter sees as substantial destruction of habitat such that even with mitigation, they result in a net loss of habitat and thus do not ensure recovery of covered species.

The commenter goes on to state that:

''In invalidating a 1986 regulation that collapsed the definition of adverse modification with jeopardy, the Ninth Circuit concluded that the regulation 'finds that adverse modification to critical habitat can only occur when there is so much critical habitat lost that a species' very survival is threatened,' which would 'drastically narrow the scope of protection commanded by Congress under the ESA.' (*Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). This and other court decisions demonstrate that critical habitat must receive a greater degree of protection than is typically provided by HCPs or other management plans. Given this disparity, we ask that when determining whether to exclude essential habitat based on an HCP, FWS makes a determination as to whether the HCP will ensure recovery of the species, which for [*Astragalus lentiginosus* var. *coachellae**], which is limited by habitat, would mean increasing the amount of habitat over time.''

*(The commenter refers to 'flycatcher' here; we presume the commenter intended to refer to *Astragalus lentiginosus* var. *coachellae.*)

Response to Comment 24: We appreciate the commenter's concerns regarding the long-term recovery of *Astragalus lentiginosus* var. *coachellae.* However, the Secretary is vested with broad discretion under section 4(b)(2) in evaluating whether the benefits of excluding an area from critical habitat designation outweigh the benefits of designating the area, so long as exclusion of an area will not result in extinction of a species. We consider a number of factors in a section 4(b)(2) analysis, including (but not limited to) the protections afforded for a species and its essential habitat under an HCP, whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat, particularly partnerships that include voluntary protections for listed plant species in an HCP or other management plan, and the economic, regulatory, and educational impacts of including a particular area as critical habitat. Please see the Exclusions section for further discussion.

We found the benefits of excluding lands that are covered under the Coachella Valley MSHCP/NCCP to be greater than the benefits of including these lands. Please see the Exclusions under Section 4(b)(2) of the Act—Coachella Valley MSHCP/NCCP section above for a detailed discussion. The Service views the partnerships we share with permittees of the HCP and local landowners and managers as having greater potential to provide for the recovery of the taxon than designation of critical habitat in areas covered under the HCP, which could damage these partnerships and thus reduce potential for recovery.

Comment 25: One commenter requested that we provide evidence that designating critical habitat in addition to any HCPs or other management plans would do any harm. The commenter asserts that real evidence of harm from critical habitat designation, such as a landowner abandoning a plan or even threatening to take such action, is lacking, and that the Service does not have or require such data to support this conclusion.

Response to Comment 25: We have received comment letters from some of the Coachella Valley MSHCP/NCCP permittees, the Coachella Valley Conservation Commission, the Agua Caliente Band of Cahuilla Indians, the Morongo Band of Mission Indians, and the Bureau of Indian Affairs in response to the proposed rule to designate critical habitat for *Astragalus lentiginosus* var. *coachellae,* all stating that the partnerships that we share with these entities will be damaged by designation of critical habitat on tribal lands or lands covered under the Coachella Valley MSHCP/NCCP. We consistently receive similar comments from HCP stakeholders and other partners in response to rules proposing critical habitat designation on lands covered by HCPs and other areas where conservation of biological resources is carried out in conjunction with the Service via partnerships. We believe these communications are sufficient evidence of the potential to damage partnerships and diminish conservation efforts of partners by adding a real or perceived regulatory burden of critical habitat designation.

Comment 26: One commenter is concerned that we did not include all of the extant locations where *Astragalus lentiginosus* var. *coachellae* is documented to occur and a robust identification of the sand sources required to sustain the taxon's habitat over time. The commenter requested that we consider all of the areas identified in the five-year review for *A. l.* var. *coachellae* to support the taxon or provide a justification for why they were not included.

In particular, the commenter asked that we consider adding areas where numerous plants have been documented to occur between Units 2, 3, and 4 between Rancho Mirage and Thousand Palms and in Indian Wells near Highway 111, and elsewhere.

Response to Comment 26: The commenter did not define ''robust identification.'' We do indicate what areas surrounding the Coachella Valley contribute sand required to sustain *Astragalus lentiginosus* var. *coachellae* habitat in both the proposed revised critical habitat rule and this final revised rule, and we believe that more detailed discussion of these areas is outside of the scope of these rules. In both the proposed and final revised rules, we have outlined our methods and reasoning for not proposing all areas occupied by the taxon (see *Criteria Used To Identify Critical Habitat* section above).

Comment 27: One commenter asked that we consider all sand source areas identified in the 2004 critical habitat proposal as part of this critical habitat designation or provide a justification for why they are not included.

Response to Comment 27: We provided an explanation of the methods and reasoning behind our decision not to propose the hills and mountains where sediment is generated via water erosion (fluvial sand source areas) in Units 1, 2, and 3 as critical habitat for *Astragalus lentiginosus* var. *coachellae* in the *Criteria Used To Identify Critical Habitat* section above, as well as in our response to peer reviewer comment number 3.

Comment 28: One commenter expressed concern that, while the Agua Caliente Band of Cahuilla Indians are continuing to implement the draft HCP, there is no information on the adequacy of the draft HCP or the permanence of the Tribe's commitment to maintain its provisions.

The commenter also stated that because the Morongo Band of Mission Indians has not completed a management plan, there are no assured protections or management actions in place, and the partnerships' effectiveness is questionable.

The commenter goes on to assert that exclusion of these Tribal lands from this critical habitat designation would set a precedent that is unfair to Tribes that actually have plans in place that are either HCPs or functional equivalents, and incentivize inaction rather than encouraging Tribes to actually work with the Service on tangible conservation benefits. Balancing in favor of exclusion of Tribal lands from critical habitat designations appears to the commenter to be politically

motivated rather than based on on-the-ground facts.

Response to Comment 28: In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal reservation lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goal of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

The exclusion of Agua Caliente Band of Cahuilla Indians and Morongo Band of Mission Indians reservation lands is likewise based on the importance of the government-to-government relationship with these Tribes, our conservation partnership with the Tribes, and their current management of tribal lands, as described in Martin (2011, pp. 1–2), Park (2011, pp. 1–11) and ACBCI (2010b).

Please see the Exclusions Under Section 4(b)(2) of the Act—Tribal Lands section of this final rule for additional discussion.

Comment 29: One commenter expressed concern that we have not considered whether nonparticipating agencies or special districts have the potential to interfere with the Coachella Valley MSHCP/NCCP permittees' ability to achieve the HCP's conservation goals and objectives, and that we have not provided an analysis of potential threats from noncovered activities to achieving the conservation goals of the Coachella Valley MSHCP/NCCP. The commenter feels that a legitimate balancing test must take these factors into account.

Response to Comment 29: Lands that are not under the jurisdiction of the permittees of the Coachella Valley MSHCP/NCCP have not been excluded from this critical habitat designation and are, therefore, subject to the provisions of section 7 of the Act. We have not analyzed the potential for interference of nonpermittee entities with the implementation of the Coachella Valley MSHCP/NCCP because we believe such issues, if they arise, can be anticipated and managed by communicating and working with our partners in the Coachella Valley area.

Comment 30: One commenter stated that permittees of the Coachella Valley MSHCP/NCCP should be relieved of critical habitat obligations as long as the plan is properly functioning, but that nonpermittees within the plan area should obtain no such benefits. The commenter asserted that giving nonparticipants a ''free ride'' is an incentive not to participate in large-scale HCP/NCCPs.

Response to Comment 30: To our knowledge, we have not excluded any nontribal lands not explicitly covered by the Coachella Valley MSHCP/NCCP from this critical habitat designation.

Comments Regarding the Economic Analysis

Comment 31: One peer reviewer asserted that the economic impact assessment under section 4(b)(2) of the Act must take into account the large decline in land values that has occurred since 2005, especially in desert regions of California.

Response to Comment 31: Presumably, the peer reviewer anticipated that the DEA would estimate the costs of the designation in terms of lost development opportunities, measured in terms of reduced land values. In fact, the analysis takes a slightly different approach. As described in Section 4.2 of the FEA, incremental project modifications resulting from the designation are unlikely in most areas, with the exception of unoccupied portions of Unit 3 in the City of Desert Hot Springs. Because the City does not yet have an approved HCP, we assume that, if development occurs in this area and a Federal nexus exists, project modification costs would be attributable to the designation. As a proxy for the cost of such project modifications, we use the per-housing-unit mitigation fee currently required under the Coachella Valley MSHCP/NCCP. This value, as of 2012, is $1,254 per unit in low-density residential developments and $5,600 per acre of commercial and industrial development. The MSHCP/NCCP mitigation fees, obtained directly from the Coachella Valley Association of Governments, represent the best available information regarding the unit cost of efforts to protect the plant.

Comment 32: One commenter stated that in the event that the Riverside County Flood Control and Water Conservation District flood control systems are not excluded from the critical habitat designation from *Astragalus lentiginosus* var. *coachellae,* the Service's economic analysis of the revised critical habitat designation for *A. l.* var. *coachellae* will need to evaluate the potential direct and indirect adverse impacts to the existing Cabazon Channel, Chino Canyon Levee, Whitewater River Levee, Mission Creek Channel, and Desert Hot Springs Channel Line E facilities and surrounding areas that include but are not limited to: (1) Increased costs associated with species surveys and section 7 consultation process; (2) increased risk that the flood control systems may fail to provide the full measure of protection to the public as a result of lengthy section 7 consultation process and implementation of any mitigation requirements (e.g., avoidance, minimization, onsite/offsite compensatory, etc.) imposed through that process; (3) increased costs (e.g., increased flood insurance rates, etc.) imposed on the local community through the National Flood Insurance Program as a result of not meeting FEMA requirements; (4) potential damages to the communities that may result if critical maintenance activities are delayed; (5) additional costs associated with duplicate mitigation requirements; (6) potential conflicts between mitigation requirements and the associated existing flood control facilities; (7) the costs associated with amending the Coachella Valley MSHCP/NCCP; and (8) the consequential costs if the final rule negates the successful implementation of the Coachella Valley MSHCP/NCCP.

Response to Comment 32: The Secretary is exercising his discretion to exclude all lands covered under the Coachella Valley MSHCP/NCCP, including Riverside County Flood Control and Water Conservation District lands, from this critical habitat designation (see Exclusions Under Section 4(b)(2) of the Act—Coachella Valley MSHCP/NCCP section above).

Comment 33: Four commenters expressed concern regarding potential economic impacts the designation of critical habitat could have on wind energy firms located within the critical habitat designation.

Response to Comment 33: Because the areas in question are occupied by *Astragalus lentiginosus* var. *coachellae* and any project in these areas with a Federal nexus would require consultation with the Service under

section 7 of the Act to address potential impacts to the taxon, the economic analysis for the critical habitat designation did not predict project modification costs to wind energy interests due to the designation of critical habitat, only the administrative costs of adding adverse modification analyses to these future section 7 consultations. We, therefore, conclude that potential economic impacts to these wind energy interests will be small.

Comment 34: One commenter stated that because the costs estimated in the DEA are low, there is no basis for economic exclusion of any of the areas proposed as critical habitat for *Astragalus lentiginosus* var. *coachellae.*

Response to Comment 34: Based on the information presented in the Economic Analysis, the Secretary is not exercising his discretion to exclude any areas from this designation based on economic impacts (see Exclusions Based on Economic Impacts section above for more detailed discussion).

Comment 35: One commenter expressed appreciation for the Service's clear separation of postdesignation baseline costs from the incremental future costs of designation in the DEA.

Response to Comment 35: We thank the commenter for their review and comments.

Comment 36: A comment provided on the DEA states that because the majority of the proposed critical habitat falls within the plan area of the Coachella Valley MSHCP/NCCP, section 7 consultation costs should be significantly streamlined. The comment suggests that, as a result, the DEA overestimates administrative impacts from the proposed revised designation.

Response to Comment 36: The DEA relies on the best available information on administrative costs, compiled from interviews with Service staff, action agency staff, and private consultants. Although consultation costs may be streamlined for projects covered by the Coachella Valley MSHCP/NCCP that have a Federal nexus, each Federal action still requires consultation with the Service if the action may affect listed species or critical habitat. Therefore, to avoid underestimating the potential impacts of the designation, the DEA assumes the level of effort required for these consultations will be similar to effort associated with consultations undertaken for activities not covered by an HCP.

Comment 37: One commenter asserts that the DEA fails to provide supporting data to justify the cost of section 7 consultations.

Response to Comment 37: As described in Exhibit 2–2 of the DEA, the consultation cost model is based on data gathered from three Service field offices (including a review of consultation records and interviews with field office staff), telephone interviews with action agency staff (for example, BLM, Forest Service, U.S. Army Corps), and telephone interviews with private consultants who perform work in support of permittees. In the case of Service and Federal agency contacts, we determined the typical level of effort required to complete several different types of consultations (hours or days of time), as well as the typical General Schedule (GS) level of the staff member performing this work. In the case of private consultants, we interviewed representatives of firms in California and New England to determine the typical cost charged to clients for these efforts (for example, biological survey, preparation of materials to support a Biological Assessment). The model is periodically updated with new information received in the course of data collection efforts supporting economic analyses and public comment on more recent critical habitat rules. In addition, the GS rates are updated annually.

Comment 38: One commenter states that incremental costs associated with the City of Desert Hot Springs are highly unlikely. This commenter states that costs are estimated for the development of lands located within the floodplain, which the City is unlikely to develop. Additionally, the commenter suggests that consultation may be unlikely because the City of Desert Hot Springs will soon be a permittee of the Coachella Valley MSHCP/NCCP. Therefore, the commenter asserts that future incremental costs are inflated.

Response to Comment 38: The DEA accounts for the uncertainty associated with the potential for development within the floodplain by excluding these costs from the low estimate and including them in the high estimate. Our interview with City officials suggested that they would prefer to avoid development within the floodplain. However, because the City has no official restrictions preventing such development, such development is possible. Development projections for this area are based on Southern California Association of Governments growth forecasts. Until the City of Desert Hot Springs becomes a permittee of the Coachella Valley MSHCP/NCCP via a major amendment, these costs are considered incremental to the baseline. Because this amendment had not yet been finalized as of the time of the economic analysis, incremental costs are estimated. In addition, section 7 consultation is still required for activities with a Federal nexus that are not covered under the Coachella Valley MSHCP/NCCP and may affect listed species or critical habitat, and, as a result, the potential for incremental impacts will still exist after the City of Desert Hot Springs becomes a permittee.

Comment 39: One commenter states that the low estimate of administrative impacts, as described on Page 4–2 of the DEA, is not clearly attributed.

Response to Comment 39: Section 4.8 of the DEA describes in detail the methodology used to estimate incremental administrative costs. The methodology involves projecting the consultation history from the past 18 years forward. In particular, Exhibit 4–5 presents the projected number of consultations by economic activity and critical habitat unit. This exhibit notes which projected consultations—only those occurring on the Agua Caliente Reservation—are excluded from the low estimate. All other consultations are included in both the low and high estimates.

Comment 40: According to a comment submitted by the Agua Caliente Band of Cahuilla Indians, the DEA incorrectly identifies the Tribal Habitat Conservation Plan (THCP) as a draft plan.

Response to Comment 40: The Tribal Habitat Conservation Plan of the Agua Caliente Band of Cahuilla Indians is considered a ''draft'' plan because the Service has not issued an incidental take permit associated with this document under section 10(a)(1)(B) of the Endangered Species Act. Text has been added to the Final Economic Analysis (FEA) to clarify this assertion. Additionally, the FEA notes that the Tribe considers this plan a Tribal-approved, final document and implements it as such for land-use planning on all Reservation lands, despite having withdrawn the request for a section 10(a)(1)(B) incidental take permit.

Comment 41: According to a comment submitted by the Agua Caliente Band of Cahuilla Indians, the DEA incorrectly states the size of the Agua Caliente Indian Reservation.

Response to Comment 41: The acreage reported in the DEA is taken from the following reference: Tiller, Veronica E. Velarde. ''Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations.'' Bow Arrow Publishing Company, 2005 (364). Based on updated information provided by the Tribe in this comment, the FEA corrects the acreage of the Reservation to 31,500 acres.

Comment 42: One comment submitted by the Agua Caliente Band of Cahuilla Indians states that in paragraph 160, the DEA incorrectly identifies the Tribe as the party that engaged in consultation with the Service for three previous projects.

Response to Comment 42: The text has been revised in the FEA to correctly indicate that the Bureau of Indian Affairs, and not the Tribe, engaged directly in consultation with the Service for past projects occurring on Agua Caliente Reservation land.

Comment 43: One commenter states that the DEA fails to include consideration of benefits resulting from the designation of critical habitat. In particular, this commenter suggests that the DEA fails to quantify ancillary benefits including the protection and improvement of water quality; preservation of natural habitat to benefit other species; and prevention of development in flood-prone areas, despite existing economic literature monetizing these benefits. This commenter suggests that these benefits should be assessed and quantified where possible or otherwise included in a detailed qualitative analysis.

Response to Comment 43: The primary purpose of this critical habitat designation is to support the conservation of *Astragalus lentiginosus* var. *coachellae.* As described in Chapter 5 of the DEA, quantification and monetization of this conservation benefit requires information on the incremental change in the probability of conservation resulting from the designation. Such information is not available, and, as a result, monetization of the primary benefit of critical habitat designation is not possible.

Other ancillary benefits of the designation may include: Increased residential property values adjacent to preserved habitat; increased recreational opportunities; preservation of habitat for other species; and improvements in water quality, among others. Although economic literature does exist that monetizes similar benefits, these studies are necessarily site-specific. For example, using benefits transfer techniques to estimate changes in residential property value based on the existing economic literature would require knowledge of the characteristics of the specific lands preserved as a result of the designation of critical habitat, including proximity to residential properties and the amount of existing open space in the area. Without knowing where lands will be preserved (for example, through mitigation fees) as a result of this designation, it is impossible to estimate such benefits. Similarly, quantifying benefits associated with improved water quality would require information regarding baseline water quality, hydrologic and chemical modeling to estimate changes in water quality, and risk analysis to determine avoided human health risk based on changes to water quality. These types of analyses are beyond the scope of the DEA. As a result, benefits associated with the designation of critical habitat are discussed qualitatively.

Comment 44: One commenter expresses concern that the designation of critical habitat may impact routine maintenance and operations of the Colorado River Aqueduct on Metropolitan Water District of Southern California (MWD) lands. These activities may include aqueduct inspection and cleaning, replacement and rebuilding of infrastructure, and maintenance of patrol and access roads. Additionally, the comment mentions an upcoming mine pit reclamation project on MWD lands that may be affected by the designation of critical habitat.

Response to Comment 44: As of the time of publication of the DEA, we were unable to confirm with MWD the types of activities ongoing or planned for these lands. However, in information subsequently provided, MWD states that routine maintenance and operations of the Colorado River Aqueduct do not require the involvement of a Federal agency. As a result, activities associated with the Colorado River Aqueduct are unlikely to have a nexus for section 7 consultation. Incremental impacts are therefore not anticipated to result from these activities. The mine pit reclamation project may have a Federal nexus for consultation through the U.S. Army Corps of Engineers Clean Water Act section 404 permitting process. The FEA has been revised to incorporate new information on MWD activities in these areas, as provided in the public comment and the information received subsequent to the submission of the DEA. Administrative impacts are estimated for these MWD activities in the FEA.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for *Astragalus lentiginosus* var. *coachellae* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than

$27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., residential, commercial, and industrial development; water management and use; transportation activities; energy development; sand and gravel mining; and Tribal activities). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Astragalus lentiginosus* var. *coachellae.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification Standard''* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Astragalus lentiginosus* var. *coachellae* and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 1 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Residential, commercial, and industrial development; (2) water management and use; (3) transportation activities; (4) energy development; (5) sand and gravel mining; and (6) Tribal activities.

Estimated incremental impacts of this critical habitat designation consist primarily of additional administrative cost of considering adverse modification during section 7 consultation and incremental project modification costs resulting from activities not covered under the Coachella Valley MSHCP/NCCP. The Service and the action agency are the only entities with direct compliance costs associated with this critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is, therefore, possible that the small entities may spend additional time considering critical habitat during section 7 consultation for *Astragalus lentiginosus* var. *coachellae.* The FEA indicates that the incremental impacts potentially incurred by small entities are limited to development activities.

The FEA estimates annualized project modification costs of approximately $52,000 in Unit 3, and annualized third party administrative costs ranging from $156 to $263, depending on whether a consultation is formal or informal and whether the project location is considered occupied or unoccupied, distributed across all four units. Because information on the number of projects or developers likely to be affected is not available, the FEA assumes that a single developer bears all costs associated with growth in proposed revised critical habitat. Under this assumption, $52,260 in incremental costs would accrue to one developer per year. Assuming the average small entity has annual revenues of approximately $5.1 million, this annualized impact represents approximately one percent of annual revenues. The assumption that all costs accrue to one developer likely overstates the impact significantly; thus, we estimate incremental impacts to small developers of less than one percent of annual revenues.

The FEA also concludes that none of the governmental entities with which the Service might consult on *Astragalus lentiginosus* var. *coachellae* for water management and use, transportation, mining, energy development, or Tribal activities meet the definitions of small as defined by the Small Business Administration (SBA) (IEc 2012, p. A–4–A–5); therefore, impacts to small governmental entities due to transportation and habitat management activities are not anticipated.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with *Astragalus lentiginosus* var. *coachellae* conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal

intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development, transportation, and flood control projects activities; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, State agencies, local water and flood control districts, and wind energy and mining companies that are not considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we analyzed the potential takings implications of designating critical habitat for *Astragalus lentiginosus* var. *coachellae* in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The takings implications assessment concludes that this designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. We did not receive comments from State agencies. The designation of critical habitat in areas currently occupied by *Astragalus lentiginosus* var. *coachellae* may impose nominal additional regulatory restrictions to those currently in place and, therefore, is expected to have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule identifies the elements of physical or biological features essential to the conservation of the *Astragalus lentiginosus* var. *coachellae* within the designated areas to assist the public in understanding the habitat needs of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose

recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

In the proposed revisions to critical habitat published in the **Federal Register** on August 25, 2011 (76 FR 53224), we proposed approximately 316 ac (128 ha) in Unit 1 within the boundary of the Morongo Band of Mission Indians Reservation, and 580 ac (235 ha) in Unit 2 within the boundary of the Agua Caliente Band of Cahuilla Indians Reservation, as critical habitat for *Astragalus lentiginosus* var. *coachellae.* We worked directly with the tribes to determine economic and other burdens expected to result from critical habitat designation on tribal lands, and as a result of information exchanged and in consideration of impacts to our government-to-government relationship with tribes and our current and future conservation partnerships, the Secretary is exercising his discretion to exclude all lands within tribal reservation boundaries meeting the definition of critical habitat for *Astragalus lentiginosus* var. *coachellae* from this final revised designation under section 4(b)(2) of the Act (see Exclusions Under Section 4(b)(2) of the Act—Tribal Lands section above).

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this rulemaking are the staff members of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by revising the entry for ''*Astragalus lentiginosus* var. *coachellae''* under Flowering Plants in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus lentiginosus var. *coachellae*.	Coachella Valley milk-vetch.	U.S.A. (CA)	Fabaceae	E	647	17.96(a)	NA
*	*	*	*	*	*		*
*	*	*	*	*	*		*

■ 3. Amend § 17.96(a) by revising the entry for ''*Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch)'' under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch)

(1) Critical habitat units are depicted for Riverside County, on the maps below.

(2) Within these areas, the primary constituent element of the physical or biological features essential to the conservation of *Astragalus lentiginosus* var. *coachellae* consists of sand formations associated with the sand transport system in Coachella Valley, California. These sand formations have the following features:

(i) They are active sand dunes, stabilized or partially stabilized sand dunes, active or stabilized sand fields (including hummocks forming on leeward sides of shrubs), ephemeral sand fields or dunes, and fluvial sand deposits on floodplain terraces of active washes.

(ii) They are found within the fluvial sand depositional areas, and the aeolian sand source, transport, and depositional areas of the sand transport system.

(iii) They comprise sand originating in the hills surrounding Coachella Valley and alluvial deposits at the base of the Indio Hills, which is moved into the valley by water (fluvial transport) and through the valley by wind (aeolian transport).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on March 15, 2013.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5′ quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site, *http://www.fws.gov/carlsbad/GIS/CFWOGIS.html, http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0064, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

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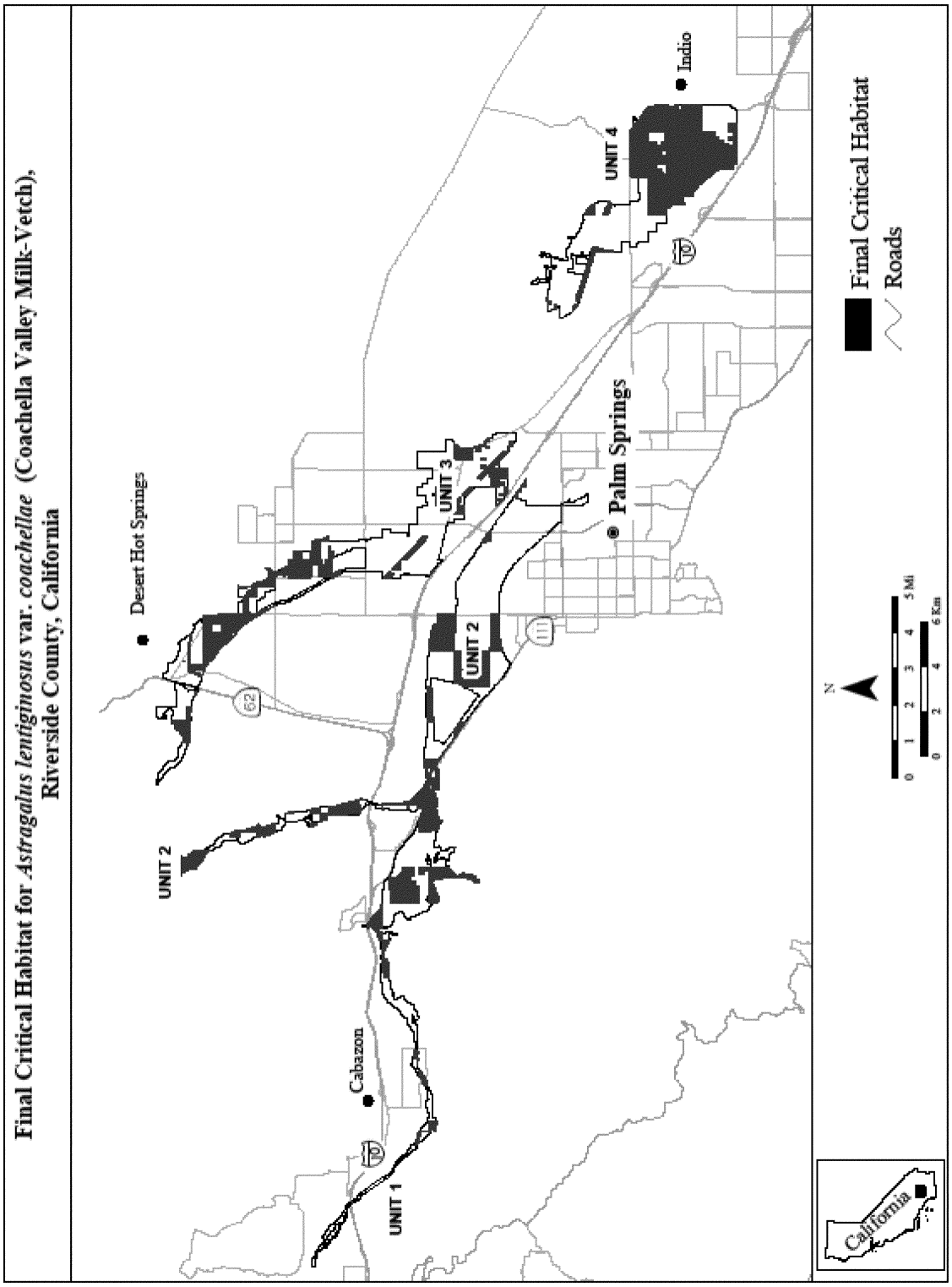
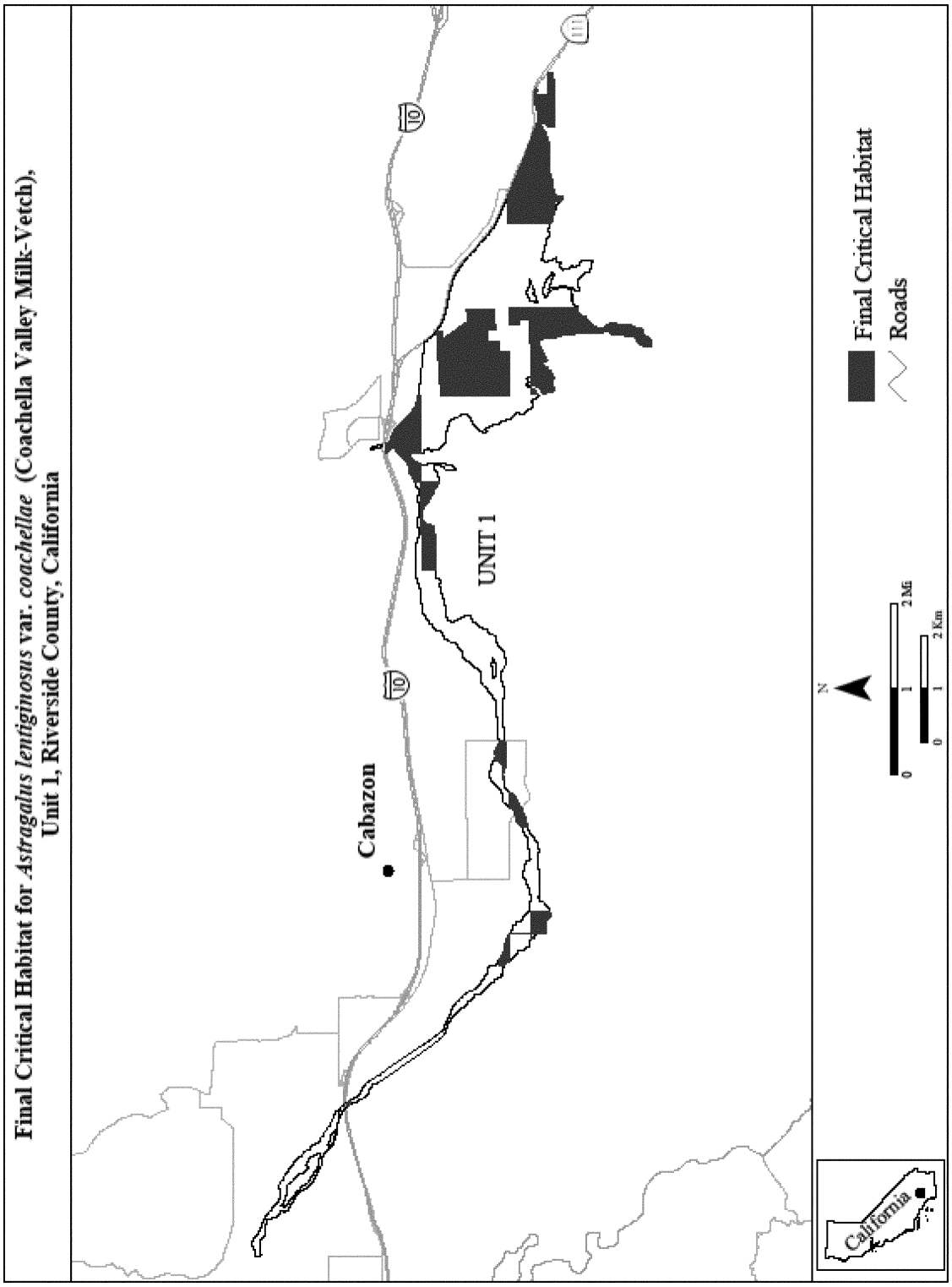
(5) *Note:* Index map of four critical habitat units designated for *Astragalus lentiginosus* var. *coachellae* follows:



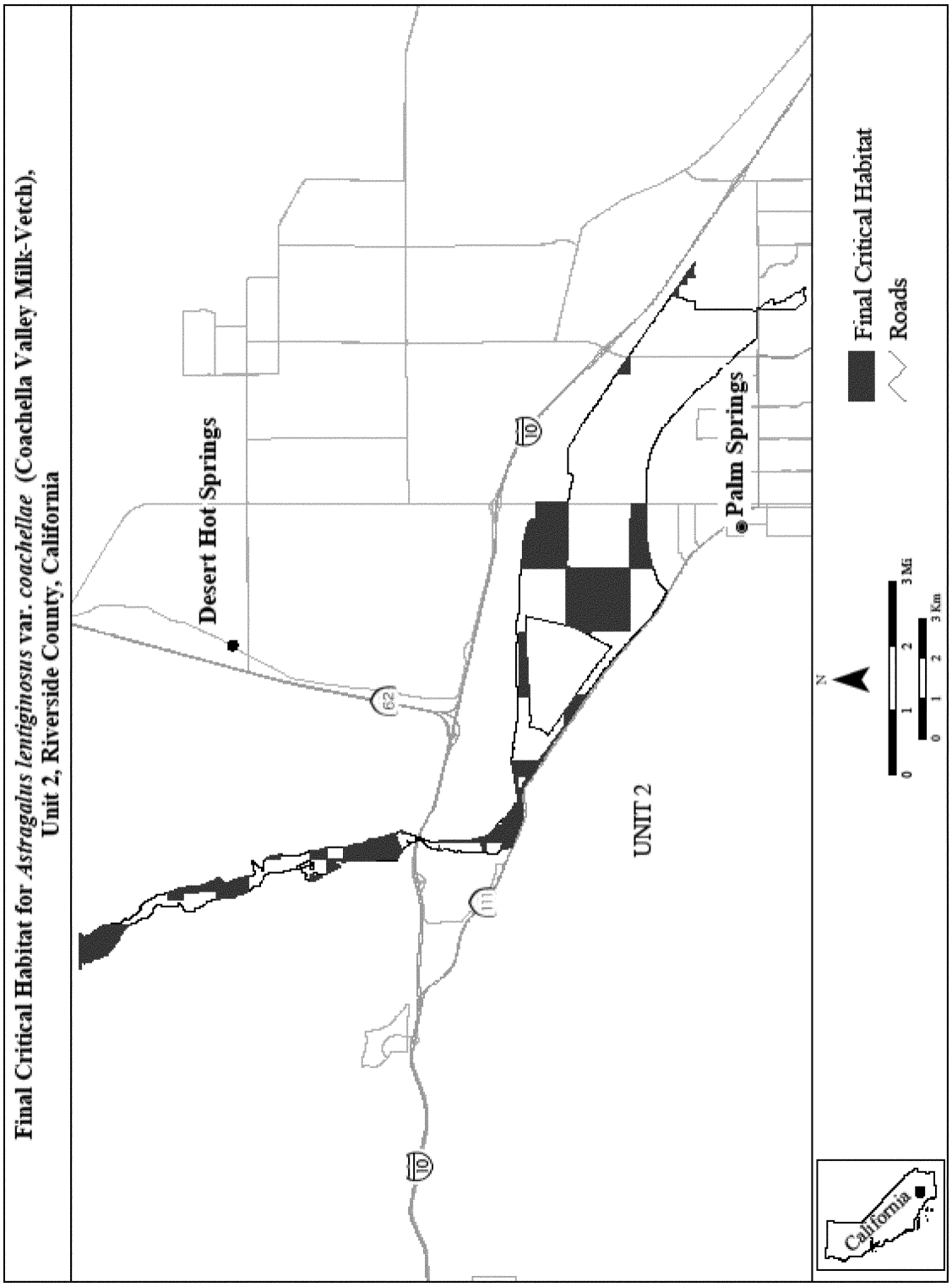
(6) Unit 1: San Gorgonio River/Snow Creek System.

(i) Note: Map of Unit 1 follows:



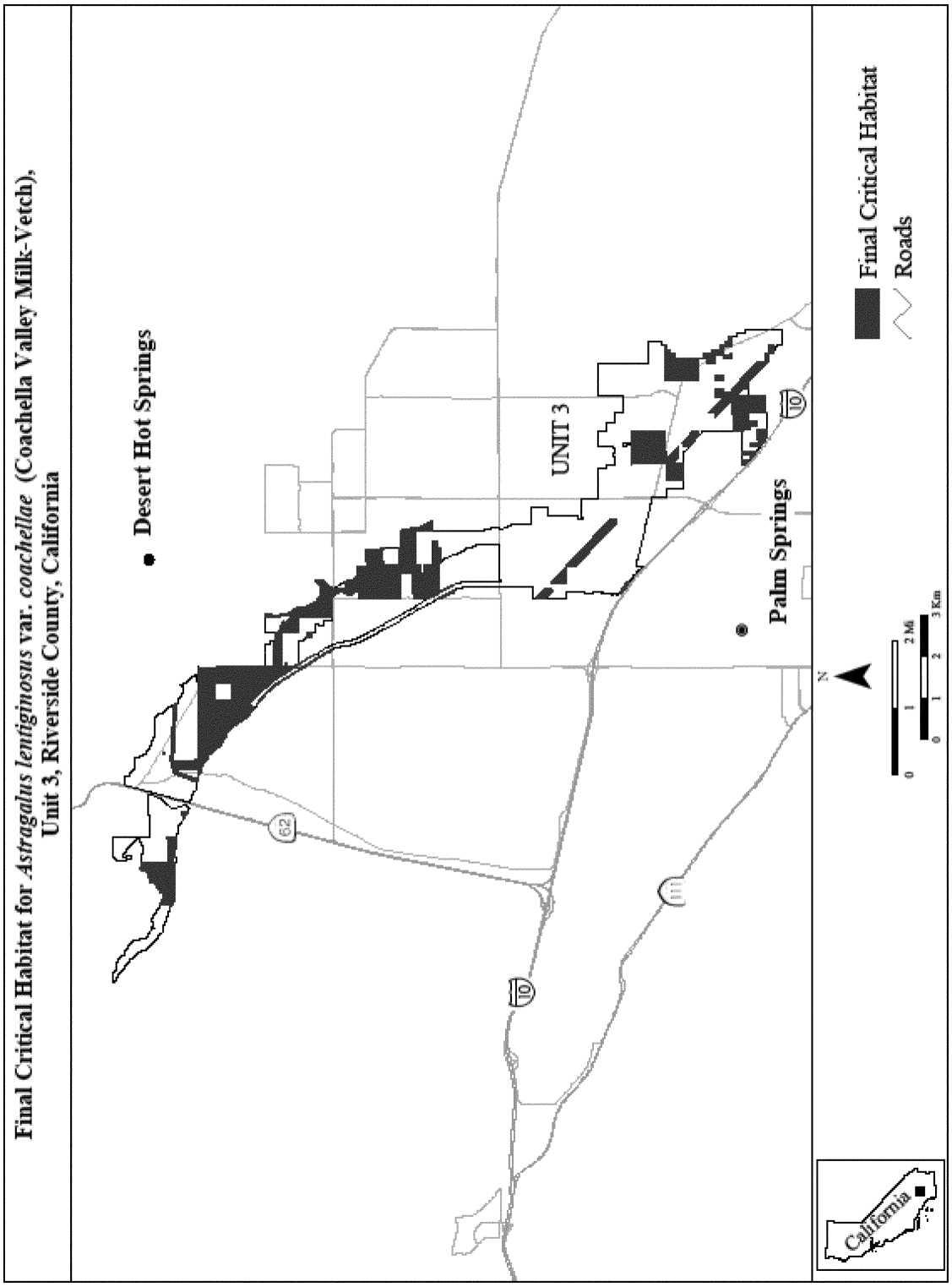
(7) Unit 2: Whitewater River System.

(i) Note: Map of Unit 2 follows:



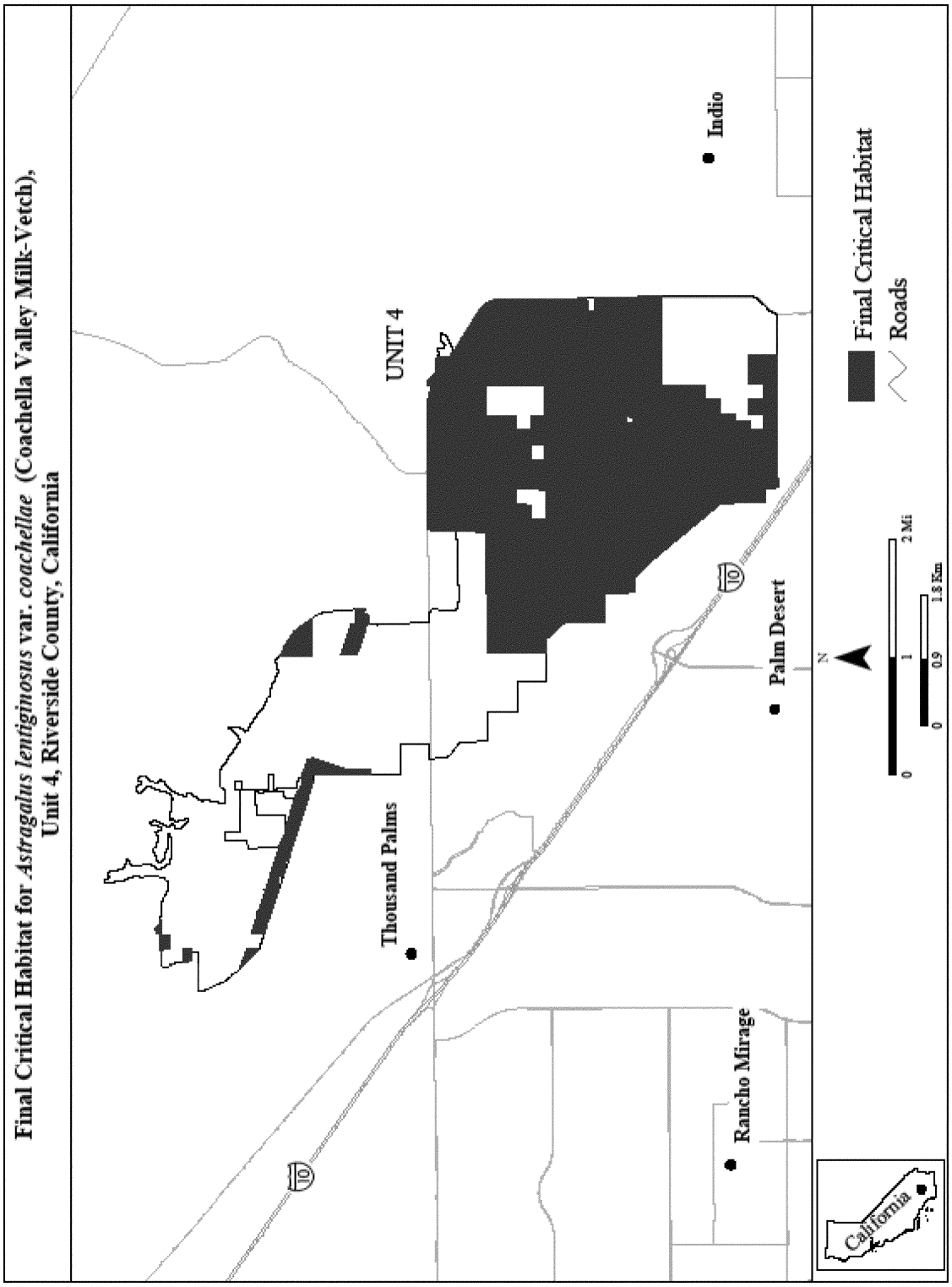
(8) Unit 3: Mission Creek/Morongo Wash System.

(i) Note: Map of Unit 3 follows:



(9) Unit 4: Thousand Palms System.

(i) Note: Map of Unit 4 follows:



* * * * *

Dated: February 1, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–03109 Filed 2–12–13; 8:45 am]

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